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BOOK REVIEW

THE MYTH OF REPRESSED MEMORY

JAMES E. BEAVER*

THE MYTH OF REPRESSED MEMORY. By *Elizabeth Loftus and Katherine Ketcham*. St. Martin's Press 1994. Pp. 290.

Elizabeth Loftus and Katherine Ketcham have produced another provocative, timely, and persuasive book, *The Myth of Repressed Memory*. The book is timely because the United States is riddled with episodes of recaptured memory of child abuse.¹ The book is persuasive because it primarily consists of a long parade of horrors; shocking examples of families destroyed, probably innocent persons condemned to the penitentiary, and abominable perversions of justice.

Dean Pound, a former Harvard Law School Dean, once observed that the eighteenth century was the Age of Reason, the nineteenth century the Age of Empiricism, and the twentieth century, the Age of Sentiment.² There is much evidence of this thesis. In the present century numerous people have been murdered because of their religion, their race, their class, or their beliefs.³ At least in the thirteenth century Genghis Khan had a more practical purpose: the Mongols needed more pasturage for horses!

It is in this late twentieth century that some psychotherapists, psy-

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¹ See ELIZABETH LOFTUS & KATHERINE KETCHAM, *THE MYTH OF REPRESSED MEMORY* (1994). See also Dorothy Rabinowitz, *Wenatchee: A True Story*, WALL ST. J., Sept. 29, 1995, at A12; Dorothy Rabinowitz, *Wenatchee, A True Story—II*, WALL ST. J., Oct. 13, 1995, at A12; State v. Michaels, 642 A.2d 1372 (N.J. 1994); Commonwealth v. Amirault, 612 N.E.2d 631 (Mass. 1993); *McMartin v. Children's Institute International*, 261 Cal. Rptr. 437 (Cal. Ct. App. 1989), cert. denied, 494 U.S. 1057 (1990).

² See Robert J. Cottrol & Raymond T. Diamond, *The Fifth Auxiliary Right*, 104 YALE L. J. 985, 1025 (1995); see also RUDOLPH J. RUMMEL, *DEATH BY GOVERNMENT* (1994).

³ Admittedly, Crusaders murdered Muslims (and *vice versa*), Romans fed Christians to the lions, the Inquisition involved horrors, and the list could be vastly extended. But no century can even approach the 20th in numbers. See DAVID WIGDOR, *ROSCOE POUND: PHILOSOPHER OF LAW* 216 (1974); 2 ROSCOE POUND, *JURISPRUDENCE* 99-199 (1959).

chologists, and perhaps a number of politically-correct psychoquacks, have "helped" thousands of people discover "repressed memories" of childhood sexual abuse. Many⁴ of these "memories" may be false. In the case of certain types of insecure or unsuccessful people, "discovery" of childhood abuse offers a convenient and rewarding scapegoat. As Dr. Richard Gardner, a Clinical Professor of Child Psychiatry at Columbia University, observes:

You're 35 or 40 and your life is all screwed up, and someone offers this very simple solution. "Ah, I never realized I was sexually abused. That explains it all!"—It's a simple answer for the therapist as well as the patient.⁵

Across America people are going to jail and families are torn apart because of the revived memory fad in psychology and the therapeutic professions. Events of the forties or sixties or seventies are "recovered" in the 1990s, leading to children suing their parents—and often they are awarded damages. The theory is that when the mind has suffered a horrifying experience, it may bury the memory of the event so deeply in the subconscious that the memory can only be recovered with great effort—therapeutic effort.⁶ The recovered memories usually relate to child abuse, though sometimes they may recapture visions of murder and other events.

According to Dr. Loftus, there is no evidence, notwithstanding enormous effort to discover such evidence, that memories of traumatic events are routinely or frequently banished to the subconscious to languish for decades, from whence they are later reliably recovered.⁷ Dr. Loftus does not assert that child abuse does not occur or that memory of it is never repressed. But she *does* establish through many of her case examples that many of these memories are complete fabrications, usually elicited by overzealous, sometimes incompetent, and often fanatical politically-correct therapists.⁸

The Loftus book appeared in 1994. Since then, more "repressed memory" cases have received public scrutiny. Perhaps the most famous current instance is the *Amirault* case,⁹ which would make one or more additional chapters for the Loftus book, and which may be helpful to consider here. Ms. Dorothy Rabinowitz, in a series of articles in

⁴ After reading this book, one imagines that a preferable adjective would be "most."

⁵ *Notable & Quotable*, WALL ST. J., Jan. 4, 1993, at A8.

⁶ See, e.g., ALAN BADDELEY, *HUMAN MEMORY: THEORY AND PRACTICE* (1990); E. SUE BLUME, *SECRET SURVIVORS: UNCOVERING INCEST AND ITS AFTEREFFECTS IN WOMEN* (1990).

⁷ See, e.g., LOFTUS & KETCHUM, *supra* note 1, at 214-15, 218-19. Indeed, on occasion subjects have been "age-progressed" to seventy or eighty years old and recalled events they had yet to experience." *Id.* at 165.

⁸ See, e.g., *id.* at chs. 6, 9.

⁹ *Commonwealth v. Amirault*, 612 N.E.2d 631 (Mass. 1993).

the *Wall Street Journal*, of which she is an editor, has lobbied hard for release of the—she says—unjustly convicted Amiraults.¹⁰ The Amirault story concerns the people who ran the Fells Acres Day School in Malden, Massachusetts. The Commonwealth of Massachusetts charged several members of the Amirault family with child abuse at the school. In 1984, the number of the accused, the number of the crimes, and the monstrosity of the offenses, escalated swiftly. Son Gerald was convicted and sentenced to thirty to forty years in 1987. His mother and sister were later sentenced to eight to twenty years each.

The monstrous crimes included raping children with knives—miraculously failing to leave any objective indicia of wounding—and tying a naked child to a tree in front of all the teachers and children, while the Amirault daughter cut the leg off of a squirrel. These offenses were proven by the testimony of children who had undergone therapy.

Police and therapists apparently cooperated in bribing and intimidating witnesses. Ms. Rabinowitz reports that the school's teachers were questioned, but none could be found who saw anything wrong at the school. Although frightened by unsubtle threats from the police, the teachers reported nothing amiss.¹¹

The nurses and social workers developed most of the children's allegations of abuse. In the interviews, the children repeatedly said nothing happened, nobody took their clothes off, et cetera. However, the interviewer persisted, perhaps because "[i]n the world of these examiners, children are to be believed only when they say abuse took place. Otherwise, they are described as 'not ready to disclose.'"¹²

The children were given positive *and* negative reinforcement and one child was "played-off" against the others. The interviewer told one child that "Sara had said 'the clown had you girls take your clothes off in the magic room.'"

Child: "No, she's lying."

Nurse: "She's lying? Why would she lie about something like that . . . ?"

Child: "We didn't do that."

¹⁰ See, e.g., Dorothy Rabinowitz, *A Darkness in Massachusetts*, WALL ST. J., Jan. 30, 1995, at A20 [hereinafter *Darkness*]; Dorothy Rabinowitz, *A Darkness in Massachusetts II*, WALL ST. J., Mar. 14, 1995, at A18 [hereinafter *Darkness II*]; *Review & Outlook: The Amirault Case*, WALL ST. J., Mar. 27, 1995, at A18; *The Amiraults Got a Trial, Not Justice*, WALL ST. J., June 16, 1995, at A11 (letters to the editor). Two of the three jailed Amiraults were ordered released by a Superior Court judge on 8-29-95. *Justice for the Amiraults*, WALL ST. J., Aug. 30, 1995, at A14. Subsequently, the Commonwealth demanded that one of these defendants "return to prison to serve a three-month sentence meted out by prison authorities for supposedly threatening another inmate." *And What About Justice*, WALL ST. J., Sept. 1, 1995. See also *State Needs Help in Child Sex Case*, TACOMA NEWS TRIB., Aug. 30, 1995, at A9.

¹¹ See *Darkness*, *supra* note 10, at A20.

¹² *Id.*

The interviewer next tells this child:

Nurse: "I really believed her [Sara] because she told me all about it, and she even told me what the clown said."

Child: "What was it?"

Obviously, this case was built upon fabricated evidence. The fabrications, Ms. Rabinowitz says, were "wholesale."¹³ No reasonable person, she says, who looked at the trial transcript, could doubt that three innocent citizens were imprisoned on the basis of some of the most fantastic claims ever presented to an American trier of fact.¹⁴

Two of the Amiraults were denied parole—because they continued to assert their innocence.¹⁵ The judge who presided at their trial thereupon issued an order to revise and revoke their sentences. "Agitated prosecutors" (Ms. Rabinowitz's term) secured a reversal of the order—unprecedented in Commonwealth history.¹⁶ Like the witch trials of an earlier Massachusetts, this prosecution will someday be the source of "amazement and horror." Meantime, "Violet Amirault lies locked in prison along with her son and her daughter, while the days and years of life slip past."¹⁷

A self-congratulatory seminar entitled "The Fells Acres Day School Case—A Model Inter-disciplinary Response," was held shortly after sentencing. Malden Police Inspector John Rivers revealed the pressure that was put on the children when he observed that interviewing the children was "like getting blood from a stone."¹⁸ One child said more than a dozen times that Gerald Amirault had not touched her.¹⁹ But children can finally be manipulated to tell the desired story.²⁰

¹³ *Id.*

¹⁴ *Id.* For perhaps an even more outrageous interrogation of a child, see *State v. Michaels*, 642 A.2d 1372, 1387-88 (N.J. 1994).

¹⁵ See *Darkness II*, *supra* note 10, at A18 ("[T]he psychologists in prison and the parole board had difficulty grappling with the fact that all the Amiraults continue affirming their innocence. 'Parole denied. Vigorously denies the offenses.'").

¹⁶ The District Attorney whose office prosecuted the case became the Attorney General of Massachusetts. The trial prosecutor is now in private practice in a firm specializing in civil cases for sex abuse. See *Darkness*, *supra* note 10, at A20; *Darkness II*, *supra* note 10, at A18.

¹⁷ See *Darkness*, *supra* note 10, at A18.

¹⁸ See *Darkness II*, *supra* note 10, at A18.

¹⁹ *Id.*

²⁰ Interviewer: "Did anybody touch Penny [the child's friend] on her bum?" Child: "Nobody. Nobody didn't do it."

Four more times the interviewer asks if anybody touched the children—to which she gets the same answer of "no," "no." Asked still again, the exhausted child finally erupts.

"Nobody didn't do it!"

In time, with subsequent interviews, the child would finally say what the interrogator wanted her to say. So was born another set of charges. *Id.*

The tragedy suffered by the Amiraults was not limited to imprisonment. Assaultants fired bullets into the Amirault home, barely missing the occupants. The Fells Acres school was closed by authorities before any Amirault was tried. All the Amirault property was tied up in litigation. The driving force, in these cases, appears to be *true belief*, a consuming ideology, producing new standards of therapeutic justice in which day care operators, parents, and others are deemed guilty before inquiry begins. It is difficult for citizens—including journalists—to grasp that in cases like the Amiraults, 'nothing . . . happened to the children but the arrival of the investigators" and the therapists.²¹

The *Wall Street Journal's* series is echoed by the *Boston Globe*,²² and by *The New Republic*.²³ "A look at the sources—court transcripts, interview tapes, expert testimony—that constitute the brief for the prosecution provides further evidence of the Amirault conviction as a case study of mass hysteria, fueled by panicky parents, vicious prosecutors, opportunistic therapists and a rapacious news media who showed no qualms about assuming guilt."²⁴

Another chapter for the Loftus book, and further proof of the broad problem assailing this nation, can be derived from *State v. Michaels*.²⁵ The New Jersey Supreme Court harshly criticized investigators for using "coercive and unduly suggestive methods" in interviewing children. The Court asserts that the recorded interviews show "the use of mild threats, cajoling, and bribing."²⁶ Positive "reinforcement was given when children made inculpatory statements," but "negative reinforcement was expressed when children denied being abused or made exculpatory statements."²⁷

Almost half "of the thirty-four children were told, at one time or another, that Kelly [defendant] was in jail because she had done bad things to children." The children were enlisted to help keep "Kelly" in jail. For example, "they were told that the investigators 'needed their help' and that they could be 'little detectives.'" The children

²¹ See *Darkness II*, *supra* note 10, at A18.

²² See, e.g., John Milne, *Amiraults Ask Judge for a New Trial*, BOSTON GLOBE, Sept. 18, 1995, at 27; John Milne, *Amiraults' Lawyer Bids For New Trial Today*, BOSTON GLOBE, Aug. 17, 1995, at 28; John Ellement, *New Trial is Sought in Fell's Acre Case: Request Based on SJC Ruling*, BOSTON GLOBE, Mar. 31, 1995, at 31; *Weld Says Amiraults Need to Seek Commutation*, BOSTON GLOBE, Mar. 28, 1995, at 24; Charles M. Sennott, *Questions Prompt Reexamination of Fells Acres Sexual Abuse Case*, BOSTON GLOBE, Mar. 19, 1995, at 16, 17.

²³ Ruth Shalit, *Witch Hunt*, NEW REPUBLIC, June 19, 1995, at 14.

²⁴ *Id.*

²⁵ 642 A.2d 1372, 1380 (N.J. 1994).

²⁶ *Id.*

²⁷ *Id.*

were also introduced to the police officer who had arrested the defendant and shown the handcuffs used during her arrest; "mock police badges were given to children who cooperated."²⁸

How such witnesses and stories can be believed based only on such evidence is a marvel. It parallels induced "witchcraft" hysteria about day care centers all over this country.²⁹ It may be no coincidence that these spectacular child abuse cases emerged shortly after passage of the Mondale Act of 1979,³⁰ which provides huge increases in funds for child protection agencies and abuse investigators. The appearance of huge amounts of government money produced enormous increases in agencies and staff, which in turn created investigations culminating in accusations of child sex abuse on a scale never seen before.³¹

Dr. Loftus and Ms. Ketcham give numerous examples similar to the Amirault story. In all these stories the alleged abuser is clearly, probably, or very possibly, innocent. For example, Raymond and Shirley Souza were convicted of multiple counts of rape and indecent assault and battery upon the person of their daughter, Shirley Ann. The assault allegedly occurred ten or more years earlier and there was no physical evidence.³² Their conviction was based solely on the terribly bizarre, indeed impossible, uncorroborated testimony of Shirley Ann.

In another similar example, the Franklin case,³³ Eileen's father, George Franklin, was convicted of first-degree murder twenty-one years after the fact. His conviction was based solely on the recaptured memory testimony of the daughter.³⁴ Although "in this and other cases of repressed memory we will never be sure what really happened,"³⁵ "there is a very real possibility that [Eileen's] whole concoction was spun not from solid facts but from the vaporous breezes of

²⁸ *Id.*

²⁹ See, e.g., *McMartin v. Children's Inst. Int'l*, 261 Cal. Rptr. 437 (Cal. Ct. App. 1989), cert. denied, 494 U.S. 1057 (1990). See John Gillie, *Court Upholds Dismissal of Sex Charges; Ruling May End Sortland Case*, NEWS TRIB., June 2, 1994, at B1. There was extensive news coverage of this lengthy trial in the *Tacoma News Tribune*. See, e.g., John Gillie, *Prosecutor to Appeal Sortland Dismissal*, TACOMA NEWS TRIB., Dec. 19, 1990, at B1. Local attorneys, Jack Abolofia, Gary Clower and Bryan Hershman covered themselves with glory in securing dismissals.

³⁰ Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.). One section of this Act raised the ceiling on federal matching funds for state social service programs from \$2.5 billion annually to \$3.3 billion. Many, many "witches" can be uncovered for \$800,000,000.00.

³¹ See *Darkness*, *supra* note 10, at A20.

³² See LOFTUS & KETCHAM, *supra* note 1, at 2.

³³ *Id.* at 38.

³⁴ *Id.* at 65.

³⁵ *Id.*

wishes, dreams, fears, desires.”³⁶ According to Loftus and Ketcham, Eileen’s mind, “operating independently of reality,” worked hard to develop a “sensible package”; ambiguities, inconsistencies, etc., “revealed to her in one blinding moment of insight a coherent picture of the past that was nevertheless completely and utterly false. Eileen’s story is *her* truth, but it is a truth that never happened.”³⁷ Historical truth and subjective belief (“psychic reality”³⁸), in this area, are often totally inconsistent.

Loftus and Ketcham do not challenge “the reality of childhood sexual abuse or traumatic memories,”³⁹ and the authors “do not question the trauma of the sexually abused child.”⁴⁰ Moreover, they do “not express . . . reservations about the skills and talents of therapists who work hard . . . to elicit memories that for many years were too painful to put into words.”⁴¹ These professionals must be distinguished from the “quacks” who brainwash and goad in the many cases detailed in the book like the Amirault and Michaels cases. The authors neither dispute nor affirm recaptured memories. “We are only questioning the memories . . . referred to as ‘repressed,’—memories that did not exist until someone went looking for them.”⁴²

Obviously, childhood sexual abuse exists. But in the obvious cases, like the cases of John Wayne Gacy⁴³ and Joel Steinberg,⁴⁴ there is some physical evidence. Without such evidence, it has been justly stated, there often “*is absolutely no way to distinguish between fact and fantasy*” in these cases.⁴⁵ One therapist observes that toward the end of his career it became “fashionable” among therapists to search “assiduously” for cases of “childhood sexual abuse among their patients” and “to demonstrate their findings with the pride of a hunter displaying a trophy.”⁴⁶

Since in many, and probably in most, cases of recapture of memory from “repression,” there is no objective “supporting” evidence,

³⁶ *Id.*

³⁷ *Id.* There is an obvious inconsistency between the statements “we will never know” and “coherent picture . . . that was . . . completely and utterly false.” This is the crux of the problem. We are dealing with ancient history where there are no records! It is like detailing the history of the Turkish Nation in the Third Millennium B.C.!

³⁸ *Id.*

³⁹ *Id.* at 141.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *People v. Gacy*, 468 N.E.2d 1171 (Ill. 1984), *cert. denied*, 470 U.S. 1037 (1985).

⁴⁴ *People v. Steinberg*, 595 N.E.2d 845 (N.Y. 1992).

⁴⁵ Lars B. Lofgren, *The Mystical Kingdom of Memory*, WALL ST. J., Dec. 10, 1993, at A15 (letter to editor).

⁴⁶ *Id.*

what should be done about recovered memories? One answer would be to make the statute of limitations run from the date of the "recaptured" event, unless some corroboration can be produced. In *Lemmerman v. Fealk*⁴⁷ complaints were untimely filed—untimely by forty to fifty years. Plaintiffs asserted that childhood sexual abuse had been "repressed" and only lately recaptured. Therefore, they argued, the statute of limitations was tolled because the cause of action was only recently "discovered."⁴⁸ Under Michigan law the limitation period begins to run in many cases only after discovery of the actionable event.⁴⁹ Plaintiffs also asserted that the statute of limitations was in any case tolled by intervening "insanity."⁵⁰ The Michigan Supreme Court rejected both claims. Where the discovery rule applies, for example in medical malpractice cases, some objective tangible result of defendant's action existed to ensure reliable fact finding.⁵¹ In contrast, in the repressed memory cases, one person's version is pitted against another's as the basis for liability determination. This situation does not permit the avoidance of stale and fraudulent (perhaps confabulated) claims that is the central purpose of the statute of limitations.

Unfortunately, following the *Zeitgeist*, many modern decisions do not follow the Michigan Supreme Court. Thus, the Minnesota Court of Appeals held an action against a former teacher and school district for sexual abuse thirteen years before initiation of the suit would lie, because the newly-enacted discovery provision in the limita-

⁴⁷ 534 N.W.2d 695 (Mich. 1995). See also *State v. Hungerford*, 1995 WL 378571 (N.H. 1995) (repressed memory therapy has not gained general scientific acceptance); *Sanchez v. Archdiocese of San Antonio*, 873 S.W.2d 87 (Tex. Ct. App. 1994), distinguished in *Vesecky v. Vesecky*, 880 S.W.2d 804, 806 (Tex. Ct. App. 1994) (finding that the "discovery" rule inapplicable in child sex abuse cases; tortious acts, if any, here, were 45 years old; all alleged actors were dead; no corroboration of plaintiff's story possible); *Seto v. Willits*, 638 A.2d 258, 262 (Pa. Super. Ct. 1994) (statutory "standard of reasonable diligence is an objective or external one which permits tolling . . . only where 'a reasonable . . . person in the plaintiff's position would have been unaware of the salient facts'"); *Vandenheuvel v. Sowell*, 886 S.W.2d 100 (Mo. App. 1994) (no tolling by repression of memory for perhaps 40 years).

⁴⁸ *Lemmerman*, 534 N.W.2d at 698.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 699. ("In those instances in which we have applied the common-law discovery rule to extend the Statute of Limitations, the dispute . . . has been based on evaluation of a factual, tangible consequence of action by the defendant, measured by an objective external standard [In] the present claims . . . liability must be determined solely by reference to one person's version of what happened as against another's") See Gary M. Ernsdorff & Elizabeth F. Loftus, *Let Sleeping Memories Lie? Words of Caution About Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J. CRIM. L. & CRIMINOLOGY 129, 166 (1993).

tions title of the code applied, and *applied retroactively*.⁵² Under the statute, the claim did not arise until the victim "knew or had reason to know [his] injury was caused by . . . abuse."⁵³ Retrospective application was held not to offend due process or other rights of defendants.

Similarly, the Court of Appeals of North Carolina⁵⁴ reversed a trial court's grant of summary judgment when a granddaughter sued her grandmother for sexual abuse twenty-eight years earlier. The limitations period for battery and intentional infliction of emotional distress was tolled because the evidence showed the granddaughter was "incompetent" at all times from the date of alleged abuse until a professional sodium amytal interview.⁵⁵ The court relied strongly on the affidavit of John Humphrey, M.D., that plaintiff suffered from "post-traumatic stress disorder."⁵⁶

⁵² *K.E. v. Hoffman*, 452 N.W.2d 509 (Minn. Ct. App. 1990); *accord Blackowiak v. Kemp*, 528 N.W.2d 247 (Minn. Ct. App. 1995).

⁵³ *Hoffman*, 452 N.W.2d at 512.

⁵⁴ *Leonard v. England*, 445 S.E.2d 50 (N.C. Ct. App. 1994).

⁵⁵ *Id.* at 52.

⁵⁶ *Id.* at 51. *See also Fager v. Hundt*, 610 N.E.2d 246 (Ind. 1993) (summary judgment precluded although the memory had been repressed for 24 years); *Ault v. Jasko*, 637 N.E.2d 870 (1994) (Two dissenting opinions compare memory recovery to polygraphy and stating it should be viewed with the same skepticism and critical examination as that evidence. Both dissents also assert that the legislative branch is the proper forum to determine such issues.); *Olsen v. Hooley*, 865 P.2d 1345 (Utah 1993) (complete repression of memory requires application of discovery rule if there is corroboration of the memory); *Mary D. v. John D.*, 264 Cal. Rptr. 633 (Cal. Ct. App. 1989) (action will lie); *Vesecky v. Vesecky*, 880 S.W.2d 804 (Tex. Ct. App. 1994) (holding that where a memory of childhood sexual abuse is repressed by psychological defense mechanisms, the statute of limitations is tolled); *Farris v. Compton*, 652 A.2d 49 (D.C. Ct. App. 1994) (similar). For in-depth discussion of the discovery rule in sex abuse cases, see Ann Marie Hagen, *Tolling the Statute of Limitations for Adult Survivors of Childhood Sexual Abuse*, 76 IOWA L. REV. 355 (1991); Carolyn B. Handler, Note, *Claims of Adults Molested as Children: Maturation of Harm and the Statute of Limitations Hurdle*, 15 FORDHAM URB. L.J. 709 (1987); Melissa G. Salten, Note, *Statutes of Limitations in Civil Incest Suits: Preserving the Victim's Remedy*, 7 HARV. WOMEN'S L.J. 189 (1984).

Washington State is a good case study. *See WASH. REV. CODE* § 4.16.340; 1991 WASH. LAWS 1084-5. The statute provides that all actions for childhood sexual abuse must commence within three years of the date the act causing injury is "discovered." *Id.* The statute provides the following new Section:

The legislature finds that:

(1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.

(2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.

(3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.

(4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.

(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

In an ideological—sentimental—age, when special interests get all the play, when rape shield statutes can be enacted in every jurisdiction within a single decade,⁵⁷ when the hearsay rule can be abolished by statute in the case of child testimony up to age eighteen,⁵⁸ and the statute of limitations amended to permit actions based on repressed memory though the alleged events be decades old,⁵⁹ mass hysteria cases and recovered memory cases can be expected. But such cases tend to be perversions of the spirit of Anglo-Saxondom.

Elizabeth Loftus and Katherine Ketcham have written a most valuable book, a sound book, a courageous book. Indeed, one must admire Professor Loftus enormously. Her original research on memory is highly respected, basic, and extensive.⁶⁰

Yet the book is not without fault. Its organization is episodic. Editorial lapses occur: for example, at one place in the text “the” is

(6) The legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the Washington supreme court decision in *Tyson v. Tyson*, 727 P.2d 226 (1986).

It is still the legislature's intention that *Tyson v. Tyson*, 727 P.2d 226 (1986) be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later.

This law manifests strong “therapist-thinking” of the sort justly attacked in the Loftus book.

⁵⁷ See, e.g., ALA. CODE § 12-21-203 (1995); ALASKA STAT. § 12.45.045 (1995); ARK. CODE ANN. § 16-42-101 (Michie 1994); COLO. REV. STAT. ANN. § 18-3-407 (West 1986); CONN. GEN. STAT. § 54-86f (West 1994); FLA. STAT. ANN. § 794.022 (West 1992); GA. CODE ANN. § 38-202.1 (Harrison 1994); 725 ILL. COMP. STAT. 5/115-7 (1994); IND. CODE ANN. § 35-37-4-4 (West 1986); KAN. STAT. ANN. § 21-3525 (1988); LA. CODE EVID. ANN. art. 412 (West 1995); MD. ANN. CODE art. 27, § 461A (1987); MASS. ANN. LAWS ch. 233, § 21B (Law Co-op 1986); MICH. COMP. LAWS ANN. § 750.520j (1991); MISS. CODE ANN. § 97-3-68 (1994); R.I. GEN. LAWS § 11-37-13 (1994); WASH. REV. CODE ANN. § 9A.44.020 (West 1988).

⁵⁸ See, e.g., CAL. EVID. CODE §§ 1228, 1293 (West 1995); COLO. REV. STAT. ANN. § 13-25-129 (West 1987); FLA. STAT. ANN. § 90.803(23) (West Supp. 1996); 725 ILL. COMP. STAT. 5/115-10 (1994); KAN. STAT. ANN. § 60-460(dd) (1994); LA. CODE EVID. ANN. arts. 801, 804 (West 1995); LA. CHILDREN'S CODE ANN. arts. 322-29 (West 1995); MD. CODE ANN., CTS & JUD. PROC. § 9-103.1 (1995); MINN. STAT. ANN. § 595.02(3) (1988); N.J. R. EVID. 803(27); OHIO REV. CODE ANN. §§ 2151.35(F), 2907.41 (Baldwin 1994); OR. REV. STAT. § 40.460, Rule 803(18a)(b) (1995); TEX. CODE PROC. ANN. art. 38.071 (West 1995); WIS. STAT. ANN. § 908.08 (West 1993).

⁵⁹ See *supra* note 56.

⁶⁰ See, e.g., ELIZABETH F. LOFTUS & JAMES M. DOYLE, EYEWITNESS TESTIMONY: CIVIL AND CRIMINAL (2d ed. 1992); ELIZABETH LOFTUS & KATHERINE KETCHAM, WITNESS FOR THE DEFENSE (1991); GARY L. WELLS & ELIZABETH LOFTUS, EYEWITNESS TESTIMONY: PSYCHOLOGICAL PERSPECTIVES (1984). Loftus is a Professor of Psychology at the University of Washington and an Adjunct Professor at the University of Washington School of Law. She has published 18 books and more than 250 articles. She holds three honorary doctorates: Leiden University (The Netherlands), C.C.N.Y., and Miami of Ohio. She won the 1995 Distinguished Contributions to Forensic Psychology Award from the American Academy of Forensic Psychology. Her Ph.D. is from Stanford University.

spelled "th."⁶¹ Even this reviewer, an agnostic, considers that when referring to God as "He," the 'H' should be capitalized.⁶² Hyphens are also dropped.⁶³

Dr. Loftus is not totally objective and without sentiment. For example, when she was asked to testify in the case of John Demjanjuk, she declined because she is Jewish, and Demjanjuk, a Ukrainian, was alleged to be "Ivan the Terrible" of Treblinka. Her excuse was that her co-religionists, especially the "eyewitnesses," would "have felt betrayed." She explained, "The cost of testifying as a defense witness would have been too great for the people I love most."⁶⁴

Still, Dr. Loftus has greatly contributed to the improvement of the world in which she lives. She has had to brave the obloquy of "True Believers" (her words),⁶⁵ charges of being "antiwoman," "antichild," "dirty," and causing "damage."⁶⁶ A friend warned her, "Get out of this whole field before your reputation is destroyed."⁶⁷ Critics of belief in recaptured, formerly repressed memory stories, like Loftus, are told they are "in denial,"⁶⁸ and they are frequently villified.⁶⁹ Loftus was once described as "the Evil Pedophile Psychologist from Hell,"⁷⁰ and before a professional audience of psychologists and psychiatrists in San Francisco, she "was hissed and booed."⁷¹ During an airplane trip, another psychologist discovered the identity of Dr. Loftus and "she started swatting [Dr. Loftus] over the head with her newspaper."⁷²

It is generally very dangerous to rely upon psychiatrists, psychologists, therapists, social workers, and other "healing professionals." Many such persons are of highest quality, but many others are quacks or worse. As partial proof, see the September-October 1964 issue of *Fact* magazine, in which 1,189 of the then 7,453 members of the American Medical Association classed as psychiatrists, responded to a survey

⁶¹ LOFTUS & KETCHAM, *supra* note 1, at 97.

⁶² *Id.* at 179.

⁶³ *Id.* at 207.

⁶⁴ Sharon LaFraniere, *Identifying 'Ivan': Does Memory Mislead*, WASH. POST, Aug. 27, 1992, at A29. Demjanjuk, was convicted but, following a decision of the Supreme Court of Israel, was released, as not being "Ivan the Terrible." The Sixth Circuit Court of Appeals later wrote an astounding opinion concerning the outrageous conduct of the Office of Special Investigations, Department of Justice, concealing evidence in this case. Demjanjuk v. Petovsky, 10 F.3d 338 (6th Cir. 1993).

⁶⁵ LOFTUS & KETCHAM, *supra* note 1, at 32.

⁶⁶ *Id.* at 32-33.

⁶⁷ *Id.* at 35.

⁶⁸ *Id.* at 147.

⁶⁹ *Id.* at 36.

⁷⁰ *Id.* at 213.

⁷¹ *Id.* at 211.

⁷² *Id.*

questioning whether Barry Goldwater was psychologically fit to be President.⁷³ Most of the respondents asserted that Goldwater was a "paranoiac" with "death fantasy," "narcissistic," "paranoid," "dangerous . . . compensated schizophrenic," "megalomaniac," and the like. Only a little more extreme than the typical response is the following:

I believe Goldwater is grossly psychotic. His statements reveal a serious thinking disorder He is grandiose, which is suggestive of delusions of grandeur. He is suspicious, suggestive of paranoia. He is impulsive, suggesting that he has poor control over his feelings and that he acts on angry impulses. This *alone* would make him *extremely* psychologically unfit to serve as President. A President *must not act on impulse!* But in addition, he *consciously* wants to destroy the world with atomic bombs. He is a mass-murderer at heart and a suicide. He is *amoral* and *immoral*. A dangerous lunatic!

Signed: A board-certified psychiatrist, Stamford, Conn.

P.S. Any psychiatrist who does not agree with the above is himself psychologically unfit to be a psychiatrist."⁷⁴

The reader must look elsewhere⁷⁵ for further substantiation of this Reviewer's claim.

What we have here is a great book, by two admirable and courageous women. The book offers proof that it is possible to implant in someone's mind a complete memory with details of events and emotions concerning a traumatic event *that never happened*.⁷⁶ It is not a case of traumatic amnesia. The subjects suffering from repressed memory have lost all memory of the trauma and also "*all awareness that they have lost it.*"⁷⁷ In many and probably in most such cases the recalled event has only subjective reality, and *no historical existence*. While reading this book, with its tales of mass hysteria and individual horror, along with accounts of other cases like that of the Amiraaults, one is unavoidably reminded of the seventeenth century Salem witch trials, and also of the Jewish Holocaust, the Ukrainian terror famine, the murder of millions in the Soviet Union, and the many other irrational, mindless horrors of the twentieth century,—the "Age of Sentiment."

⁷³ See James E. Beaver, *The "Mentally Ill" and the Law: Sisyphus and Zeus*, 1968 UTAH L. REV. 1, 47-53; Goldwater v. Ginzburg, 261 F. Supp. 784 (S.D.N.Y. 1966) (survey responses substantially accurately reported). See also Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir. 1969), cert. denied, 396 U.S. 1049 (1970).

⁷⁴ Warren Boroson, *What Psychiatrists Say About Goldwater*, 1964 FACT 63, Sept.-Oct. (reprinting a letter from a board-certified psychiatrist from Stamford, Conn. The emphasis was the original author's).

⁷⁵ A good place to start is Beaver, *supra* note 73.

⁷⁶ Hypnotism may also result in false memories. See, e.g., James E. Beaver, *Memory Restored or Confabulated by Hypnosis—Is It Competent?*, 6 U. PUGET SOUND L. REV. 155 (1983).

⁷⁷ *Id.* at 216.