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The McMartin Preschool Abuse Trial: A Commentary

by Douglas Linder

The McMartin Preschool Abuse Trial, the longest and most expensive criminal trial in American history, should serve as a cautionary tale. When it was all over, the government had spent seven years and \$15 million dollars investigating and prosecuting a case that led to no convictions. More seriously, the McMartin case left in its wake hundreds of emotionally damaged children, as well as ruined careers for members of the McMartin staff. No one paid a bigger price than Ray Buckey, one of the principal defendants in the case, who spent five years in jail awaiting trial for a crime (most people recognize today) he never committed. McMartin juror Brenda Williams said that the trial experience taught her to be more cautious: "I now realize how easily something can be said and misinterpreted and blown out of proportion." Another juror, Mark Bassett, singled out "experts" for blame: "I thought some of the expert testimony about the children told you more about the expert than the child. I mean, if the expert says children are always 100% believable and then you have a child who is not believable, either the expert is extremely biased or they've never seen anything like that child before."

The McMartin trial had its origins in a call placed to police in Manhattan Beach, California by Judy Johnson, the mother of a two-and-a-half-year-old son who attended the McMartin Preschool on about ten occasions in 1983. Johnson told Detective Jane Hoag that a school aide, Ray Buckey, the 25-year-old son of the owner of the preschool, had molested her son. Despite the fact that the young boy was unable to identify Ray from photos and medical investigations of the boy showed no signs of sexual abuse, the police conducted searches of Buckey's home, confiscating such "evidence" as a rubber duck, a graduation robe, and Playboy magazines. Detective Hoag arrested Buckey on September 7, 1983.

The next day, Police Chief Harry Kuhlmeier sent a letter to 200 McMartin Preschool parents informing them that Ray Buckey was suspected of child abuse and asking them for information. The letter asked parents to "question your child to see if he or she has been a witness to any crime or if he or she has been a victim." The letter listed the possible criminal acts under investigation:

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

Chief Kuhlmeier's letter ended by asking parents "to please keep this investigation strictly confidential because of the nature of the charges and the highly emotional effect it could have on our community. Please do not discuss this investigation with anyone outside your immediate family." Needless to say, it wasn't long before everyone connected with the McMartin Preschool, and indeed most everyone in the Los Angeles metropolitan area, knew of the ongoing investigation of Ray Buckey.

Judy Johnson's reports of misbehavior at the McMartin Preschool became increasingly bizarre. She claimed that Peggy Buckey, Ray's mother, was involved in satanic practices: she was said to have taken Johnson's son to a church, where the boy was made to watch a baby being beheaded, and then was forced to drink the blood. She insisted that Ray Buckey had sodomized her son while his head was in the toilet, and had taken him to a car wash and locked him in the trunk. Johnson told police that Ray pranced around the preschool in a cape and a Santa Claus costume, and that other teachers at the school chopped up rabbits and placed "some sort of star" on her son's bottom.

Eventually most prosecutors would come to recognize Johnson's allegations as the delusions of a paranoid schizophrenic, but the snowball of suspicion had been started rolling. Chief Kuhlmeier's letter led to new accusations and demands from parents for a full-scale investigation of doings at the McMartin Preschool. Bowing to this pressure, the District Attorney's office handed a major portion of the continuing investigation over to Kee MacFarlane, a consultant for the Children's Institute International (CII), an agency for the treatment of abused children.

Parents were encouraged to send their children to CII for two-hour interviews. MacFarlane pressed 400 children, through a series of leading questions and the offer of rewards, to report instances of abuse at McMartin. Children generally denied seeing any evidence of abuse at first, but eventually many gave MacFarlane the stories that she clearly wanted to hear. After the interviews, MacFarlane told parents that their children had been abused, and described the nature of the alleged abuse. By March 1984, 384 former McMartin students had been diagnosed as sexually abused.

In addition to interviews, 150 children received medical examinations. Dr. Astrid Heger, of CII, concluded that 80% of the children she examined had been molested. For the most part, she based her findings not on physical evidence, but on medical histories and her belief that "any conclusion should validate the child's history."

On March 22, 1984, a grand jury indicted Ray Buckey, Peggy Buckey (Ray's mother), Peggy Ann Buckey (Ray's sister), Virginia McMartin (founder of the preschool thirty years earlier), and three other McMartin teachers, Mary Ann Jackson, Bette Raidor, and Babette Spitler. The grand jury initially indicted the "McMartin Seven" on 115 counts of child sexual abuse. Two months later, and additional 93 indictment counts were added, as District Attorney Robert Philobosian pursued his strategy of hyping the McMartin case to boost his chances in an upcoming primary election. In June, bail for Peggy Buckey was set at one million dollars. Ray Buckey was held without bail.

The Preliminary Hearing

By the time the preliminary hearing began in August 1984, Prosecutor Lael Rubin was telling the media that the seven defendants committed 397 sexual crimes (far more than the number for which they were indicted) and that thirty additional individuals associated with the McMartin Preschool were under investigation.

Searches of the McMartin Preschool and the homes of defendants failed to produce much incriminating evidence. No nude photographs of children were discovered, despite the insistence of investigators and parents that such photographing was commonplace at McMartin. No evidence was found of the "secret rooms" where massive instances of sexual abuse were said to have taken place. In March 1985, a group of nearly fifty McMartin parents, determined to unearth the fabled secret tunnels, began digging at a lot next to the school. A few days later, the parents were joined in their efforts by an archeological firm hired by the District Attorney's office. Still, no secret rooms were ever discovered.

The longest--and probably strangest--preliminary hearing in history began before Municipal Court Judge Aviva Bobb in early 1984. The chaotic proceeding featured seven defendants (each with his or her own attorney) and three prosecutors. Unlike the typical preliminary hearing in which the prosecution tries to demonstrate cause for bringing the defendants to trial and the defense passively observes, the defense in the McMartin hearing mounted an "affirmative defense," aggressively cross-examining a parade of prosecution witnesses including allegedly abused children, McMartin parents, therapists, and medical experts. The defense repeatedly tried to raise questions as to how abuse on such a massive scale could have gone undetected for years and suggested that much of the testimony of the prosecution's child witnesses was flatly unbelievable.

Kee MacFarlane testified at the preliminary hearing that the abuse was able to go on for years because children either suffered from "denial syndrome" or were afraid that revealing McMartin's dark secrets would result in their own deaths, or the deaths of family members. MacFarlane explained that she succeeded in bringing out the secrets with the help of anatomically correct dolls and a set of puppets, through which she asked children questions during her interviews. The puppets included Mr. Alligator, Mr. Snake, Detective Dog, and Mr. Sparky. Videotapes of the interviews also showed that MacFarlane and other therapists relied heavily on leading questions and subtle pressure to persuade children to join the chorus of accusers. The defense played tapes that showed therapist Shawn Connerly telling a child interviewee that 183 kids had already revealed "yucky secrets" and that all the McMartin teachers were "sick in the head" and deserved to be beaten up.

The testimony of children at the preliminary hearing was shockingly bizarre, and often riddled with inconsistencies and contradictions. Several children reported being photographed while performing nude somersaults as part of the Naked Movie Star Game. One child said that as the game was being played the children sang, "What you see is what you are, you're a naked movie star!" Others testified as to playing a nude version of "Cowboys and Indians"-- sometimes with the Indians sexually assaulting the cowboys, and sometimes vice versa. Children testified that sexual assaults took place on farms, in circus houses, in the homes of strangers, in car washes, in store rooms, and in a "secret room" at McMartin accessible by a tunnel. One boy told of watching animal sacrifices performed by McMartin teachers wearing robes and masks in a candle-lit ceremony at St. Cross Episcopal Church. In response to a defense question, the boy added that the kids were forced to drink the blood of the sacrificed animals. Perhaps

strangest of all, was the testimony of one boy who said that the McMartin teachers took students to a cemetery where the kids were forced to use pickaxes and shovels to dig up coffins. Once the coffins were removed from the ground, according to the child, they would be opened and the McMartin teachers would begin hacking the bodies with knives.

By September 1985, and well over a year into the preliminary hearing, some members of the prosecution's own team began to express doubts about the case. One prosecutor was quoted as saying, "Kee MacFarlane could make a sixth month old baby say he was molested." The two co-prosecutors in the case urged dropping all charges against five of the seven defendants, and pushing ahead with prosecution only for Ray Buckey and Peggy Buckey. Chief Prosecutor Lael Rubin, however, argued that all seven deserved prosecution. After a December 1985 meeting involving over a dozen members of the District Attorney's Office, the decision was made to drop charges against all defendants except Ray and Peggy Buckey. So far the case had cost Los Angeles County four million dollars--and the trial had yet to begin.

The First Trial

A legal bombshell exploded before the trial was scheduled to begin in the courtroom of Judge William R. Pounders. Independent filmmakers producing a documentary on the McMartin trial turned over to both the California A.G.'s office and to defense attorneys copies of a taped interview with McMartin prosecutor Glenn Stevens. In the interview, Stevens acknowledges that children began "embellishing and embellishing" their stories of sexual abuse and said that, as prosecutors, "we had no business being in court." Stevens also admitted on tape that prosecutors withheld potentially exculpatory information from defense attorneys, including evidence concerning the mental instability of the original complainant in the case, Judy Johnson, as well as evidence that Johnson's son was unable to identify Ray Buckey in a police line-up. Based on the revelations contained in the Stevens interview, defense attorneys moved that charges against Ray and Peggy Buckey be dismissed, but Judge Pounders denied the motion.

Jury selection took weeks. The twelve finally selected included eight males and four females. Half of the jurors were white, three African-American, two Asian, and one Hispanic. All but two jurors had at least some college education. Defense attorneys said later they were pleased with the jury.

In many ways, the trial was a condensed version of the preliminary hearing. While the prosecution attempted to prove widespread sexual abuse of McMartin children, the defense tried to prove that the whole show was driven by the suggestive and overzealous interview techniques of the crusading therapists of CII. In addition to featuring two rather than seven defendants, there were fewer charges, fewer attorneys, and fewer witnesses. Still, by any measure, it was a major trial. Before it was over, the prosecution would present 61 witnesses, including nine child witnesses, a jailhouse informant, parents, medical specialists, therapists, and even a woman who had sexual relations with Ray Buckey.

Opening statements in the McMartin trial began on July 14, 1987. Deputy District Attorney Lael Rubin characterized the trial as one about the betrayal of trust. Dean Gits, attorney for Peggy Buckey, described a case in which the children, the parents, and the McMartin teachers were all victims of an overzealous prosecutor. He told the jurors to consider that the McMartin Preschool operated for over twenty years without complaints, and that the prosecution--despite moving heaven and earth in a search for secret tunnels, pornographic pictures, semen, and buried animals--had turned up no hard evidence of any sexual molestation. Daniel Davis, attorney for Ray Buckey, said that he would offer a "common sense defense" that would show his client to be the victim of suggestive interviewing techniques and a virtual witch hunt.

The prosecution produced several parent witnesses to lay a foundation for the accounts of their children that would follow. Typically, a parent would testify that prior to the infamous letter of Chief Kuhlmeier announcing that Ray Buckey was suspected of child abuse, he or she had no reason to suspect that his or her child had been molested. After taking the children to CII and talking with Kee MacFarlane, however, the parents became convinced that their children had been sexually abused. Parents suggested that bladder infections, nightmares, anatomically correct artwork, or masturbation were confirming evidence of abuse. A couple of parents theorized that the massive abuse might have occurred during naptime, when parents were prohibited from picking up their children.

The prosecution's child witnesses, ranging in age from eight to fifteen, repeated many of their stories from the preliminary hearing. Jurors heard of the Naked Movie Star Game, Ray Buckey scaring the children into silence by executing a cat with a knife, and numerous graphic accounts of sexual abuse by both Ray and Peggy Buckey. The defense countered with evidence of contradictions between trial testimony and testimony at the preliminary hearing, videotaped interviews in which the children denied that they were molested, and CII interviews revealing MacFarlane coaching children and rewarding "right" answers.

The defense tried to produce a child witness of its own, the young boy who started the whole investigation rolling: the son of Judy Johnson. With Judy Johnson now deceased, the boy's father flatly told reporters that his son would testify "over my dead body." Judge Pounders agreed with Johnson that trial testimony might prove too stressful for his son and declared the boy legally unavailable as a witness.

Perhaps the key witness in the trial was CII therapist Kee MacFarlane. In her five weeks on the stand, MacFarlane fought to defend her controversial interview techniques that included naked puppets, anatomically correct dolls, and telling children what other children had previously reported about sexual abuse at the McMartin School. Before MacFarlane finished her lengthy testimony, even Judge Pounders was expressing concern about her techniques. Outside of the presence of the jury, Pounders declared, "In my view, her credibility is becoming more of an issue as she testifies here."

Defense expert Dr. Michael Maloney, professor of psychiatry at USC, further discredited MacFarlane's interview techniques. Maloney criticized the technique as presenting

children with a "script" that discouraged "spontaneous information" and instead encouraged the children to supply expected answers to "please mother and father" and prove themselves "good detectives."

Another distinct weakness in the prosecution's case was the lack of medical evidence of sexual abuse. Although Dr. Astrid Heger testified that she found numerous scars "consistent with rape," the defense's medical expert, Dr. David Paul, said that his review of the medical evidence turned up virtually no evidence of molestation. In the case of nine of the eleven alleged victims, Paul found the body parts to be "perfectly normal."

Perhaps the strangest testimony at the trial came from jailhouse informant George Freeman, Ray Buckey's cell mate and a nine-time felon and confessed perjurer. Freeman testified that Buckey had admitted to him that he sexually molested children at the McMartin School and elsewhere, had a long-standing incestuous relationship with his sister, shipped pornographic materials to Denmark, and had buried incriminating photos of himself and children in South Dakota.

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

On November 2, 1989, after nearly thirty months of testimony, the case went to the jury. The jury spent another two-and-a-half months deliberating its verdicts. On fifty-two of the sixty-five charges against the two defendants (some charges were dropped during the trial), including all of the charges against Peggy Buckey, the jury returned an acquittal. On the thirteen remaining charges against Ray Buckey, the jury announced that it was hopelessly deadlocked. Jury foreperson Luis Chang explained the vote: "The interview tapes were too biased; too leading. That's the main crux of it." Another juror told reporters, "Whether I believe he did it and whether it was proven are very different." Judge Pounders offered his own appraisal of the verdict: "I was not surprised by the verdicts. I would not have been surprised at any decision the jury made."

Aftermath and Second Trial

Child protection groups and parents pressured prosecutors to retry Ray Buckey on the charges on which the first jury deadlocked. Five hundred people, including many McMartin parents, marched through the streets of Manhattan Beach carrying signs such as "We believe the children." One McMartin parent called the verdict in the first trial "a

crime...almost equal to the crime that occurred outside the courtroom." A television poll showed 87% of respondents thought the Buckeys guilty.

District Attorney Ira Reiner signed off on the retrial. Two new prosecutors were assigned to the case, Joe Martinez and Pamela Ferrero. The second trial also saw a new judge, following a successful motion by defense attorney Daniel Davis to have Judge Pounders removed from the case. Pounders expressed relief at the development: "I'm finally free after three years and three months. I was honestly afraid I couldn't live through it." Superior Court Judge Stanley Weisberg was assigned to replace Pounders.

The second trial was a much more focused proceeding, involving only eight counts of molestation and three children. The prosecution presented its entire case in just thirteen days (compared to fifteen months in the first trial) and offered only eleven witnesses. One of the witnesses was a mother who, on the stand, glared at Ray Buckey and announced, "I'm so angry at you, I could kill you right now." The prosecution chose not to call CII interviewer Kee MacFarlane; instead, MacFarlane was called as a defense witness.

Jury deliberations after the three-month trial were described by one juror as "excruciating." The jury ended its deliberations deadlocked on all eight counts. The jury leaned toward acquittal on six of the counts, and leaned toward conviction on only one count.

Following the mistrial, District Attorney Reiner chose not to retry Buckey a third time and all charges against him were dismissed.

The McMartin Preschool Abuse Trial was costly in many ways. In monetary terms, it cost taxpayers over \$15 million dollars. For the defendants, the costs of the trial included long terms in jail (Ray Buckey spent five years in jail before being released on bail), loss of homes, loss of jobs, loss of life savings, and a stigma that might never leave. The children too were victims. Ray Buckey in a CBS interview said: "Those poor children went through hell,...but I'm not the cause of their hell and neither is my mother..The cause of their hell is the ...adults who took this case and made it what it was." Parents, too, suffered. Many felt betrayed by the justice system. The community of Manhattan Beach was another victim, left uneasy and polarized by the long investigation and judicial proceedings.

The effects of the McMartin trial even extended beyond the state of California. Across the country, day care providers resisted the temptation to hug or touch children--contact almost all child experts say children need--out of a fear that their actions might be interpreted as signs of abuse. Many day care centers were forced to close their doors after insurance companies, fearing molestation lawsuits, dramatically raised liability insurance rates. Early publicity surrounding the McMartin investigation also spawned a rash of charges against day care providers elsewhere. A 1990 study indicated that 80% of the charges against day care givers later turned out to be unsubstantiated.

There are many lessons to be learned from the McMartin Preschool Trial. There are lessons for police and prosecutors, but there are also lessons for the media. It was "pack journalism"--slanted heavily toward the prosecution, providing sensational headlines day after day, almost never seriously questioning the allegations--that turned the McMartin trial into the expensive and damaging fiasco that it became.

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