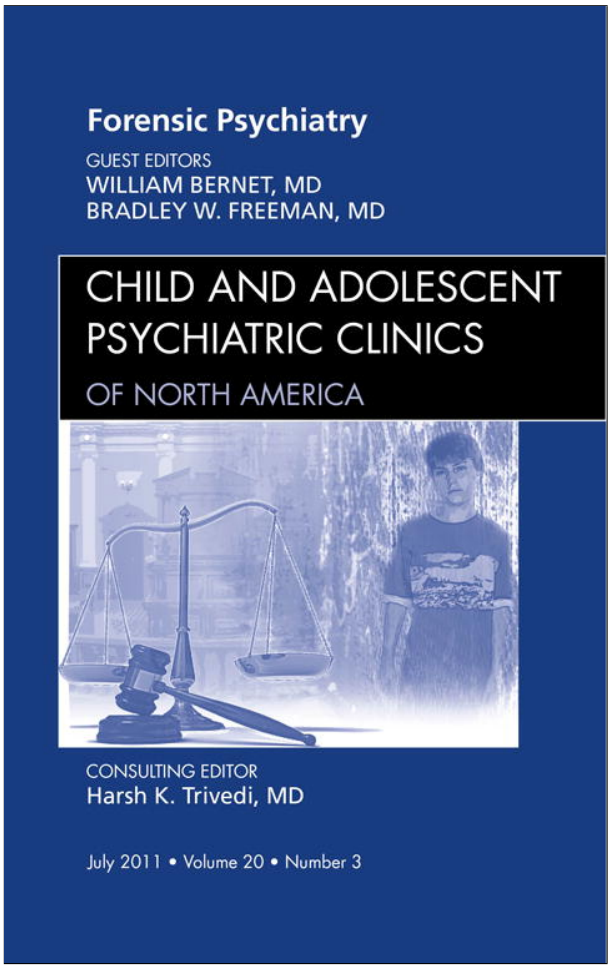

Forensic Psychiatry in France: The Outreau Case and False Allegations of Child Sexual Abuse

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• Psychiatric expertise • Psychological expertise

Outreau is a small town in the north of France. The Outreau case entered the media in May 2001 in a commonplace manner: a sordid story of incest in an underprivileged social class. However, numerous revelations would change the nature of this case until the trial in May 2004. The allegations became more serious and the number of victims increased. The findings of the psychiatric and psychological experts who examined the children before the trial left no doubt: the children were not liars. That was also the view of the *juge d'instruction*, the investigating judge.

This article examines the joint mechanisms that created a state of confusion in the roles of the judge and the experts. In the words of Hubert van Gijseghem, this resulted in the expert "sitting in the chair of the judge."[1] In this case, the psychiatric expertise constituted most of the evidence that favored the prosecution. The prosecution experts validated the narratives of the children and attributed "traits of a pedophiliac or pervert" to each of the accused. The author of this article was honored to be summoned as a witness for the defendants to provide the *Cour d'assises* the French criminal court, with a critical examination of the expert opinions submitted against the accused.

This article starts with a purely factual summary of this historical case. Then, the author's analysis illustrates, in numerous respects, the failings of child protection and its catastrophic influence on the operation of the judicial system.[2] The author further challenges militant dogma and erroneous beliefs that have resulted in child protection, at least in France, constituting a true sexual exception in the law, that is,

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an area in which the fundamental principles of criminal law (presumption of innocence, burden of proof on the prosecution) are not applied or are inoperative. The author offers some lessons to be learned from the Outreau case in light of comparisons with the Anglo-Saxon judicial system. To improve the handling of word-against-word cases, in which evidence is often lacking, there must be joint collaboration between judges and experts. In the words of a member of the French Parliament speaking before the Parliamentary Board of Inquiry that was ordered, after the trial, to examine the causes of dysfunction in the Outreau case, "The tragedy is that the procedure was complied with. If this were not so, it would be so simple."[3]

SUMMARY OF THE OUTREAU CASE

This summary is based on evidence submitted at trial and a book, *La Méprise* [The Error], by a French journalist, Florence Aubenas.[4]

The Disclosure

The initial disclosure occurred in September 2000. At first, it was a simple story that started with the revelation, at school, of incest committed by parents on their 4 sons, who were between 4 and 10 years of age. The alleged rapes were revealed at the start of the new school year by the exhibitionistic behavior of the oldest son during class, who put a pencil in his behind. The initial story was frightening: ogres and ogresses who abused little children for years, subjecting them to zoophilic rape. According to the early accounts, several children had been murdered and buried during these parties. An avalanche of revelations ensued. The 4 children who had been placed in foster families and subjected to the most suggestive questions revealed an impressive list of alleged abusers and child victims.

On the day after her arrest, the mother of the children, Myriam Badaoui, confessed to the incestuous rapes committed by her husband, Thierry Delay, acknowledging her complicity. As legal proceedings commenced on December 5, 2000, the young *juge d'instruction* (investigative judge) Fabrice Burgaud, took this case very seriously. (In France, the legal system is inquisitorial rather than adversarial. That is, the *juge d'instruction* is in charge of conducting the investigation, preparing the case, and assessing whether it should proceed to trial.) France had been affected by the Dutroux case, named after the pedophilic predator who raped, confined, and assassinated several young girls in Belgium during the 1990s. In the Outreau case, Judge Burgaud was determined and convinced that "the children were not liars." He would repeat this phrase hundreds of times until the end of the investigative phase of the proceedings. The truth would be revealed at a later time.

The Escalation

The case escalated at dawn on March 6, 2001. In a spectacular crackdown, similar to a drug or antiterrorism raid, approximately 60 neighbors of the Delay-Badaoui family were questioned, taken to the police station, and placed in custody. Alleged victims and alleged abusers found themselves together in the early hours of the morning.

At that stage of the investigation, 16 children were questioned by policemen untrained in interviewing children. They were asked questions such as, "Did men or women do nasty things to you?" and, "Have you ever seen your daddy's weenie?" The children were asked to point out the adults who had abused them from among the portraits shown to them. No methodological precautions were taken. Because all the photographs were of adult suspects, each adult pointed out became a guilty party.

The foster mothers of the 4 brothers often phoned each other to compare new revelations from their respective protégés. That led to other adults being subsequently placed in temporary detention: the baker; the Abbé Dominique Wiel; the bailiff and his wife; and the taxi driver, Martel, who drove the children to the farm in Belgium where they were allegedly raped by all kinds of animals. The Belgian lead and that of the respectable abusers of poor children were then pursued.

Myriam Badaoui, who was confident in the promise made by her lawyer as to her imminent release, decided to collaborate with the judge. Her imagination showed no bounds: "The children gave names. The judge would come to fetch me [in the remand center] and would tell me that it was true. I believed him and so continued to follow him. I thought it unfair for me to carry the burden alone." No one dared to point out the contradictions or incoherencies in Ms Badaoui's statements. The lawyers failed to suspect any mythomaniac tendencies, nor were they diagnosed by the experts. (Mythomania refers to habitual or compulsive lying, which is also called pathologic lying and pseudologia fantastica.) Ms Badaoui then wrote 10 or so letters to the investigative judge in which she expressed her surprise at remaining in temporary detention: Had she spoken in vain?

In July 2001, a new order provided for the temporary placement of 25 additional children. "Most of these children seemed traumatized" recalled one of the police officers. "But we asked ourselves why: Was it from having suffered sexual molestation or having been brutally ripped away from their families?" The case grew every day. Confrontations, in which alleged victims and alleged abusers were questioned face to face in front of the judge to explain their differing accounts of the facts, were organized in groups. All requests for individual confrontations submitted by the defense were refused. Those denials were upheld by the *Chambre de l'instruction* (the investigative court), that is, the appellate court responsible for reviewing the decisions of the investigative judge.

The Explosion

On January 10, 2002, the case took an even more spectacular turn. One of the accused, Mr Daniel Legrand, decided to prove his innocence by the most absurd means: "I wanted to tempt the devil and to find something more intelligent to bring out their lies…." Mr Legrand consequently told the investigators that Ms Badaoui's husband, Mr Thierry Delay, not only raped but also killed a small Belgian girl (like in the Dutroux case) and buried her in the allotment gardens. Contrary to all expectations, Ms Badaoui confirmed those imaginary statements. Even better, she further provided the judge with all of the details of that murder. Diggers began excavating the indicated area under the horrified eyes of onlookers and television cameras.

France held its breath. At that point, 10 or so child protection agencies decided to get involved in the case. (Under French law, an agency may be joined as a civil party in proceedings related to its field, which has the perverse effect of attracting agencies to cases that do not directly concern them, notably in matters attracting heavy media attention.) The Minister of the Interior visited the scene. Also, Ms Ségolène Royal, a future candidate in the 2007 presidential election, launched her pedophilia prevention campaign with much hype. The slogan for her campaign was *Se taire, c'est laisser faire* (To say nothing is to do nothing). No murdered child was ever found buried in the gardens of Outreau.

In such an elaborate complex case with a total lack of hard evidence and full of inconsistencies, psychiatric and psychological expertise becomes indispensable. However, the psychiatric and psychological evaluations may confirm, without qualification, the statements of the children and may become evidence condemning the

accused. Of the 17 children alleged to be victims, all were deemed to be perfectly credible. With respect to the adults who admitted and reported certain acts, the real issue was whether they had mythomaniac tendencies. However, the psychiatric and psychological experts also deemed these individuals to be perfectly credible and genuine; adults who denied involvement in criminal acts reflected all the traits of sexual abusers, according to the psychiatric and psychological experts.

The Trial: A Legal Shipwreck

The trial, which began in May 2004, was a legal shipwreck. By that time, almost all of the accused had been in temporary detention between 2 and 3 years. The media coverage was enormous. Seventeen adults were in the accused box: 3 made accusations, 1 said nothing at all, and 13 denied all allegations. Having come to see monsters, journalists were swayed during the proceedings by accused individuals who cried more than the victims, combined with numerous about turns, retractions, and inconsistencies. The press and public opinion soon asked for clemency with the same vigor they had previously called for lynching.

At the trial, Ms Marie-Christine Gryson-Dejehansart, the psychological expert who examined 16 of the children and head of a child protection agency, proved to be incompetent and was unable to respond to questions posed by Maître Dupond-Moretti, counsel for the defense. She was jeered as she left the courtroom.

However, as the trial continued, an extraordinary development occurred. Ms Myriam Badaoui, the principal accuser, retracted all of her allegations. Before a dumbfounded courtroom, Ms Badaoui admitted to having lied from the moment of her arrest. She asked to be pardoned, one by one, by each person she had accused, regretting that she had destroyed their lives. She said, “Nothing is true! I am a sick person and a liar!”

When the presiding judge asked Ms Badaoui whether the children lied, she responded, “They don’t lie, but sometimes they make mistakes!” However, the investigative judge, Fabrice Burgaud, did not express any doubt or any regret about primarily relying on the word of a mythomaniac and her children during the course of his investigation. He stated feebly, “It is not true that everything was invented. The only thing is that verifications were conducted in vain.”

The absurdity of the case and of the investigation was clear. Among the 13 adults claiming their innocence, the general public prosecutor asked that 7 be acquitted and the other 6 be convicted. Nothing was said relating to 1 of the accused, who committed suicide in his cell after writing an emotional letter to Judge Burgaud in which he claimed his innocence. The jury rendered a verdict in accordance with directions of the *Parquet* (the public prosecutor), a verdict described as unreadable and incomprehensible by the press, giving the impression of a true drawing of lots of the accused.

The convictions in the Outreau case were appealed to the *Cour de cassation* (Criminal Court) and the trial opened in Paris in November 2005. On November 17, 2005, the expert Jean-Luc Viaux was strongly attacked by counsel for the defense and also by the general public prosecutor; a rare occurrence. Mr Viaux left the hearing furious and greatly frustrated to face a forest of microphones and cameras. He chose that moment on leaving the hearing to question the mediocre remuneration for criminal expert reports in France. Mr Viaux’s historic remark—“When one pays experts at the same rate as a cleaning lady, one receives expert reports of a cleaning lady”—greatly irritated the Minister of Justice, who requested at the end of the trial that Mr Viaux be removed from the list of experts. However, if the fees of French experts do not constitute an attenuating circumstance, it is relevant to inform our American colleagues of

the specific remuneration provided for such important expert assessments: 170 euros per child, which includes the hearings, the preparation of the report, and all filings in the criminal court. This work is a true calling.

On November 18, 2005, the author of this article testified at the *Cour d'assises* as a witness for the defense. The author conducted a methodological examination of the expert reports prepared by his colleagues and noted the failures and overzealousness that, in his opinion, resulted in the case taking on such proportions. According to the newspaper, *Le Monde,* he "dealt the final blow."[5] The author specifically pointed out that convicting adults without any evidence other than the word of the children is, in the end, tantamount to giving the children life sentences. That is, the justice system irreversibly conferred on them the status of victims.[6]

The 6 individuals who had been convicted at first instance were acquitted on December 1, 2005, by the *Cour d'assises* of Paris. France was in a daze. Beyond the judicial error of the court of first instance, the faith of each citizen in justice had been shattered. In the weeks following the announcement of the verdict, the Minister of Justice, conscious of the scope of this case extending beyond simply that of a judicial error, ordered the establishment of a "Parliamentary Commission of Inquiry to investigate the dysfunction of justice in the Outreau case." Two substantive questions were addressed to all members of the Commission: What really happened during the Outreau case? How could other Outreau-type cases be avoided in the future?

WHY DID THE OUTREAU SHIPWRECK OCCUR?

Probably all criminal lawyers have acted in Outreau-type cases in the past and will continue to do so in the future. It is common for defendants to be convicted in word-against-word cases without hard evidence, even if it leaves lawyers bitter and outraged at the subjectivity of psychiatric expertise condemning their clients or sanctifying the word of the child. How do we understand that we needed the Outreau case was needed to shake certainties? Few people in France had warned against the risk that an easily influenced judicial machine might get carried away. By what incredible hypocrisy did we pretend to discover in 2004 that the word of a child could be fragile, especially if the child was very young, had experienced atrocities, and furthermore had been poorly interrogated? What conditions enabled such an obvious fact to finally surface?

Did the examination of the facts contradict the statements of the victims? Did a judicial confrontation identify signs of insincerity in the accusing adults or in the children? Were the accused in a position to prove their innocence? Did the experts reveal flaws or incoherencies or criticize the manner in which information was obtained? Not at all. In any case, a retraction by a child does not attract the same interest as the first revelation. The explanation given for a retraction simply denotes the weight of guilt or a common ambivalence with respect to the alleged abuser. Rarely does a judge request an expert opinion on the reliability of a retraction.[7]

Two conditions were key in establishing awareness of the fallibility of children's statements and experts' opinions and creating a state of shock. First, the retraction did not come from a child. At the hearing on May 18, 2004, it was Ms Myriam Badaoui, mother of the child victims and principal accuser, who exculpated those whom she had implicated in the case. Her turnaround was ephemeral: she went back on this retraction at the following hearing, changing her story once again. That led not only the lawyers and judges in the case but also journalists and public opinion to realize the extent of her mythomania and of the damage caused.

Second, the retraction did not call into question the victim status of the children, at least for a certain number of them. Despite many adults being wrongly accused, the

4 children of the Delay-Badaoui couple were still serious victims of incestuous rape. Only the other children became imaginary victims.

Without these 2 conditions (the second, in particular), the Outreau case would have had a lesser impact or none at all. No commission of inquiry would have been created to examine the dysfunction of justice and most of the accused would be serving harsh sentences. It was that sudden new development that led public opinion, the judges, and the media to recognize the fragile nature of the word of children, not to mention that of experts.

Comments by Government

It was previously known that psychiatric and psychological expertise was fallible, but the Outreau judges pretended to ignore that fact, giving experts and their science excessive credit. For example, the French Parliament debated the law related to the protection of minors and victims of sexual offenses in June 1998. During that debate, Renaud Dutreil, a Member of Parliament, expressed his concerns: "We are not in a scientific field and the expertise we are speaking of is based largely on interpretation and subjectivity…."

More recently, François Fillon, the current prime minister, posed the following question: "In what other field is it accepted that the accused alone be required to provide evidence of his innocence? No such field exists!" It is clear that, faced with overwhelming evidence provided by mental health experts, an accused is left with only 1 option: proving his or her innocence. That is what lawyers specifically call a reversal of the burden of proof. In principle, this is unacceptable. Under French criminal law, the burden of proof rests on the prosecution. However, in cases of alleged sexual maltreatment of minors in France, a kind of sexual exception applies. That is, evidence that child maltreatment occurred is not required. The alleged victim is deemed to have told the truth. Child advocates say: Can a child be expected to prove the validity of his or her statements?

Dominique Coujard, president of the Criminal Court of Paris, made this lucid but cynical remark: "Judges are just about as confident in experts as experts are in the justice system." Mr Coujard was speaking at a conference organized by an association of fathers, SOS Papa.

Enough of this hypocrisy! Judges knew to what extent psychiatric experts could err, even if they claimed to have only discovered this during the Outreau case. However, it was convenient for them to validate the word of the children by means of psychiatric or psychological expertise. That was what a French psychoanalyst and sociologist called umbrella expertise, which provides greater protection to the person reporting than the minor in danger.[8] Be it the word of children or experts, the Outreau case showed that both were fallible, easily influenced, and abusively established as evidence in a field in which evidence is greatly lacking. As a result of the Outreau case, awareness had been raised and it was alleged that everything would be done to avoid any recurrence of this type of situation; we would see that these good resolutions were not all followed up on.

The Role of Judges

After the Outreau case, both the judge and the experts were criticized. The judge was inexperienced and acted as a psychologically rigid inquisitor, unable to doubt or be open to self-criticism. As a result of this case, the entrance examination for the *École Nationale de Magistrature* (the National Magistrates' School) has since been altered to include psychological tests and case situations for future judges, to test their ability to question their own certainties.

In France, the investigative judge is a person that Balzac deemed to be the "most powerful man in France."[9] The situation has not evolved significantly since the nineteenth century and the independence of the investigative judge remains complete: no person may give him orders and he is free to conduct any inquiries he deems necessary. More specifically, only the investigative judge can request or refuse a psychiatric or psychological expert, as in the Outreau case. This independence of the investigative judge has been commonly challenged together with the highly sensitive issue relating to the elimination of the role of the investigative judge, which is a personal priority of the current president of France.

However, the judge was far from being the sole player severely criticized at the end of the Outreau trial. In addition, the experts erred unreasonably as they condemned the accused and sanctified the word of the children, which was essentially based on their personal convictions. It is therefore evident that the French courts do not attribute the same importance as the Anglo-Saxon courts to scientific methodology. At the Outreau trial, the list of experts included both scientific psychologists and Lacanian psychoanalysts.

Credibility of Children

Another factor at the Outreau trial was resistance to questioning accusations made by children. There was, above all, the need to believe and the difficulty in standing back when confronted with revelations made by children. Before the Outreau case, and after decades of silence regarding child sexual abuse, one could rightfully believe children who were alleged to be victims. One could not doubt the word of the child, and those such as Dr Hubert van Gijseghem in Canada or this author in France, who pleaded for an examination of the reliability of the revelation, were accused of siding with pedophiles. The state of child protection after the Outreau case is disturbing: did the Outreau case not take us 1 step backward with regard to protecting children?

Credibility is a difficult concept. The entire judicial process is based on the statements of children. The problem is to acknowledge the possibility that, in certain circumstances, the child and his entourage may, in good faith or with destructive intent, provide erroneous or falsified testimony. "In almost all cases, we are therefore not talking about a lie of a child but of a progressive process of contamination of his story from suggestive questioning. In such cases, it is evident that the child, often at pre-school age, is the involuntary victim of a kind of brainwashing, also involuntary."[10] What a French psychologist termed the "process of contamination by questioning"[11] was therefore neglected or overshadowed for years by almost all French experts who agreed, without too much fuss, to allow the judges to ask them the fearsome question relating to credibility and, worse still, to answer such question.

After being heard on November 15, 2004, by the Commission chaired by the *Procureur Généŕal* (Public Prosecutor) Jean-Olivier Viout, immediately following the Outreau trial at the court of first instance, the author reiterated his recommendation that the term credibility be eradicated from the legal jargon and from the mission of the expert. The report provided to the Minister of Justice in February 2005 finally recommended its elimination denouncing its "all too frequent semantic distortion for it to be maintained." The spiral of autosuggestion and error is largely influenced by the principle of precaution. Between the risk of a false-positive (falsely believing in abuse which did not occur) and a false-negative result (not believing a child who makes a revelation), the second result represents, for the professional, the most painful, but also the most dangerous, conscience decision, which raises the question of professional courage: an expert who dares to claim that a revelation is not reliable may err in his judgment, which could have serious consequences. However, experts who choose to

systematically incur a false-positive risk (ie, use their expertise to support the relevant allegations however improbable they may be) would be known as protectors of children and would never be unmasked. The impunity of the fainthearted expert would consequently almost be guaranteed because it would take an exceptional case like Outreau and the lunacy of a Myriam Badaoui for him to be uncovered.

Allegations by Children

What has not been said about the child's word? There is the need to believe children to offer them the opportunity to overcome the trauma by means of the therapeutic virtues of the trial. There is a remedial utopia and the distortion of the criminal trial leading to an obligation to convict. However, in reality it is not that simple because the child's word is not always a spoken word and, worse still, does not always come from a child. We are therefore confronted here with a slogan; a short, striking phrase or expression intended to send a message or to support an action, rather than a clinical reality.

It is not always a spoken word from which the revelation originates, but occasionally the allegation is based on behavioral symptoms. However, no symptom exists that is specific to sexual abuse. Another problem is that there is no infallible method for distinguishing children who are victims of abuse from children who are sincerely convinced that they have been abused. In both cases, the narrative, drawings, or tests are impregnated by a sexual theme.

Allegations by Adults

The allegations do not always come from a child. In the Outreau case, observers noted the zeal, but also the tactlessness, with which the child protection workers collected, encouraged, and sometimes even provoked revelations by the children. In numerous cases, particularly with respect to allegations of sexual abuse during conflictual parental separations, 1 parent claims to have obtained a secret. The incubation period of the revelation (marked with suspicions, intuition, interpretation, and domestic questioning) sometimes lasts several months before the judicial process begins. The author emphasizes a recommendation that his working committee provided to the Minister of Justice: in the case of suspicion of intrafamilial sexual assault, the entire family should be subject to an expert assessment and not only the child and the alleged abuser. The parent making the revelation or accusation can shed light on the matter for the expert. The problem is that, in France, in false allegations, no one thinks that the child could be the victim of his own parent's imagination.

This family approach does not come naturally to French investigative judges; their attention seems to focus only on the author/victim couple. It should be pointed out that the coffers of the *Trésor public* (French Treasury Department) are empty and that an additional expert assessment, despite being miserably compensated, is only granted parsimoniously. However, whether abuse occurred or not, the family relations have been disrupted. Why not apply forensic understanding to this systemic analysis?

The Role of Experts

When the child speaks, the situation is more complex. In the case of a spontaneous revelation to a third party outside the family, as in the Outreau case, reliability is high and all signals are red. That is not the case where the revelation is solicited in response to suggestive questions posed by an anxious adult. Militants are not troubled by this type of nuance and the prevailing dogma is at least simple: "The child speaks the truth!" chanted Ségolène Royal, launching her pedophilia prevention campaign in 2002.[12]

In such a demagogic climate, the usefulness of expert assessments in which a child has revealed abuse could be questioned. Only recently, one of the agencies joined as a civil party in the Outreau case strongly called for a presumption of credibility in every case in which the victim was a child. That request was presented in a proposed bill in November 2003 by a group of 71 Members of Parliament. One of the fundamental principles of criminal procedure in France, the presumption of innocence, would have been reversed in cases in which the child was the accuser, creating a sexual exception in law.

With respect to the child's word, the author has always preferred to interpret, decipher, and assess the child's reliability rather than believe in the religious sense of this term. To take a child's word seriously does not mean to take it literally as several unscrupulous fanatics or demagogues have suggested. The author has stated and written numerous times that to lie is to knowingly alter the truth. In an expert assessment, to deem that a revelation is not reliable based on criteria confirmed by scientific literature is not tantamount to treating the child as a liar. Very young children can mix up the real and imaginary worlds in varying proportions and be influenced or poorly interrogated. Their statements may be induced or suggested. A child may be sincere, convinced, and thus persuasive, and yet denounce fantasized abuse.

In France, we already knew what we pretend to discover today. Queen Marie-Antoinette wrote this to her sister Elisabeth from her cell at 4:30 AM on October 16, 1793, a few hours before her execution: "I have to speak to you about something very painful in my heart. I know how much grief this child must have caused you. Pardon him, my dear sister. Think of his age and how easy it is to make a child say what we want to hear, even what he does not understand."[13] Marie-Antoinette had been falsely accused of incest at her trial.

The role of the expert is to interpret and decipher the word of the child. What otherwise would be his mission? The literal interpretation of the narrative of the children in the Outreau case is not worthy of an expert. It led to erroneous conclusions and a judicial error that, were it not for the spectacular retraction of their mother, would have been upheld on appeal. In the assessment of the reliability of the revelation, the forensic analysis should never be limited to a word or drawing, be it troubling or distressing.

The Danger of Certainties

By eliminating doubt and alternative hypotheses, the militant approach, despite its noble intentions, seems to be more than simplistic; it is dangerous. The author believes that doubt, the ability to establish alternative hypotheses, and the willingness to provide the judge with a probabilistic approach and not a peremptory response are professional qualities in forensic expertise.

The peremptory style is even less acceptable where the opinion of the expert is founded on nonscientific arguments that are neither refutable nor verifiable. Such is the case with respect to the odd interpretation of drawings and dreams. For example, the psychologist in the Outreau case recalled in his report the shrew with a big tail in a drawing by one of the children subject to an expert assessment.[14] Also, a psychologist unfortunately appointed in the Outreau case as an expert had already acted ruthlessly in several other incest cases. Regarding a father accused of incest who had shared his nightmares with him since his detention, the expert stated: "His dreams point toward his guilt without the possibility of challenging this interpretation."

It may be difficult for our American colleagues to imagine that French judges would give any credit to such expert assessments. However, it is a reality. No one is a winner: neither justice nor the persons being tried, and even less so the search for truth. Since

the Outreau case, noticeable changes were made. Experts are no longer granted life terms but are appointed for a period of 5 years. Throughout their entire career, they must certify as to all training taken. However, in-depth discussion must be pursued in particular with respect to expert methodology. The expert must no longer convey his feelings to the judge, but should provide a true analysis based on scientific literature, verifiable or refutable by his peers.

Analysis of the Reliability of a Revelation

The analysis of a revelation or a disclosure of abuse is of such complexity that it should never be limited to a single word, drawing, or symptom. Each expert assessment should contain a chapter titled *The Revelation* with a retrospective analysis of the conditions in which the revelation was made. This analysis should always succinctly include the following components, whether the child makes a direct denunciation or the family entourage is at the origin of the report:

- The personality and history (psychiatric, medical, and legal) of the alleged abuser
- The personality and history of the nonabusing or protective parent
- The nature of the first revelation, reported as literally as possible if the revelation was verbal or described precisely if the revelation was nonverbal
- The context of the first revelation (eg, whether it was spontaneous or made in response to questions, and if so, which questions in particular)
- The broader socioenvironmental circumstances in which the revelation occurred (eg, dynamics of parental separation if applicable, history of suspicions, the emotional character of the event, and psychofamilial issues)
- The assessment of the alleged victim (eg, physical or behavioral consequences, psychomotor development, history of truthfulness, quality of relationship with each parent).

Such analysis ensures that all focus is not simply on the content of the revelation and helps to cool down the debate, but remains vigilant with respect to the context of the revelation and the dynamics of the family.

THE TRIAL AS A FORM OF THERAPY

The therapeutic virtues of the criminal trial, perceived as a prerequisite to providing psychological remedies to victims, have often been highlighted by French psychologists. Many lawyers representing civil parties have often placed a responsibility on judges that should never have been there in the first place in arguing that acquitting the accused is, in some ways, tantamount to removing from the victim all hope of curing his or her traumatism. Criminal lawyers know that the public rarely identifies with the criminal in the box and that the compassion that the victim arouses, even more so in the case of a child, is often a reflection of its loathing for the accused. We have seen that it is assumed that the child speaks the truth; a child rarely lies, and any attempt to elicit such argument in court is dangerous.

Special Statutory Limits

Similar arguments were presented with respect to convincing the legislature to extend the limitation period for public actions. In France, this period has been extended to 20 years after the age of majority (ie, the age of 38 years). For childhood victims, there is consequently the issue of reliability with respect to memories of events in the past, which places experts in a difficult situation: how can one expect to truly illuminate

the court with respect to events that occurred so long ago? The argument takes the form of a syllogism:

- It sometimes takes a whole life to make a revelation or disclose abuse
- A person cannot rebuild unless the abuse is acknowledged
- It is thus indispensable, when the alleged victim makes the revelation, that the court provides sanctions.

The nonapplication of statutory limits to sexual crimes and misdemeanors against minors is thus a recurring request of child protection agencies. Designating incest as the ultimate crime and denouncing the presumed complacency of the legislature in a "plea for the non-application of statutory limitation" that is as vibrant as it is demagogical, the psychiatrist and sexologist Philippe Brenot stated: "This hypocritical law prevents most women from reporting incest. Indeed, the very specific character of psychological development after incest has been ignored by the legislature unless it is a man participating in a collective denial of incest."[15]

Lack of Confrontation

The belief in the therapeutic virtues of a trial still occasionally leads judges, with the support of the experts, to eliminate decisive phases in the search for truth; this was shown in dramatic fashion in the Outreau case. Consequently, the filmed interviews of the Outreau children (which were mandatory pursuant to the law of June 17, 1998) were rare. It was said that video equipment was lacking and, during the investigation, the court did not want to inflict on the children conditions that would remind them of abuse, which had allegedly been filmed by their parents.

Similarly, no child in the Outreau case (including those who would later be found to be imaginary or fabricated victims) would be deemed to be able to attend a confrontation. The wording of the question posed to the experts was at least leading. The judge asked whether the confrontation was of a nature capable of reactivating the traumatism incurred by the children. The experts all responded in the affirmative even though confrontation is a fundamental right of the defense. Such methods are hard to accept and constitute a distortion of criminal justice. Strictly applying basic legal principles does not cause the victims additional pain but, on the contrary, guarantees to all the proper functioning of a constitutional government.

Confusion of Roles

The militant involvement of one of the female experts in the Outreau case, a psychologist but also the president of a child protection agency, raises another problem shown in these proceedings. What can be said about the attitude of an expert who confuses a trial with therapy and an investigation with treatment, thus offering the judges who trust them with a kind of all-in-one judicial proceeding? What can be said about an expert who speaks to the court of children subject to expert assessments as "her" children, for which she claims to be the maternal substitute? Can a forensic expert assessment be conducted with a bleeding heart overcome with passion and even fantasy? Can the story provided by a child alleged to be a victim be objectively examined if one confuses psychological and judicial remedies determining that one remedy must be given priority with respect to the other?

The ethics of experts prohibit them from conducting expert assessments in cases in which they were the therapist of the patient. The bitter lesson inflicted on our colleague in Saint-Omer, evicted from the courtroom during the trial, shows that the reverse should be true: All experts should refrain from providing therapy to individuals who

are examined in connection with an expert assessment. Failing to exclude such a possibility as a matter of principle results, in the long term, in confusing both missions (expert assessment and treatment) and affects the attitude of the expert-therapist. When these roles are confused, empathy overrides the clinical sense, and emotion abolishes distance and silences the critical sense. A commingling of feelings inevitably leads to a confusion of roles: the expert shamelessly replaces the investigators through the concept of credibility and assumes, by means of peremptory conclusions, a large part of the responsibility of the verdict. This confusion fails to serve justice, even when it is performed with the best intentions in the world.

BEYOND OUTREAU: WHAT NEEDS TO CHANGE?

The Outreau case was the most important case in France in the first part of this century. It featured a botched investigation seeking incriminating evidence with the accused imprisoned without reason for more than 2 years, a case with sudden developments and psychiatric and psychological experts held up to ridicule. Its consequences for the judicial system and the expert approach in France were significant but their effects have yet to be felt, and there is a risk that all has been forgotten.

Nothing will have changed after Outreau if we fail to conduct critical analyses of the conjunction of parameters and of the beliefs or passions established as dogma that permitted such a shipwreck. In the future, the accused persons will not be so lucky to have, as an accuser, a mythomaniac who retracts at the hearing; a militant expert, evicted during the course of the trial; or a mediatized court as ready to exonerate the accused as it is to tie them to a whipping post. If one continues to examine cases of child sexual abuse based on binary and overly simple criteria such as true/false, lies/truth, and limit the expert inquiry to the author/victim dyad, there will be little chance for durable and significant change in the forensic approach used in such cases.

For every Outreau case in the future, how many closed or secret trials will there be? How many improbable allegations will there be? How many verdicts issued for the benefit of the doubt based on the word of colleagues too peremptory in their judgment? In the Outreau case, the judge and expert also proved, in the most horrible fashion, that they could form a pathologic team.

At the author's examination in the appeal proceedings in the Outreau case, he had the opportunity to state that to condemn an innocent person, even to a light sentence, is to fabricate a victim. It also condemns the alleged victim to live with this status for life, which is tragic if the abuse never occurred. A true discussion must now be engaged. Unfortunately, it took a shipwreck to be heard.

Limits of Expertise

The most lasting lesson does not concern the word of the child. Even today, only in exceptional circumstances will an expert challenge the veracity of statements regarding abuse made by a child. What has been especially learned from the Outreau case is the limits of psychiatric and psychological expertise. Even the best among us can make mistakes. Further, the clinical hypotheses of the psychological or psychiatric expert must be taken for what they are: an attempt to find a psychological truth and in no way a means to establish a judicial truth in place of the judge or even less so a search for a historical truth. What truly occurred, sometimes many years before the revelation, in reality escapes all players involved in the trial. If experts are conscious of their own limits and the limits of science, they have fewer misgivings in offering the judge a prudent response: a probabilistic approach based on relevant methods recognized by their peers.

Validation by Peers

The Parliamentary Commission of Inquiry initially addressed the problem of counter-expertise or, in the event of refusal, the possibility of an expert assessment conducted by the defense. This occurrence remains rare in French courts with the so-called private expert assessment deemed to be partial if the expert is paid by the party requesting it. Our inquisitive criminal procedure system is thus diametrically opposed to Anglo-Saxon practices, and judicial experts, despite the occasional uncertain nature of their work, have authoritative power in the court room.

The discussion here must address an important question: how much longer can it be tolerated that psychiatric expert assessments take on the force or weight of a verdict? The era of the expert-sapiens who may not be contradicted in court must come to an end. Contradiction, assessment by peers, and diagnostic discussions respecting rules or courtesy and ethics are necessary changes in the search for truth. If court experts knew, in drafting or filing an assessment, that they would be subject to contradiction, they would undoubtedly be more prudent, rigorous, and methodological, which would be in the interests of all.

Sexual Exception

Can allegations of child sexual abuse be dealt with similarly to all allegations of other types of offenses? The answer is not clear. If the sexual exception is the rule, an experienced or competent judge is not needed to deal with the case. However, if child sexual abuse allegations are to be handled the same as all allegations of other types of offenses, judges will have to have a higher level of competency. The author's opinion is that allegations of child sexual abuse should indeed be treated like any other area in law. Regardless of whether the judge is starting a career or is near retirement, the key is to be competent. There is no valid reason for a judge to undermine the fundamental rights of the defense and to discard experts. Judges, lawyers, and experts all have important roles in the process.

Perhaps it is not possible and this sensitive field must remain a sexual exception in law because of the victim being a child, but, if so, this must be clearly stated. It must also be acknowledged that neither the collegiality nor the experience of judges or experts will fundamentally change this injustice.

SUMMARY

Psychiatric experts must not interfere in this debate between lawyers. They should at least refuse to support punitive measures without their knowledge. They must show courage in acknowledging that a revelation does not meet the reliability requirements established by scientific literature on this issue. This requirement is not tantamount to treating a child as a liar but simply reminds the judge that the word of the child may be influenced, solicited, or contaminated by the views of a close adult. Consequently, the legal examination of the word of the child requires a different level of prudence then during a visit with the psychotherapist: as in all areas of law, the accused must be given the benefit of the doubt. However, if psychiatric experts or psychologists make peremptory statements failing to raise any doubts they may have, then what chance will the accused have? Will experts not, on the pretext of protecting children, become prosecutors of sorts, providing scientific (or pseudoscientific) support to punitive measures by the courts? They should express their doubts (a professional quality in this field) and limits that are not only restricted to their knowledge but also to their art. In following this policy, the expert will never be dishonored and, even if sometimes tacitly invited, will avoid sitting in the chair of the judge.

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