

**How the Law Abets Medicine in Promoting
Pseudo-Illness:
Post Traumatic Stress Disorder**

by

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Tonight I will talk about the work we do in none too flattering terms. I will talk of gullibility, unreason, abandonment of logic, of doctors who do not dispel illness but create it and of lawyers who foster sophistry and injustice. Even worse, I will draw your attention to the fact that the community has not fallen into this pit once but it does it again and again, seemingly incapable of learning the lessons of history.

The right idea can give us that balance which will save us from righteous indignation about others or a depressing sense of shame about ourselves. The right idea will carry us through the real reasons for our congregation: the drinks we have had and the dinner which follows. Should your question later betray that you belong to the true believers, the right idea will prevent the unbelievers from assaulting you with that tolerant and amused smile or the patronising tone reserved for simpletons or expert witnesses. You and I have to remind ourselves constantly of the right idea. For a start, we are all believers. The unbelievers merely subscribe to some other belief which immunises them from the beliefs which they scorn. The right idea saves us from the egocentric conviction that we are right and they are wrong. Lucky chance more than diligent application and wise reflection brought us to that stage of superiority.

I will be quoting David Hume, frequently. I believe he is soon to be discovered, although this is from his book written in 1739. "Wherein consists the difference between believing and disbelieving any proposition. We are not determined by reason but by custom. Nothing is more evident than those ideas to which we give assent." "We" being the true believers. Some simple facts convey the essence of the right idea. I will dilate on a few tonight. Most are so obvious that they have become invisible, taken for granted. Australians still vote along much the same lines as their parents before them. Consider the enormous implications of that simple fact. Where would we be without that stubborn stability? Where would we be had not that stubborn stability evolved a balance which leads to a modicum of tolerance, freedom, justice and opportunity for all?

Now that takes us to the notion of evolution, a little further back. Lucky chance brought us individually to this hall instead of relegating our ancestors to the hordes lost through the ages in the savage process of evolution. Any reflection on human activity, such as thought, has to fit within the principles of evolution. Evolution has the pitiless ferocity of extinction, the obverse side to survival of the fittest. Evolution brought about the lucky chance and it's been nice meeting you, I must

say. Genetic evolution moves very slowly in the measure of our lives. It does not have a practical bearing on our deliberations beyond stating our absolute limitations. In contrast, the evolution of ideas can move rapidly within a generation. Ideas are very much our stock-in-trade, so I hesitate to introduce a relatively new idea to you. It is the idea of the idea.

Richard Dawkins developed the notion of the idea- meme, more commonly expressed as the meme in his book "The Selfish Gene." He pointed out that ideas have the essential qualities of genes. Each meme has potential immortality, much the same as each gene. The memes and genes which survive do so by prolific reproduction during which slight changes produce the variations out of which the fittest survive. The meme and the gene have an even closer relationship in the human.

Susan Blackmore in her book "The Meme Machine" - not "The Mean Machine", she's English, describes the co-evolution of both in the human. As a species we specialise in meme production. The needs of the meme have shaped our genes. To take one example, speech gave the human an enormous advantage for the communication of ideas. The needs of speech have shaped our brains, our nasal sinuses, our vocal cords, the adjacent bones such as the base of the skull, the regulation in our breathing and, of course, the big brain. The caption of the cartoon in which a bear has just shot a human reads, "That's just not impressive, Doris. The brain. Hold up the big brain."

Information is also very much our stock-in-trade. We have carried to a peak a process common to all animals: genes and memes capture information, essentially through evolution. The DNA of the gene provides (in the words of Sir Macfarlane Burnet) "an immensely versatile mechanism for, one might say, converting error into information." Of course, he puts an enigma. He puts the principle that life learns from error. It has no other option. Francis Bacon put the enigma another way. "Truth emerges more readily from error than from confusion." Existence does not depend on finding the one and only correct solution. Life throws up changes, virtually at random. Through the failure of the others, in other words their error, the surviving gene or meme can be relied upon to contain the more valid information. It is just a simple matter of selection and extinction. The same principles govern thought. The need to learn from error explains why we relive the lessons of history. Only the survivors of the evolutionary process are granted the opportunity to go out there and try once again.

Our dilemma becomes one of staying ahead of the pack so that we number among the survivors. The lucky variation of the law which we in this room inherit does not lay allegiance to any truth. You may not believe it but the law says there is no such thing as truth to which we aspire. We don't try to. It recognises the imperfection of our blunderings and its pursuit. The caption on the slide reads, "If I do enough different things in enough different ways I may eventually do something right."

Science has its own variation of the juristic principle. Sir Karl Popper expresses it in the principle of falsifiability that is now enshrined in the law through the decision of the Supreme Court of the United States in Daubert. The enigma of this notion prompted the dissenting opinion handed down by Chief Justice Renquist and Justice Stephens who were at a loss to know how the scientific status of a theory could depend upon falsifiability. They followed impeccable logic. Should the notion prove falsifiable, the hypothesis loses all scientific status.

The enigma lies in the inaccessibility of ultimate truth. Science tests the information we accumulate, providing us with validated knowledge. Validity does not equate to truth. Validation proclaims the failure, at least for the time being, to find falsity. Science provides us with a moving target which has a temporary grant of validity under the shadow of its potential falsifiability.

In the terms of the decision of the Supreme Court of the United States in Daubert, if the notion is not testable for falsity it does not deserve the label of science. It should not be admissible testimony. I wish that members of a certain tribunal had heard that yesterday.

My intention tonight is to take two epidemics of recent years and relate them to the history of pseudo-illness. Pseudo-illness presents one of the lessons of history that we seem fated to re-live perpetually. Edward Shorter describes it - I love these words - "one of ever changing steps in a *pas de deux* between doctor and patient." He charts the history from the 18th Century of one wave after another of outrageous speculation widely adopted, fooling all of the people for some of the time.

So we'll go back to David Hume. The sequence has a well-chartered choreography. A patient converts a sense of dissatisfaction with life into a complaint, hoping to gain the attention reserved for the sick. A doctor provides an explanation which gives the patient the approval of authority. Explanations of this type are a penny a dozen. Few manage to strike the responsive cord which sets loose the next epidemic of pseudo-illness. The timing must be right.

When one meme no longer fools all the people all the time it leaves space on the stage for the next. The explanation has to be right as well. It has to accept vague and subjective complaints. It has to justify the absence of objective signs. It has to provide a quasi-scientific explanation and it has to accommodate the symptoms of anxiety and depression while at the same time denying that the complainant has any mental, psycho-social or psychiatric condition.

Pseudo-illnesses overlap, borrowing a feature here or there from each other. Not cranks or quacks but the eminent experts of their time promote them. The names read like a Who's Who of medicine through the 18th and 19th Centuries. I won't refer to the 20th; it's much too close to us.

Education, sophistication and medical advance do not protect us from pseudo-illness. They only dictate its form. In the most sophisticated communities of today, pseudo-illness far outstrips real illness and costs far more. The menu offers fibromyalgia, myofascial pain syndrome, chronic fatigue syndrome, environmental illness, and multiple chemical sensitivities. These are all conditions we have in this community right now. Total allergy syndrome, chemically induced immune dysregulation, dysautonomia, autonomic apraxia, irritable bowel, and sick building syndrome. It's not the building that's sick; it's the people inside. Chronic post-traumatic stress disorder, chronic pain syndrome, repetitive strain injury and reflex sympathetic dystrophy. Some of you will believe in some of them.

Once recognised, a pseudo-illness becomes the typical lesson of history - boring and stupid. A recitation of the syndromes from the past seem most implausible to us now. We have kept some names, such as hysteria, but no longer are we fooled by the form in which it appeared until very recently, that is, convulsions and paralyses and so on. Nor do we find plausible the theory that it results from wanderings of the womb. I think that idea went even before female emancipation. Our current pseudo-illnesses keep hysteria alive and well. David Hume again: "No weakness of human nature is more universal and conspicuous than a too easy faith in the testimony of others."

From whence comes this widespread desire to be sick? I have not seen a convincing explanation. The best seems to be that for many people life does not meet their expectations. It's a bit disappointing, isn't it, life? These disappointed people look for an explanation in some extraneous cause rather than their own doing. They get their satisfaction from the comfort people give the sick and the advantages

which comes with the sick role. The group known to us in the medico-legal world use complaint to avoid work and still be paid. Not all have the same motivation. Some have quite the opposite. Some famous hysterics of the 19th Century, among them Charles Darwin, Elizabeth Barrett Browning and Florence Nightingale, used pseudo-illness to avoid time-wasting social obligations so that they could get on with their work.

During the last two decades of the 20th Century two remarkable new epidemics developed in parallel: the recovered memory syndrome and the chronic post-traumatic stress disorder. They have much in common. They arose out of the same currents of thought in psychiatry; they share the belief in traumatic memory and in myths such as repression and dissociation. They have generated much medico-legal work and an enormous amount of unhappiness in the pursuit of what they see as justice. Both have elements of validity. Some adults do abuse children and disaster really does generate mental distress.

For one of these epidemics, the recovered memory syndrome, the verdict is in. At least it is in the United States. We in Australia still have to learn from this error. The courts which a few years ago, in the United States, convicted parents on the sole word of their daughters have recognised their error and taken instead to awarding large sums against the therapists who induce the false memories. Now you who deal with justice will not be surprised to learn that it is not the aggrieved parents but the children who falsely accuse them who get the compensation. Some therapists have been deregistered and many at present face that fate. Here in Australia our courts continue to convict on the basis of recovered memories. As for post-traumatic stress disorder, to call it a pseudo-illness in any court, including some of the courts here in Melbourne or overseas, attracts severe disapproval.

Childhood sexual abuse, like stress induced mental disorder, passes through a cycle which oscillates from rejection to over-valuation. The cyclic recognition has a well-documented history from the 19th Century. Freud, in his lifetime, went through the over-valuation part of the cycle, developing his notion that sexual seduction in childhood causes neuroticism. He forcefully impressed his conviction on his unhappy patients until they began to produce memories of having been sexually seduced in childhood. The horrified repudiation by his professional colleagues forced him to reconsider. In doing so, he discovered what could yet be another fantasy but one which is accepted by all psychiatrists today, the so-called normal childhood sexuality.

The caption of the cartoon reads, "It's sometimes easier to admit being wrong than it is to admit being ignorant." The opposite extreme which put childhood sexual abuse as insignificant lasted until well after World War II. Almost 100 years after Freud made his outrageous claim, childhood sexual abuse has not only regained the recognition it deserves but swung well past it to over-valuation. What had been regarded as a rarity, only a few decades ago, suddenly took the alleged proportions of affecting one in four girls. By now it might be one in two. The allegation includes one in eight boys (Scott, 1995) and the cause of many psychological disorders.

Therapists instructed patients with conditions such as eating disorders or obsessive-compulsive neurosis to recover their repressed memories of childhood sexual abuse. For most, perhaps all who responded to the indoctrination by producing memories of the abuse, the new memes became a total pre-occupation with them and made them far worse.

With its new outlook society plunged into extensive action. Messianic health workers in some regions precipitated mass actions of removing children from their parents and their homes. The absurd magnitude alone of their allegations should have inspired scepticism in the authorities called upon to carry out the Draconian actions but did not. Individual cases of over-reaction abounded. The citing in one case of a minor blister meant the child was put into an institution. The unsupported allegations of young children about the McMartin family in the United States initiated the longest and most expensive criminal court case in American history - abortive as well, I might tell you.

In the typical case, a grown daughter accuses her father of incest, claiming to have forgotten or repressed the memory of the events since childhood. She gets sick, she goes into therapy and the therapist tells her that is what is wrong. The recovered memories commonly include events from the first three years of life. They can include hearing conversations in the crib, hearing words and understanding what they have not yet been able to manage. As the recovery increases, the memories depict unbelievably bizarre events.

At a trial in Bunbury the plaintiff could remember a snake coming down from the rafters, entwining around the body of her sister and spiders coming down and dancing to the commands of their father. The trial judge took it seriously. Accusations delude the courts and many succeed, despite the extraordinarily flimsy basis for their testimony. The accusations were easy to make but difficult or impossible to

falsify. Righteous indignation generated a powerful confirmation bias in therapists, police and the courts.

By 1994 the recognised cases of false accusations exceeded 15,000 in the United States alone. By 1988 the False Memory Foundation in Philadelphia had 18,000 families as members. Loftus & Ketcham describe the bewilderment and the distress of the accused and the accusers. Swept up in the moral panic, judges imposed grotesque sentences. A school bus driver convicted of actions not witnessed by any adult was sentenced to 165 years. A child carer subject to bizarre accusations received a sentence that makes him - he's still in gaol - ineligible for parole for 240 years.

We can learn from this error another of those repeated lessons of history. They do not arise out of some little slip of reason but out of outrageous lunacies. Hitler explained the formula in "Mein Kampf"; the broad mass of a nation will more easily fall victim to a big lie than to a small one. The lunacies share common paranoid themes such as anti-Semitism and personifications of the devil. They promise rewards which honest effort will not obtain, dispossessing others in one way or another. One of the common features of these parents in the United States is that they are prosperous. They can be sued and they have to pass over a large amount of money. A simple letter from a lawyer can suffice, saying, "If you pay \$500,000 we won't proceed." They depend on reasoning from consequent to antecedent to arrive at the causes which prejudice chooses. They require acceptance of contradiction to explain away the anomalies which the false beliefs generate.

The enterprise of satanic sexual abuse brought together strange bedfellows: psychoanalysts and Christian fundamentalists. The cornerstone of psychoanalysis, repression, bolstered the accusations. 100 years earlier, Freud discovered that his brand new explanation of hysteria had been published centuries earlier in the European witch trials. He wrote to his friend Wilhelm Fleiss, "Why did the devil who took possession of the poor things invariably abuse them sexually and in a loathsome manner? Why are their confessions under torture so like the communications made by my patients in psychological treatment?" Freud recognised anomaly but he failed to see its essence. He looked in the wrong direction, the minds of the accused witches and his patients instead of looking into the minds of the inquisitor and the therapist. Understandably, he ignored the harmful part he had played in putting ideas into the minds of his patients.

But how could he ignore the dominant part played by the torturers? If any of you are interested in the 400 years of the Inquisition and

the persecution of witches, you would know something of the horrible tortures which were mandatory for every person accused and no witch was ever acquitted. They had followed their textbook, *The Malleus Maleficarum*, "the hammer of the witches", religiously for 400 years to the predestined conclusion. Surely Freud had to know that.

The modern version of witches also has a blueprint. The modern lunacy holds that Dr Greenbaum, a Hasidic Jew, saved himself from the gas chambers by agreeing to assist Nazi scientists. He instructed them in the secrets of Jewish magic, the Kabala, with the assistance of which they devised a means for world domination. The story goes that he survived the concentration camps to be brought back to the United States by the CIA after World War II. Here he masterminded the network of the satanic sexual cult. The rites impose mind control in the children reared by the cults. At the pre-arranged signal (which will probably come over the net with the new version) they will overcome and dominate the world.

In bizarre contrast, the blueprint to rear babies for world domination also has the cult "kill this member" and even "eat the babies." So seriously does the United States Government take this notion that it had a number of teams in helicopters with advanced infra-red equipment to detect the decomposition of bodies, surveying the United States looking for these bodies buried by the satanic sexual cult. You won't be surprised to know that they found nothing. They had estimated from the accusations that there would be at least 40,000 babies buried like this. They have not found a single bone.

The notion of repressed memories has nothing scientific to commend it. The few papers which claim to document repression fail to provide confirmation of the trauma and do not establish the existence of amnesia. The alternative explanation has exacting scientific proof: people forget. They also confabulate. Memories are created to suit new beliefs or in response to suggestion, such as the idea that they must have been abused sexually in childhood.

Experimental work discloses the ease with which the deliberate implantation of these ideas leads to the false fabrication of memories. Those influenced in this way hold to the false memories with great conviction. Even after being told how they were tricked and what way they were tricked, they indignantly maintained that the events did happen.

In the cases of alleged sexual abuse the false accusations derived effectiveness from the guiding philosophy of the therapists, who advocate hatred as the healing method and suing as the means to gain

strength. You would be forgiven for believing that they were lawyers who had that philosophy but there is not a single lawyer among them.

Similarly, cycles of fashion regulate the recognition of stress-related illness. A phase of over-valuation began with the notion of nervous shock and the decision of Coultas in 1888 right here in Melbourne. The cycle switched to the opposite extreme of rejection between the world wars. It took decades after the concentration camps discharged their victims for psychiatrists and the courts to accept that the experience in the concentration camps could possibly have a harmful effect on the people who survived it. It took another 15 years before psychiatry gave the syndrome a name, post-traumatic stress disorder.

But once under way the swing of the cycle picks up momentum rapidly. Within the next decade post-traumatic stress disorder had required a new industry of stress therapists, counsellors and management consultants. The methods lacked validation. Not one treatment advanced for managing stress has proof of its worth. Nevertheless, in the past decade, the provision of counselling for victims of disaster rapidly assumed the force of unquestionable belief, becoming virtually a mandatory requirement. At the height of this trend, organisations which failed to provide counselling appear reprehensible and become vulnerable to the accusation of negligence.

The new belief swayed the courts, producing an epidemic of claims. In the United Kingdom over the five years from 1992 the appellate courts made 13 major decisions on psychiatric injury. A remarkably high number. In Australia over four years from 1993 an equally remarkable number of more than 150 appellate decisions concerned claims for psychiatric damages. Even at the beginning of this explosion, from the litigation in our relatively small nation, Mullany & Handford collected more than 1,000 cases. In many countries boutique disaster law firms, as they call themselves, sprang up to satisfy the new demand. More than a decade later science began to examine the ideas of the community and the courts. No study revealed any improvement from treatment.

Victims of road traffic accidents given post-accident de-briefing had a worse outcome than those left alone. Trainee police officers given pre-exposure training have an increased inclination to complaint and alleged disorder. In the most exacting of tests, the prospective randomised and controlled studies subjected to blind assessment, psychological de-briefing increased the rate of post-traumatic stress disorder among burns victims by three times 13 months after injury. The bad outcome

contrasts with the consumer satisfaction. Those given counselling find it helpful and believe that it makes them feel less stressed and yet they either do no better or they fare worse than those spared the treatment. These are the hallmarks of an irrelevant measure applied to a non-existent illness.

In the recovered memory syndrome the patients become fanatically devoted to their false memories despite the obvious damage to their mental health, employment, social and family life. They follow in the 19th Century tradition of total removal of the large bowel for neurasthenia or the early 20th Century removal of all teeth for focal sepsis. The patients gain their satisfaction from the efforts which give their complaints a professional stamp of approval.

Consider yet another oddity about pseudo-illness. Each has fooled all the people for some of the time and yet not one had any substantive proof at any stage. Each seemed to have such convincing validity that proof did not seem necessary. Each fits the way of thinking at the time to exploit some fundamental weakness of reason and bring about an extreme gullibility in doctor and patient alike. That weakness has at least to do with the nature of the memes themselves. The new meme fits so well with the existing memes that it seems beyond question. Again, the timing is critical. An idea which appealed to our parents strikes us as ridiculous today.

On a broader scale, some memes have a remarkable durability. The 19th Century notion of neurasthenia has survived to this today, albeit with change of name such as fibromyalgia and the chronic fatigue syndrome. The belief in witches has a similar durability. The persecution of witches lasted 400 years, stopped only by taking the profit out of accusation. With the recovered memory syndrome and the accusations of satanic sexual rights it resurfaced again recently. In some way these ideas have an insidious power to defy logic and keep on coming back. We can sample these persuasive means and transition. Although the recovered memory syndrome is on the way out, taking with it the modern reincarnation of witches, true believers still operate in child welfare bodies and the Department of Public Prosecutions. In contrast, post-traumatic stress disorder is still very much in.

A different pseudo-illness, repetitive strain injury gives us the example of a meme halfway between. For most of us here in this room, repetitive strain injury is out, but in the USA it is very much in. We had our epidemic from 1982 to 1985, the virulence of the epidemic making up for its brevity. In the USA their current epidemic grew a little more

slowly but in a much bigger pond. Between 1981 and 1991 in the USA cases of repetitive trauma increased tenfold to become 61 per cent of all occupational illnesses. It doesn't matter about the details. The figures were published in a particular trade union magazine to let their members know how much money there was at the time to allege that they had repetitive strain injury. By 1996 the combined direct and indirect costs in the United States were estimated at \$1.256 trillion. The rate of the increase indicates by now in each year 50 per cent of the workforce in the USA will have an occupational injury each year. Left unchecked, the total cost will surpass that of Medicare in one or two years.

When we in Australia believed in RSI, therapists embarked enthusiastically on surgery for the carpal tunnel syndrome, so much so that within two years the true believers acknowledged that it made the complaints worse. In the USA they label most of their cases of RSI as carpal tunnel syndrome, but they administer a great range of treatments besides surgery. I hesitate to go through the long list of them which will include osteopathy and chiropractic. We might fall off that tightrope. Relatively slowly they are discovering the harmful effect of surgery which, incidentally, works remarkably well for the genuine case of carpal tunnel syndrome but not for anybody who is getting compensation. It is like the failed back syndrome: operate on them and you are asking for trouble.

The moral seems a type of quantum theory. To learn we need a certain quantum of error: the less the error, the longer it takes to learn. That is one way of learning about RSI. Perhaps this is the best time to confess that, but there for the grace of God go I. When RSI appeared in the first guise of tenosynovitis, I resonated with politically correct indignation at the harm to migrant women - it always seemed to be migrant women when you saw them on the television screen - injured by the poor ergonomics of soul-destroying factory assembly work. When the notion of post-traumatic stress disorder appeared I took it up with equal enthusiasm. I believe the moral of the story lies in the right idea that we can only learn from error.

The largest single group of patients I see have severe brain damage inflicted in traffic accidents. When the DSM-III diagnosis appeared in 1980 I found perhaps the first cases pleaded in Sydney, the parents of very young children killed suddenly and tragically. Some of these parents enter into a bitter decline, blaming themselves and each other. They nurture rage above all for the driver of the other car and a justice

system which did not hang, draw and quarter him. No matter how many other lovely children they may have, they gain no more joy from them and they withdraw their nurturance of them. The grief for what they lost denies them the joy of what they still have.

For a while I enjoyed a roaring trade in these shattered lives and then it all suddenly dried up. I never learned why. I suspect that at the beginning I had joined the victims in their illusion that they had all been beautiful people, leading beautiful family lives with ideal children, the most ideal being the one who died. But you cannot fool me all the time. I read an article which spoiled it all. It pointed out that feckless and disturbed children reared by inadequate and rejecting parents put themselves at risk and make up the majority of children killed on the roads. Even worse, I soon found that the parents of true innocents, those who had done everything right and had suffered the bad luck of being in the path of some drunk or a speeding juvenile delinquent, reacted with concern for those who lived and continued to do their best. Probably the right idea spoiled for me this promising source of income. The solicitors who used my services probably could not find any case which met the increasingly strict criteria I enjoined. As that was another time in another city, you will not be able to tell me what really happened.

The need to learn from error reminds me of the retort made by Monsieur Clemenceau, the French Prime Minister after World War I. Asked by a reporter what he thought about the news that his son had joined the Communist Party, he responded that if at his age his son had not become a communist he would have been disappointed, but if his son does not give the Party away within a few years he would be even more disappointed.

I have no doubt that post-traumatic stress disorder occurs. For three years as a student I helped a survivor of the concentration camps through the last three years of medicine so that he could resume his profession. Rarely did he talk about his experiences and then without drama or emotional display. The presentation of people who have suffered greatly differs from those who make the claims heard in our courts these days.

People advancing the recovered memories of sexual abuse present a similar contrast. Their demonstrative behaviour and statements put them apart from the women who have undoubtedly suffered sexual abuse. The one makes increasingly strident protests about a fantasy while the other expresses reality in the resigned tones of grief. The

wife of a patient who had suffered greatly put it simply in the words of a proverb - "the deeper the sorrow the less tongue it has." The real victims behave that way because they have no choice. The fakes have a choice and they use it to arrive at the stereotype which the community favours at the time. By now humanity should have learned at least these fundamental lessons about humans. Instead, the victim of real abuse is far more likely to be disbelieved in court as so many victims of rape have learned. What makes us so confident of our ability to detect guilty demeanour when we really do it so badly?

The title of this cartoon reads, "How to recognise the moods of an Irish setter." Every face looks exactly the same. And while I touch upon this absurdity, consider yet another. Lindy Chamberlain owes her freedom partly, at least, to a public relations consultant. She behaved naturally after the death of a child. The nation, or at least most of the media, based on her demeanour, voted her guilty. After she was released from gaol awaiting the Morling Royal Commission, her counsel prevailed on her to learn from a public relations consultant how to behave. She had to adopt the stereotype created by film and stage to give the appearance of being a genuine victim.

The next caption reads "And so I ask the jury, is this the face of a mass murderer?" We see the same absurdity daily in our courts. The posturing of the fakes receives the rewards. The doctors create the ground rules with a recipe from their cookbook, DSM-IV. The litigants regurgitate the formula in a nauseatingly contrived manner and the courts swallow it all hook, line and sinker. Surely we can do better.

Theoretically, the answer lies in Daubert but that prevails in a country where RSI still goes from strength to strength, seven years after the publication of the decision. Of course, the rules which would make inadmissible the type of expert evidence promoting RSI have not yet fully permeated that system. It will take decades for Daubert to have its full impact in the USA. Hopefully, we in Australia will not be far behind.

QUESTION: DR JAGER. I like to think that the ability to fake a mental state examination sets psychiatrists apart from the apes. You alluded to the DSM-IV being a cookbook and that many of our colleagues choose to use it in the courtroom to prove the presence or absence of post-traumatic stress disorder. I was wondering what you think about the use of the mental state examination to help discern the presence or absence of post-traumatic stress disorder given that in the DSM-IV there is no allowance for a mental state examination to play a component in the diagnosis.

DR BELL. I don't use the mental state examination any more. I used to do it religiously after I finished my training. I did all the right things the right way. I did it first of all so that I could pass and by that time I was indoctrinated. As the years went by it seemed to be, to my mind, quite futile and got me nowhere, I just stopped doing it. A few years ago a colleague took advantage of the fact that I didn't do it and didn't mention it to say I wasn't practising psychiatry.

John Ellard a psychiatrist in Sydney, and another psychiatrist, Paul Skerrett in Perth, both have written papers on the mental state examination and they have done it wittily and remarkably well. They acknowledge that the exercise is a farce. And the farce depends partly on this problem with demeanour.

We have the problem in courts that a lawyer will stand up and say "How many hours have you seen the patient?" and, of course, "I have only seen the patient once and I saw him for only an hour and a half or two hours." "But Dr So-and-so has seen the patient for five years twice a week, an hour each time. Surely he knows much more about the patient than you do?" The answer is "No." The therapist relies on demeanour. The patient can use demeanour to keep on fooling that therapist for years.

I recall one patient I had treated in group therapy weekly for four years and then she brought a patient along, her sister and I said to her "Why are you bringing your sister? You've been telling us for four years how badly you're doing and how much worse you have become." "Oh" she said, "I've been fooling you, you know, you've done marvellously well, so that's why I brought my sister." Well, I had relied on her demeanour when she said that to me. The next session none of them turned up. No, I had no faith in the mental state examination. I have little faith in psychiatry these days, I must say.

QUESTION: DR PRAGER. I wondered how you distinguish between people who have suffered sexual abuse and those who haven't in the absence of corroborative evidence. You admit that patients do get sexually abused in childhood and raped in adulthood and you admit that there are psychiatric consequences of sexual abuse. The majority of patients I have seen over the last 30 years who have eventually said that they had suffered some sexual abuse and suffered psychiatric consequences have certainly never wanted to take any kind of legal action. Now some of those cases have been corroborated by other members of the family or by other witnesses. Some of them have even been corroborated by medical evidence in casualty departments or in

hospitals. So I don't think we have any argument there. The problem is when it comes into a legal setting. You are saying that the demeanour of a person makes a difference but that depends on their personality, doesn't it? It's interesting that some of the cases that come up legally now because patients have permission to go legally when they didn't in the past without the guarantee they wouldn't be believed.

In some cases it's interesting that the alleged perpetrator actually confesses when they see the details of the report and other people come forward who have also suffered abuse from the same perpetrator or, at least, alleged abuse. I think it is terribly difficult if you weren't actually there at the time to say whether it really happened or not or if you haven't got corroborative evidence.

DR BELL. I could say whatever I like and that's the trouble. So can other people and that's where we go wrong. But I agree with you. I shouldn't say something that's not supportable.

The answer to your question is the right idea. We can only learn from error. The children who have been sexually abused and whose stories can be corroborated and who talk about them many years later in adult life, their problem isn't that they forgot, their problem is they could not forget. I don't know whether you agree with that, Shirley. The one distinguishing feature is their difficulty in not forgetting. So the recovered memory syndrome which is based on the idea of repression, that the idea could disappear and then suddenly they could resuscitate it from nowhere, that is one distinguishing feature we have learned from error. But confessions, oddly enough, are not necessarily a hallmark of a genuine case.

A policeman in the United States by the name of Ingram was accused by his two daughters and he was convicted and sentenced to 20 years and he is now in the eighth year of his gaol sentence. If you want to follow his story there is a web page where a group has organised to try and get him out of gaol and so next year you'll be able to see whether he's still in for his ninth year. He had a happy marriage, he thought, and lovely children. His two daughters had grown up, became depressed and went to therapists. After being in therapy for about 18 months they started accusing people. They accused two people and both accusations were proven wrong. They accused them of sexually assaulting them as children and then they accused their father. So this is now a space of about six years. The father, when confronted with their accusations, said, "I can't remember anything like that." But he reasoned that his two daughters would not lie so there must be something to what they're

saying and he kept on saying as he started making confessions, "Well, I would've done this" or "I would've done that" and it became a most ridiculous situation in which his confessions became more extreme than what he was being accused of. It became a competition in which the girls made worse accusations after their father had made worse accusations than they had last made.

Then other members of the family started making confessions: two brothers and the mother. Then the girls, once they'd accused the father and he'd confessed, started accusing other people. They accused the mother, they accused the brothers then they started accusing his colleagues in the police station and one of the people they accused, oddly enough, was the police prosecutor. This police prosecutor was so indignant that they had to take his gun away from him when he went into court for fear that he would shoot the accused, not the accusers even though he himself was accused. The accusation went that the police officers used to have a regular poker game. They would go to different homes and when they were in this home they would go upstairs and they'd start raping the two girls and the mother would come and encourage them and so on.

The story they told became increasingly bizarre. They said they were inflicted with various wounds. They had babies which they had to eat. Other babies were buried in the grounds. They took up most of the grounds of the property there to try and find the bodies that the girls talked about. And the helicopter I was telling you about with the team and the special equipment went around the whole district looking for these bodies.

A psychologist Richard Ofshe became quite famous for his work in this area of memory at the University of California, Los Angeles, and he was invited to assess Ingram. He tried an experiment. He started to tell him that the daughters had just said something, which he invented for the purpose. Ingram would respond, "I don't remember doing that." But the next time Ofshe went to visit Ingram, Ingram could remember it. He would have got six months on probation and would have been let out at that time. That was how cases were managed at the time. But instead he recanted his confession after Ofshe convinced him that he was making a false confession and consequently he got 20 years instead of six months.

The two girls eventually had to submit to a medical examination which found no scars of all the various injuries supposed to be inflicted on them and they were both still virginal, nulliparous. But their father

was still sent to gaol and is still in gaol today. Now if you want to support him you can get on the net and send a message to try and help get him out of gaol. No, confession isn't the answer. There are all sorts of things but we can only learn from error. We can only see these things happen and learn what happens, but we have to learn. Now that may seem very strange and you may think it happens only in the United States. But it has happened here in Australia.

QUESTION: MS JOCKEL. How do you distinguish between pseudo-illness and illness proper?

DR BELL. Yes, very difficult, because as I made my confession, I believed in both these conditions to start off with. Pseudo-illnesses have got that magic. They're a meme that just fits so well with what we believe at that time. Educated people would seem to be less gullible but they are not. It's just that - I've said this already - what we believe shapes the idea that will persuade us - and we can only learn from error. It's sad, isn't it? I've got no other message for you. There are some general features about them which might help us. I listed them earlier. They have a vague quality about them. They don't have objective signs. They have what seem to be scientific explanations but are not. When you look into the science of these things there's no science to it and they have that odd feature that one resembles the other. For example, chronic fatigue syndrome and then the Gulf War syndrome. The Gulf War syndrome is just another variant of the chronic fatigue syndrome. The answer to your question is we can only learn from error.

QUESTION: MR CHAPPLE. On the assumption that your theories on pseudo-illness aren't just pseudo-science, as a retired personal injuries insurer, I'd like to ask you a very mundane but practical question. Let's say we have someone who was in a genuine car accident, had some genuine injuries, stopped working after the accident, and was paid weekly payments. We're now 18 months out from the accident and this guy has been sitting at home watching *Days of Our Lives*, *Ricky Lake* and *Gilligan's Island* for the last 18 months. Reading the file I'm not at all surprised that he's depressed and his psychiatrist is recording all of the symptoms of post-traumatic stress disorder. There's probably not a lot physically wrong with him any more but he's not keen to leave the house and, despite the fact that there is only so much *Ricky Lake* you can watch, he's still in there. Having experienced many fakes and looked at files and said, "I can't believe this", I'm not having a problem with this one. The person doesn't appear to be deliberately making it up. The person just appears to be demonstrating the normal

symptomatology of someone who's been watching daytime television for 18 months and no doubt believes that he has an illness and probably hasn't met you and doesn't know that there's no such thing.

As an insurer I know that I'm going to have to come to grips with this case at some stage and I could brief a very expensive Queen's Counsel and I could get some very good medical experts along. I know if I call you to give evidence I'll no doubt get the judge offside and, depending on whether the jury likes you or the plaintiff, that's probably a fairly risky step to take, but I'm trying to think of something pro-active I can do because I know that by the time I get to court it's actually worse than tossing a coin. Do you have any advice on how to cure the person of a pseudo-illness by persuading them that they don't have it any more? Because I know that if I could do that it would save me a lot of money and the sick person would stop being sick and would be happier as well.

DR BELL. You've answered your own question except for the last little bit which is very good. I agree with what you say. My work in the medico-legal field started with head injuries and severe brain damage and you probably have on your desk my textbook from 1992. You probably would have read what it says about post-traumatic stress disorder. Fascinating how time changes. Because that tells you, in 1992, that people who have severe brain damage never get post-traumatic stress disorder. They just don't. How can they? They can't remember the event and so they don't have a memory of something awful to be neurotic about it and have post-traumatic stress disorder. That was the plain fact in 1992. They didn't. And you, as an insurer, didn't get this kind of claim then, did you? But, more than that, they didn't tag. You know how these claims are, particulars of injuries, put everything in, stupid little things but never in those days did they put that in. There was a good reason. They didn't think of it. It wasn't popular. It wasn't fashionable. Now it is. And so now all of a sudden it is happening and you read the weirdest explanations of why patients who cannot remember what happened to them have post-traumatic stress disorder. It's just not on. But it is on because that's the idea.

Now how do you cure them? Well, you will cure them. You will give him money. That will cure him. Now if he still has an opportunity to get more money in some other way he won't be cured. Until the opportunity to get more money is cut off he will go on being miserable. Now there is a strange thing about this business, about people. We are very limited, really, and we're talking about the limitation of the

human mind. These people who litigate and claim do not have anything really wrong with them. They've got that inbuilt honesty that all we humans have. They can't go there and make a case for making money and be cynical about it and really enjoy themselves. They have to be miserable and they have to make their family miserable: their wives, their children. It's part of that innate sense of honesty we all have.

When that opportunity is cut off - but, no, you can't do that in Australia. The opportunity goes on and on and on. There will be some pension, some way you can get extra money. I've got one patient whose wife got a pension to be carer for him and then she got a nervous illness. While she was being paid to be his carer, he put in an application and was paid to be the carer for her.

QUESTION: MR MURRAY. For fear of being provocative and making a far right stance as bad as some others take a far left stance you have, like others dealing with the physical injury side, the problem of quantitation. You have in your cases a distribution curve from major uncomplicated physical injury through to what you are talking about. I suspect that your message would be completely unacceptable to the greatest proportion of plaintiffs who see a doctor.

DR BELL. Yes, well I've heard this - to take the last part first, that the community won't stand for it, and I've heard this as a justification for doing all sorts of things. I was talking to a surgeon only last week and he was telling me about amputating the arm of a woman who had pain in the arm. He knew it was neurotic. I couldn't believe that he would tell me this sort of thing. I don't think he'd heard my lecture.

The first thing you said describes my position. In Sydney I'm known as standing to the right of Genghis Khan, so I agree with you. To be to the right is not necessarily to be wrong. When I was junior resident two of our senior residents a year ahead of us went into practice as general practitioners. We looked up to them very highly and we were surprised that they went into general practice instead of becoming specialists. They were at the leading teaching hospital and so on. And they really made a name for themselves in general practice because they didn't kow-tow to any local idea or any general idea or any current pseudo-illness and they would tell their patients exactly what they thought of them. They were very popular and they ran a very big practice. It is possible to be honest.

I recall a young lad of 18 who had had a car accident and his general practitioner said to him "Look, there's nothing really wrong with you." He was born in Australia but his grandfather was born in Greece and

he'd come out here and done well. He was there when the young lad said to the general practitioner "Look, my solicitor tells me that if I go to work I'm going to lose \$70,000." The grandfather asked, "How much did you say?" "\$70,000." "Look" he said, "I'll sign a cheque for \$70,000 and you can go back to work." And that's what happened. People who give up work for compensation never earn as much as they lose from whatever they do. The courts make sure of that. But not many general practitioners or doctors will warn their patients that you are going to lose a lot more than you'll get from whatever you're doing.

I have come down to Melbourne as part of this litigation by sailors of the *Melbourne* who cut the *Voyager* in half. I saw one recently, and this is *sub judice* perhaps, but he had been a real estate agent. I said, "You shouldn't be doing this. You're going to lose a lot more than you'll ever get." He said, "Don't tell me. I worked out the figures last week." He had already lost a lot more than he could possibly gain from litigation compared with what he would have earned had he stayed at work as a real estate agent.

So, I don't know. I have seen people who do this sort of thing, general practitioners and other doctors. I believe that I never told anybody anything that I didn't really believe and I ran a practice where I never had any shortage of patients, I was always overworked. I think it's possible to do that and I wish more people did.

QUESTION: PROFESSOR BALL. We have, in fact, the witches' hammer now and that's DSM-IV and I wish lawyers, as well as many doctors and psychiatrists, would read the introduction because the introduction specifically says that it's for research and related purposes and great care should be used in using it in the forensic field. It was not meant for the purposes it is used and is grossly abused.

I think that the Godfather from Newcastle has anointed David so I can't disagree too much with him and I think probably I agree in part and disagree in part. I think there's a danger of the baby going out with the water, the soap and the dish in taking this extreme view. On the other hand, I agree with many of the ideas which have been put forward insofar as neurotic disorder just transmogrifies from one century to another.

I think things change over centuries and we have the same rate of disorder, it just appears in a different way according to cultural shift. But I think that it's dangerous to say that trauma doesn't have bad effects. It does for some people and I think we must be careful that

we allow for that. But we do have major problems. I get fed up with people coming in and, in effect, reciting whatever the relevant page is in DSM-IV, a great list of symptoms. They didn't use to do this and I've been around, like David, for a long time and I've seen maybe tens of thousands of patients and it's amazing how their presentation differs. This is brought out very clearly in a recent court case where I was giving evidence where it was clearly established that the lawyer had gone for his first interview with a client and said "Do you have..." and then read out a list of the classical complaints.

Shorter has pointed out that the post-traumatic stress disorder was invented to solve an American problem in regard to the post-Vietnam veterans and I think we shouldn't forget that.

The core of the difficulty is the issue of compensability. There is a recent paper in *The History of Psychiatry*, the last edition, which is called "Pitiless Psychology" and it reviews the British experience in and following the Second World War where they used what they learned from the First World War to change their attitude towards the acute and the long term management and the noncompensability of much of traumatic neurosis. They had a remarkably low rate of long-term chronic problems. These figures were compared with the Americans who had an appalling problem and Eisenhower and Patton both complained that they lost divisions to neurotic disorder. The German army, which you might have lots of views about why they were fighting, but there's no doubt they were a brilliant army, and they had an extremely low rate of neurotic breakdown in the Second World War. This is well documented and there were several conferences after the war to try and work out why this was so. And it is partly related to the history of noncompensability. Admittedly, you can query the figures. We know they shot 15,000 men and they might have shot 30,000 and then the rate of neuroticism would have been a lot more.

So I think this is a fundamental issue which affects lawyers and doctors. How much are we, if not creating, at least maintaining illness?

DR BELL. The first thing you raised about the preamble to DSM which is from DSM-III onwards, I've quoted that frequently. Every opportunity I quote it. I've got it in reports and all the rest of it. It does no good. They don't want to hear and they won't know. It's no good saying that "Look, the people who invented this said it shouldn't be used in the court room and there are good reasons for it. Here are the reasons." It does no good. They'll continue using it. So, I'm afraid

that's the sad answer to that question.

The issue of compensability raises a particular problem and I think you put it as throwing out the dish and the bath water and so on. But, no, no, the real problem is throwing the baby out and we do throw the baby out. Of the 15,000 or whatever it was they shot, there'll be people who had really broken down and who had real problems.

We see this problem every time a government gets into action here, or anywhere, and wants to cut down on the third party compensation or the insurance premium or wants to reduce the cost of traffic accidents, insurance and so on. Every effort that has been made means that lots of people who have ridiculous claims still get away with it but there are a few people who have got terrible injuries and have got terrible disorders and handicaps. They get clobbered hard and their cases accumulate and there is agitation and responsible bodies become more and more concerned and they make their representations. In New South Wales we have had Labor governments for long periods and I have seen Labor governments who have done "the Kennett" in a sense. They have set the problem up and they have still stayed in power so they have had to solve the problem. Unsworth did it in New South Wales and introduced Draconian legislation which reversed their ridiculously weak legislation encouraging compensation. So they learned from error. We have to learn from error. That's the sad part about it. But somehow we've got here. Somehow we're all here together and we're doing reasonably okay, as long as we don't get hit by a drunk on the way home in a car and then we've got no compensation or we're killed and the wife has got to sell the home and so on. There are the few that fall by the wayside and it is pretty sad. At least they're not going to starve. They might have to give up the big home in Toorak and live in some slum elsewhere on a small pension, but it's not too bad.

