



The Six-Million Dollar Man

The church gives millions to four students claiming sexual abuse by a teacher others say was the best they have known.

by Bonnie Dwyer

“What is right often rests on who gets to decide.”

—Robert L. Sweezey, President
Risk Management Services

AUGUST 26, 1994. AN UNUSUAL MEETING WAS called into session at General Conference headquarters at the request of a pastor from Tillamook, Oregon. Repressed memories of sexual abuse was the topic, specifically the alleged abuse of Adventist school children by one teacher which has spawned five different civil actions against the denomination. The cost to the church's insurance agency for settling cases involving this one teacher has reached approximately \$5 million, plus close to \$1 million for legal fees. Donald Gilbert, chairman of the board for Risk Management Services (RMS), presided, as presentations were made on behalf of Russell

Hustwaite, a former teacher in Tillamook who had been accused of abuse by his former students based upon memories that they retrieved through therapy. A criminal case against Hustwaite was pending in Montana's eighth judicial district court.

How should the church deal with this phenomena of repressed memories that has swept through America since the late 1980s? In the media, the stories of families being torn apart when children go to court and accuse their parents of abuse have been tragic. Each new account is more bizarre than the last. Satanic rituals are sometimes described. A California father has been accused and convicted of murder. One professor accused of abuse by his psychologist daughter decided to fight back by creating a foundation to support other people accused of abuse. The False Memory Syndrome Foundation tracks legal cases based on repressed memory and has seen the number climb to about 800.

The group at General Conference headquarters were faced with a case that raised the

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questions posed by repressed memories of sexual misconduct. How should an institution react when forced to choose between supporting its employee and protecting its children? Practically speaking, how much is the church willing to pay? Should the church continue to settle repressed memory cases out of court or begin to litigate them before judges and juries?

To bring all the pertinent people together for the meeting with church officials, Pastor William Smith, Russell Hustwaite's brother-in-law, spent \$3,000 of the family's money. In attendance were three attorneys for the church: John Stewart of Portland, Oregon; Ron Waterman of Helena, Montana; and Lisa Saveikis of the General Conference Office of General Counsel. From the General Conference Risk Management Services was Jerry Fritz, chief claims officer. Two of the chief financial officers of the church were present: Don Gilbert, General Conference treasurer; and George Crumley, North American Division treasurer. Visitors from out of town included John Cannell, M.D., director of Missoula Psychiatric Services; Stephen Hagerman, Great Falls, Montana, attorney representing Russell Hustwaite; and Smith.

Although not present at the meeting, Hustwaite maintained that he was innocent of the allegations and that it was only because of repressed memory therapy that the charges had been brought. His attorney, Hagerman, suggested to church officials that settling these claims only encouraged more people to file for damages. Cannell was there to address the phenomenon of repressed memory within American society. He was also well versed in the pending criminal case because he had examined the medical records of the plaintiff, Jane Doe (a pseudonym), and knew her to be a virgin. Her claims of having had a fist shoved up her vagina and of having been raped did not match the physical evidence. However, it quickly became apparent to Cannell that the

people representing the Adventist Church considered Hustwaite guilty.

"When we get a good case, we'll stand up and fight," he remembers them saying. Cannell wondered what they thought constituted a good case. "You don't find very many 20-year-old virgins these days," he said.

Hagerman came to the meeting with the intention of convincing church officials not to settle with Jane Doe. What Hagerman didn't realize was that the church had already settled the civil suit with Jane Doe, only days before.

Montana to Washington to Oregon: Russell Hustwaite

A graduate of Mount Ellis Academy and Walla Walla College, Russell Hustwaite got his first teaching job in 1963 in Hamilton, Montana. Hamilton is a small town south of Missoula, just over the Bitterroot Mountains from Idaho. The little Adventist church school in Hamilton had only a dozen students, and he was the only teacher. But during his tenure there the school began to grow. His record with the conference was good.

Hustwaite was then called to another Adventist school in Missoula, Montana, where he taught for one year.

Next, he was called to the state of Washington where he taught for 13 years. At the small Sky Valley Adventist School in Monroe, Hustwaite became a part of students' lives for several years, since he taught multiple grades. It was here that he taught Paula Pfeifle, who would later be the most famous of his accusers, telling her story on the national television program *America Behind Closed Doors*.

In 1982, Hustwaite returned to Montana, where he filled an opening in the Adventist Palisades School in Great Falls, the city where he had lived as a child. Criminal charges would eventually arise from the five years Hustwaite taught at this school.

But in 1987, at the end of those five years, when Marvin Mitchell, the Oregon Conference superintendent of education, checked his credentials, everything seemed to be in order. That year Mitchell proceeded to hire Hustwaite for the Adventist church school in Tillamook, Oregon. Since the Tillamook school had experienced difficulty keeping teachers, Mitchell kept close tabs on his new teacher. He was impressed with Hustwaite's skills. In his opinion, Hustwaite handled curriculum and discipline well. Some members of the school board proclaimed Hustwaite the best teacher their children had ever had. No complaints or charges of sexual abuse have been filed on behalf of any Tillamook School students.

Washington: Paula Pfeifle

But on January 7, 1989, a sheriff appeared at Hustwaite's door, and served the papers accusing him of sexual molestation. The charges were brought in a civil suit by one of his former students in Monroe, Washington, Paula Pfeifle. With the help of therapists who were treating her for anorexia, Pfeifle said she had recovered memories of Hustwaite abusing her when she was in elementary school.

When Paula Pfeifle filed her civil suit against

Adapted from René Magritte's "The Glass House"



Russell Hustwaite in 1989, repressed memory cases were escalating nationwide, and stories of abuse filled the newspapers. In Olympia, Washington, Thurston County sheriff deputy Paul Ingram was being branded a child molester and Satan worshipper by his daughter. His confession to the increasingly bizarre crimes of which she accused him received daily coverage. (A book-length account has been written by Lawrence Wright, entitled *Remembering Satan*.) The state of Washington had recently enacted a law extending the statute of limitations on sex crimes against a minor to seven years, rather than three. And then the law had been amended again, to allow charges to be brought for three years following the date a victim remembers a crime.

It was the same year that in California, Eileen Franklin Lipsker recovered a memory that her father, George Franklin, murdered her best friend 20 years earlier, setting off a sensational trial that received national coverage. This occurred just one year after the publication of *The Courage to Heal*, in which victims of sexual abuse were encouraged to take their cases to court.

Pfeifle's attorney, Roberta Riley, worked diligently on her case for two years, methodically trying to find other accusers by contacting Hustwaite's former students at other schools where he had taught. Riley was the second attorney the Pfeifle family had consulted regarding their case.

When the Paula Pfeifle civil case was first filed, the most immediate question facing the church and its insurance carriers was deciding who was responsible for defending Hustwaite. Risk Management personnel told Hustwaite that they would retain the best lawyer insurance money could buy. Risk Management Services might choose to settle, they said, because it would be the best stewardship of the church's money. But if that was done it would not imply guilt on Hustwaite's part. At least, that is what Hustwaite recalls being told.

Risk Management Services did retain one of the largest law firms in the Northwest, Bullivant Houser, to represent Hustwaite. But it was Cigna Insurance that carried the policy covering the Monroe SDA School for the period when Hustwaite was the teacher. Cigna Insurance questioned whether the alleged abuse had occurred during school hours, saying they were not liable for what happened after school.

With the ongoing coverage dispute, very little was being done in Hustwaite's defense. Finally, one of the senior partners in the Bullivant Houser firm contacted the Washington Conference of Seventh-day Adventists and argued that Hustwaite should be defended. The Washington Conference decided to pick up the cost of defending Hustwaite until the insurance dispute was settled.

The taking of depositions resumed. On October 2, 1990, Hustwaite went to Washington State for the deposition of Paula Pfeifle. At that meeting one of Pfeifle's attorneys said that Hustwaite could be arrested because a second accuser might make criminal charges at any time. It could be a bluff, Hustwaite's attorney, Steven English, suggested. However, he was so concerned he told Hustwaite that he should get a criminal defense lawyer to check into these new allegations.

Montana: Denise Emmerson

Three days later, attorneys for Pfeifle, Hustwaite, and the Washington Conference traveled to Bozeman, Montana, to take the deposition of Dee (Denise) Emmerson, who had attended the Hamilton, Montana, school in the 1960s under Hustwaite. She recounted an incident that had remained clear in her mind since the day it happened:

It was one winter day when I was in sixth grade. It was cold and blustery outside, and I decided that I didn't want to go out for recess because I got cold easy. So I decided to stay in the classroom

and read. And I was sitting there reading and Russell stayed in also.

(Question by Ms. Riley): I need to interrupt you momentarily. Do you remember if Russell locked the door and pulled the blinds?

A: I don't remember specifically that he did that.

Q: Okay. What do you remember next?

A: The next thing I knew was he was at his desk stacking books on his desk and he said, "Would you help me carry these upstairs?"

So I said yes, and he gave me an armload of books, and I followed him down the hallway and up the stairs to the second floor, and the room that you walk into at the top of the stairs was a multi-purpose room that the ladies used for their community activities. It had a counter, and a small kitchenette.

Q: Was there a name for the room?

A: We called it the Dorcas room.

Q: You were describing the room, and I interrupted you. I'm sorry. It had a kitchenette?

A: A kitchenette, a long counter, a kitchen counter, a large work table and a couch. And when he got to the top of the stairs he stepped around the corner and sat his book on that counter and he said to me, "Do you know what the word f___ means?"

And I gave him a noncommittal answer, and started to walk on through that room to the next room where we were going to be taking the books for storage. And he stepped around the counter toward me and he said, "If you'll take off your panties and lay down there on the couch, I will show you."

And I was so scared that I don't know what happened next. The next thing I knew I was laying on the couch, and my panties were off, my dress was up, and he was kneeling down and unzipping his pants, and he pulled his penis out, and then he tried to insert it in me.

Unlike the other victims who said they repressed their memories of his abuse,

Emmerson said she always remembered. However, it wasn't until she was in high school that she was able to tell anyone about it. The person she told was her boyfriend at Mt. Ellis Academy, Gary Emmerson, who later became her husband. Denise Emmerson never filed suit against Hustwaite. Since repression was not a factor in her case, the Montana statute of limitations had run out by the time she was contacted by Roberta Riley. Besides, "I can forgive Russell Hustwaite now for what he did to me," says Denise Emmerson, who has become a member of the Montana Conference Executive Committee.

Hustwaite denies Emmerson's accusation. But when he filed for bankruptcy protection, which stays civil litigation, Hustwaite included Emmerson's name in a list of a dozen of his former students whom he named as "precautionary" creditors. He says his bankruptcy attorney said that if there were anyone who could file suit against him at any time, to write their name down. So the Hustwaites went through all their legal papers from the Paula Pfeifle case, looking for names of anybody who had said anything negative about Hustwaite. They thought that the list would be private. Instead, the bankruptcy court notified each of the people named. Hustwaite never meant for the list to be considered an admission of guilt.

But for the parties entangled in litigation over Hustwaite's actions, the list posed many questions. Why were these people potential creditors? Was this an admission that abuse had taken place?

During the period Russell and Joyce Hustwaite were considering whether to file their chapter 13 bankruptcy petition, the church's attorneys were conducting negotiations to settle the claims brought against it. On November 28, 1990, Hustwaite filed for bankruptcy protection, and Roberta Riley and the church agreed to a settlement of \$1.4 million for Paula Pfeifle. Cigna Insurance paid the bill.

Back in Oregon, when Hustwaite confided

about his troubles to two members of the school board in Tillamook, they helped him find a criminal defense lawyer. With a few phone calls the defense lawyer determined that no criminal charges had been filed against Hustwaite.

By this time, Hustwaite had been forced to sell his house at a loss, and had lost his job. But his troubles were not over.

Washington: Mary Jo Porter

On February 11, 1991, Attorney Riley filed a second civil case against Hustwaite and the church on behalf of Mary Jo Porter, another of Hustwaite's former students, from the same Monroe, Washington school that Paula Pfeifle had attended.

When Porter had been asked to testify in the Pfeifle case, Porter's medical records show she had no memories of abuse by Hustwaite. Two years later, now with different therapists, she had recovered many memories of abuse. In her letter to the church attorneys, requesting a settlement for Porter, Attorney Riley wrote:

At this point, Mary Jo recalls numerous instances of rape and sexual abuse by Hustwaite spanning the 4 1/2 year period that she was his student. The vast majority of Hustwaite's crimes were committed in his office at the Sky Valley Seventh-day Adventist School, during school hours. Hustwaite also abused Mary Jo during the Outdoor Education Program sponsored by the school in May of 1982, and again on a trip to Bellingham. Based upon Mary Jo's memories so far, my best estimate is that Hustwaite sexually abused her on approximately 40 different occasions, between 1977 and 1982.

Mary Jo Porter repressed all memory of these traumatic childhood events until quite recently. As you know, it is common for victims of childhood sexual abuse to suffer memory repression. Washington law expressly recognizes the repression phenomenon and accords sex abuse victims a three year delayed discovery statute of limitations. RCW 4.16.340

At this point, Mary Jo Porter is still in the process of recovering her memories. Unfortunately, new memories continue to surface and haunt her even to this day. The process of uncovering these memories is quite terrifying and upsetting for Mary Jo. She suffers sleep disturbances, horrible nightmares, nausea and shame every time another grotesque memory surfaces. Therapists predict that Mary Jo will be plagued with these symptoms for several years to come.

As debate within the church raged over whether Hustwaite was guilty, the Oregon Conference arranged a meeting where Hustwaite's accusers would face him in public, and the school officials in Oregon would also be present. Acting on the advice of his defense attorney, Hustwaite declined to appear and the meeting was canceled.

Representatives of the church negotiated a settlement of \$710,000 with Riley for Mary Jo Porter.

The *America Behind Closed Doors* segment was aired August 6, 1992. Among its viewers were other former students of Russell Hustwaite who, after watching the show, decided to contact attorneys.

Montana: Jane Doe and Sally Roe

On October 1, 1993, a felony criminal charge of sexual intercourse without consent was filed against Hustwaite by the county attorney of Cascade County, Montana, based on allegations of a former student from the Great Falls SDA School. This same student filed a civil suit against Hustwaite. While the criminal suit awaited trial, Risk Management Services made a settlement for more than \$1 million with this student. This settlement took place just days before the August 1994 meeting with Hustwaite's representatives. Shortly after the meeting, the church also settled for more than \$1 million with a male plaintiff who had filed a civil case against Hustwaite concerning alleged activities in Hamilton, Montana.

Five years had passed since Paula Pfeifle first made her charges. Including attorney's fees, the church's costs were approaching \$6 million. Hustwaite had lost his job and everything he owned and had never had his day in court.

But Hustwaite's day was coming. The criminal trial being brought by the Cascade County attorney on behalf of Jane Doe and Sally Roe (a pseudonym), two former students of Hustwaite's in Great Falls, was set for November 28, 1994. Representatives of Court TV were making plans for national coverage of the case. Hustwaite's attorney, Steve Hagerman, had recently won acclaim for his successful defense of a public school teacher accused of abusing a student in Great Falls. Hagerman had put together an aggressive defense for Hustwaite. Investigator Creed Evans had spent six months tracking down the plaintiffs' medical records. He learned that, following a suicide attempt, Jane Doe had received treatment at six different hospitals and clinics. Evans also researched the records of those people with whom the church had already settled. The investigator visited and photographed the sites where the abuse was supposed to have taken place to determine if the details of the accusations were accurate.

Hustwaite had been given a lie detector test by an expert, and passed. He had passed a battery of psychological tests as well. National experts on memory Drs. Elizabeth Loftus and Richard Ofshe had agreed to testify on his behalf. Hagerman filed a hard-hitting motion to dismiss (see excerpt in this issue, pp. 38-41).

Adapted from René Magritte's "The Unexpected Answer"



Then, two weeks before the trial, on November 14, attorney Steve Hagerman died of a heart attack. The trial was delayed. In January 1995, the criminal case against Hustwaite was dismissed with prejudice, which meant it could not be refiled. Judge Jeffrey M. Sherlock, in his dismissal motion, wrote:

The reasons for this dismissal is that the prosecutor has determined that serious doubt has arisen as to the continued viability of the prosecution of this case. At trial, the burden of proof in a criminal matter is guilt beyond a reasonable doubt, a standard which requires a much greater evidentiary showing than mere probable cause. Under the present circumstances, the prosecutor has determined that serious doubt has arisen as to whether sufficient admissible evidence is available to convict the defendant beyond a reasonable doubt, as the results of: (a) the exclusion of a number of State's witnesses, pursuant to M.R. Evid. 404(b); (b) the controversial scientific validity of repressed/recovered memories; (c) the controversial circumstances under which the adult victims were able to recollect their memories of the charged incidents; (d) the lack of significant physical evidence; and (e) the concealment of possible exculpatory evidence by a third party mental health professional who was attending one of the victims in this case.

For Hustwaite, the dismissal was his first victory. And yet, he still had not had his day in court. And there were people who pointed to all the circumstances surrounding the case—changes in the judge, prosecutor, and defense attorney; prosecutorial misconduct; destruction of evidence by a material witness—to explain its dismissal. They were not convinced that the dismissal exonerated Hustwaite.

The Quandary for Risk Management Services

For the church and the representatives of Cigna Insurance, the Hustwaite case presented a financial dilemma—they would lose significant amounts if they paid the accusers

and kept the cases from going to trial. They would also lose money in legal fees if they mounted a vigorous defense of their employee and went to trial.

Hustwaite remembers a meeting with RMS representatives in July 1993, when he was told, "This is not about morality; this is about money." It was a no-win public-relations situation, as well. Church members in Washington and Montana were lining up to defend the accusers. In Oregon, members supporting of Hustwaite launched a fund-raising campaign to help him pay for his mounting legal costs.

Given that civil cases are required to demonstrate only "preponderance of the evidence," Risk Management Services feared that a jury might agree with the accusers and award large judgments to the accusers, so the insurance people decided to settle the cases. Sweezey claims to have saved the church millions by doing so. Church officials are convinced that if these cases had gone to juries, the amounts awarded to victims would have been staggering.

"These were not tabloid repressed memory cases, with just the accuser's word against the teacher. There are other parties, witnesses [who] corroborate the charges," says David Duncan, North Pacific Union Conference attorney. "For insurance purposes, we have to make a judgment about what will happen in court. We have to look beyond repressed memory and examine other information to determine the risks. Settlement is based on the amount of risk.

"I get sensitive about people who think that the church does not care in these cases," Duncan says. "We don't like to have people feel that way. The church is trying to do what is right. We have to walk a tightrope between the two sides. And in the end we have to make a decision based on what we think is right."

One of the legitimate issues raised by this story is who pays for the defense of pastors and teachers accused of misconduct, Duncan says.

"In today's society, everybody is at risk, and while we wish we could guarantee a criminal defense for everyone, that may not be the case."

According to one source, legal fees for defending Russell Hustwaite—quite apart from the money paid to settle the cases against him—have run close to a million dollars, making him a \$6 million man. Duncan points out that in criminal cases brought against public employees, it is the union defense fund that pays the legal fees. "This is a topic that the church needs to discuss with its employees," Duncan says.

Risk Management Services does write its policies for schools differently now, says Swezey. "Our re-insurers told us to reduce our risks. The helping industries have been hit hard by these types of cases. It used to be that general liability policies included coverage for sexual wrongs. Then insurance companies were required to pay for large judgments, and policies changed. The first change was to write \$500,000 coverage per incident on an institution's policy. That was then changed to \$1 million coverage against claims. These new policies radically reduce a conference's ability to shift risk to the insurance agency." In other words, the conferences themselves are at a greater risk now than ever before.

The cost to the denomination includes increases in its insurance costs. Rates have been raised three times over the past three years, Swezey says.

Society is changing, too. In a *California Lawyer* article about the decline of repressed memory in the courts, Mark MacNamara recounts the comments of a federal judge:

Psychology has, since the time of Freud, been in the business of exploring and finding subjective reality. Courts, on the other hand, are in the business of trying to find objective reality. In cases like this, these two enterprises necessarily clash. Indeed, reasonable people could well wonder

whether courts are suited at all to deal with problems like these. To the extent, however, that courts are required to determine these questions, there is no doubt in our mind that the objective enterprise is far better served by receiving fresher evidence than recollections of events that occurred eighteen to twenty-four years ago.

McNamara goes on to report that:

Little by little, the structure that supported the notion of repressed memory is collapsing. Even Judith Herman, the Harvard Medical School professor who has been one of the most articulate and respected defenders of repressed-memory theory, appears to have readjusted at least one aspect of her position. At a conference last fall, Herman said, "Sometimes people plunge prematurely into this work with disastrous results. There's a fantasy that people will vomit out the trauma and then it will be gone."

The backlash against the repressed-memory phenomenon reflects a shift in cultural values. The shelter of victimization has lost its roof. The so-called abuse excuse—regardless of the abuse—has become bad form these days, and sympathy seems hard to come by.

MacNamara suggests that "the legal battle is moving to other theaters, to issues of professional obligation, the liability of therapists, and the more straightforward and frequent cases in which a memory has been suppressed rather than repressed—that is, the accuser never forgot what happened but simply put it out of mind."

For the church, the legal battle may be moving, too. Who is responsible to pay for defending the church's employees? What if Russell Hustwaite sues the church? Will Risk Management Services again settle out of court, or choose to stand and fight, defending its every move over the past six years of litigation? Will it be strictly a monetary decision made by Risk Management Services' attorneys based on risk factors, or a policy decision made by church leaders?