



# The Accused Strikes Back

Excerpts from the motion in a Montana court to dismiss criminal charges against Russell Hustwaite.

In 1994, the Cascade County prosecutors office filed criminal charges in Montana's Eighth Judicial District against Russell Hustwaite on behalf of two adult women who had been Hustwaite's students at the Palisades Seventh-day Adventist School in Great Falls, Montana. One of the women had earlier filed a civil case against Hustwaite. Before the criminal case trial date, Risk Management Services settled out of court for more than \$1 million (see "The Six-Million Dollar Man," by Bonnie Dwyer, pp. 30-37).

On October 31, 1994, Attorney Stephen Hagerman filed a motion for dismissal of the criminal charges against Russell Hustwaite.

The brief in support of the motion outlined five separate grounds for dismissal:

I. There is no scientific basis for the theory of repressed memory, and Jane Doe's and Sally Roe's memories were induced by the therapist.

II. Jane Doe's allegations were a result of hypnosis and were, therefore, inadmissible.

III. Through selective prosecution the state denied to the defen-

dant his right to equal protection of the law since the state failed to prosecute Jane Doe for similar sexual offenses.

IV. The Cascade County Attorney was guilty of prosecutorial misconduct in its treatment of the defendant in this matter.

V. The interests of justice were best served by dismissal of this matter.

On November 1, 1994, Hagerman filed on Hustwaite's behalf an affidavit of claimed costs and fees totalling \$22,592.07.

On November 21, Judge Jeffrey Sherlock denied the motion for dismissal, reserving the right to revisit each at the time of the trial. On the validity of the repressed memory, the judge wrote, "... after having reviewed much of the scientific data, the Court would say that the theory of recalled memory is not one upon which one would want to bet the ranch." He said a determination on the dispute over the use of hypnosis could not be made on a motion to dismiss and should go before a jury. The next day, the judge filed an order concerning attorney fees, saying the county attorney's office had re-

quested a hearing on the issue, and that such a hearing would take place after the disposition of the case.

On November 28, the date the trial was set to open, the deputy Cascade County attorney, Dirk M. Sandefur, filed a motion to dismiss without prejudice the charges against Hustwaite, saying:

The grounds for this motion are that the interests of justice require dismissal because, although probable cause existed to charge the defendant, under the circumstances, serious doubt has arisen as to whether sufficient *admissible* evidence is available to convict the defendant beyond a reasonable doubt. . . . as the result 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 apparent intentional destruction of possibly exculpatory evidence by a third party mental health profes-

sional who was attending one of the victims in this case.

Negotiations continued concerning the attorney fees. Then on January 10, 1995, the prosecution and the defense filed a joint motion to enter dismissal with prejudice, meaning that charges could not be refiled. The dispute regarding the attorney fees was dropped.

What follows is Section V and the conclusion of the motion to dismiss charges against Hustwaite. This excerpt appears unedited.

—The Editors

## The Interests of Justice Are Best Served by Dismissal of This Matter.

The Court has the absolute authority to dismiss an Information in the interest of justice, M.C.A. §46-13-401(1).

The development of this case and what has transpired with the various witnesses will demonstrate that this case should be dismissed in the interest of justice.

Witness Mary Jo Porter commenced therapy at Bellview Community Services in Bellview, Washington, on October 29, 1990. The EAP intake and session note reveals that she went there for "survivor issues". (See Exhibit No. 6)

The notes of that session reveal "in fifth-eight grade went home and cried every day principal/teacher was very abusive, verbally-mean. Charges now brought against this man by another woman who was sexually abused. *The want me to testify but I can't remember.*" (emphasis added)

On December 5, 1990, the therapy note from Bellview Com-

munity Hospital shows that Mary Jo Porter was again asked to testify "*but has no memory.*"

The therapy note for February 11, 1991, reveals "court case - lawyer feels like M.J. should sue the conference. Other girl won 1.4 million from conference. Settled out of court. Lawyer says she has to do it soon before statute of limitations runs out."

This lawyer is Roberta Riley.

The EAP intake and session note for that day, February 11, 1991, show that *guided imagery* was used. The therapy note for February 20, 1991, shows the following: "Did *visualization* with Mary Jo going back to classroom. Remembered feelings - outfit - getting ready to go to school. Could not recall any physical or sexual abuse of her by Hustwaite."

Mary Jo Porter's attorney was Roberta Riley and Roberta Riley was also the attorney for the "girl" who won 1.4 million dollars.

What these notes emphasize is that Mary Jo Porter (1) had no memories of any physical or sexual abuse by Russell Hustwaite, (2) was asked to testify even though she had no memories, (3) Roberta Riley wanted to file suit on her behalf against the church, as well as against Russell Hustwaite even though she *had not recognized her memories.*

Mary Jo Porter then went to therapist Mary Ann Thompson beginning on July 25, 1991, and the first therapy note shows: "Seeking counselling *because she believes* sexually molested as a child." (Emphasis added) She attended one more session August 29, 1991, "Mary Jo stated she thought her attorney would refer her to a different therapist." (See Exhibit No. 17)

She then commenced counselling on February 19, 1992, with Nancy Logan where she suddenly has memories of Russell Hustwaite. On the therapy note of March 10,

1992, is this quotation: "I am afraid that I will remember that my father sexually abused me. I can't do that right now." In the therapy session of March 31, 1992, attorney Roberta Riley was present and a note reads, "Memories began in bits and pieces for 8-9 months, cogent memories very recently 2-3 months until date of police report." (See Exhibit No. 18)

The above narrative shows the danger of this type of therapy. Not only did Porter have no memories of Russell Hustwaite until beginning therapy, she also never had any memories of her father until she entered this type of therapy.

In this particular case, the therapists have caused people to imagine themselves being raped and then to believe thereafter that they, indeed, were raped when, in fact, they weren't.

Based upon the above mentioned therapy disclosures, Roberta Riley sued the Seventh Day Adventist Church and Russell Hustwaite.

On August 21, 1992, Roberta Riley sent a letter to Mr. John Spencer Stewart concerning the impending lawsuit to be brought by Mary Joe Porter. On P. 2 at the bottom is found, "Mary Joe 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 (3) year delayed discovery statute of limitations. RCW 4.16.340 (See Exhibit No. 19)

At that point, Mary Jo Porter was still in the process of recovering her memories.

On August 24, 1994, the undersigned and his investigator, Creed Evans, met with Chief Deputy County Attorney Michael L. Fanning concerning discovery matters. At that time, Fanning stated he

couldn't understand why the Defense Counsel was claiming that Mary Jo Porter's memories were repressed. He stated unequivocally that in his speaking with Mary Jo Porter she claimed to have always remembered the alleged abuse.

On October 7, 1994, the undersigned along with his investigator, Creed Evans, and attorney, Rob Rosche, of Bullivant, Houser, Bailey, Pendergrass & Hoffman, who was Russell Hustwaite's attorney at the time of the previous civil settlement interviewed Mary Jo Porter with her Attorney, Roberta Riley. Mary Jo Porter's case was settled without the knowledge or consent of Russell Hustwaite or his attorneys at Bullivant Houser. During the interview of Mary Jo Porter, Roberta Riley specifically stated *that this was not a repressed memory case*. Both she and Mary Jo Porter claimed at that interview that Porter had always remembered the abuse.

As a result of that admission, Bullivant Houser is in the process of informing their client of the possibility that there was insurance fraud.

The statements in the above mentioned interview also quite vividly demonstrate that the alleged victims in the present case and their legal representatives will do whatever suits their best interest at the time. Porter and her attorney have already received \$710,000 after claiming repressed memories. Now, they are attempting to bolster the State's case by claiming that Porter's memories were never repressed.

This is fraud upon this Court. Yet, the Cascade County Attorney's Office intends on using this type of perjured evidence against Russell Hustwaite.

Paula Pfeifle is another individual who settled with the Seventh Day Adventist Church. She received 1.4 million dollars. Roberta Riley saw to it that Pfeifle appear on the program "America Behind Closed Doors," a program about Russell

Hustwaite and the alleged sexual accusations in the state of Washington which was broadcast in Great Falls, Montana, on August 6, 1992.

Mary Doe, a sister of Jane Doe, was interviewed by Deputy Dalke of the Cascade County's Sheriff's Department on June 5, 1993. During the course of that interview, she indicated that she and Sally Roe watched America Behind Closed Doors. At the end of that show they called Roberta Riley who had appeared on the show. Mary Doe indicates that Sally Roe talked with Roberta Riley about being sexually abused.

On September 15, 1992, Sally Roe saw Monte Kuka, Ph.D. Sally Roe indicated to Kuka that she had been referred to Roberta Riley. Sally Roe stated, "I have blacked four years of my life and would like to have those years back into my memory." (See Exhibit No. 5) Thus, Roberta Riley sent Sally Roe to a psychologist in order to recover her memories.

On September 15, 1992, Sally Roe informed Dr. Kuka: ". . . approximately a month ago she had watched a Patty Duke Program on television and there had been an episode where a girl was molested by a teacher on one of the programs." This program apparently brought back memories of being sexually molested by a teacher at the church school that Sally Roe had attended. Yet, when Deputy Dalke interviewed her on June 28, 1993, and asked her whether or not she had been abused by Russell Hustwaite she stated that she could not remember what had or had not happened to her.

This directly conflicts with her statements to Dr. Kuka nine months earlier.

Roberta Riley had contact with Barbara Iverson here in Great Falls and began shipping documents to her. This commenced in approximately May of 1992 per a report by

Cascade County Deputy Sheriff Dalke on May 26, 1993, and evidenced by the attached letter dated May, 1992. This letter clearly shows that Roberta Riley poisoned the community and caused the present hysteria. Barbara Iverson disseminated that information to others within the Seventh Day Adventist Church including the Doe family.

Barbara Iverson also video taped the program "America Behind Closed Doors" and presented the same to the Cascade County Sheriff's Department.

Jane Doe began therapy with Suzy Saliel, a therapist in Bozeman, Montana, in October of 1989. On the note of December 19, 1990, Suzy Saliel writes about Jane Doe, "I suspect sexual abuse of some sort at the bottom, just with so many of Jane Doe's behaviors. I expect either a family member or possibly an old church teacher, who has been in the news lately accused of some sex abuse." (See Exhibit No. 20) Importantly, here is an example of the first therapist beginning to . . . plant the seed of the "memory" that Russell Hustwaite abused her. She also suspects that it may have been a family member.

Suzy Saliel's note of January 17, 1991, states:

Jane Doe is able to recognize the man in Texas did molest her. I am much more concerned with the church school teacher. Jane Doe does not want to talk about him, and she is somewhat defensive about him. We had an intensive discussion with me doing quite a bit of confronting. Jane Doe recalls this man wanting her to sit on his lap, caressing her legs and some other 'accidental touching' of her breasts. There is a lot more to this situation that she is not ready to deal with yet. I pushed her to remember as much as she could handle for now.

This graphically shows how ideas are "planted."

Jane Doe was hospitalized at St. Patrick's Hospital in Missoula early February, 1993, for an attempted suicide. In the discharge summary dated April 6, 1993, and signed by L. K. Martin, M.D., he states that he had a discussion with Candace Crosby, Jane Doe's therapist, and goes on to say, "Apparently a teacher of hers in Great Falls had been charged with abuse of a number of young children and *it was thought that Jane Doe be among the victims.*"

Candace Crosby then had Jane Doe write a letter on March 5, 1993, to Mr. Perry Parks, President of Montana Conference [of] Seventh Day Adventist[s] concerning alleged sexual touching by Pastor Jenson. (See Exhibit No. 21)

Candace Crosby then had Jane Doe go to Rogers Memorial Hospital to "recover her memories". At Rogers Memorial Hospital, Jane Doe purportedly "recovers" her memories of being molested by Russell Hustwaite on April 16, 1993. While at Rogers Memorial Hospital on the 25th day of April, 1993, she calls her father, John Doe, who affirms her by reading to her from information that he had concerning Russell Hustwaite. (See Exhibit No. 22) On the 28th day of April, 1993, she tells staff at Rogers Memorial Hospital.

Upon leaving Rogers Memorial Hospital, Jane Doe immediately began the process of instituting criminal charges against Russell Hustwaite as well as civil charges. She was discharged on May 5, 1993, and was in the Cascade County Sheriff's Department on May 24, 1993.

Jane Doe did not sue the friend's uncle in Texas that allegedly raped her. Jane Doe did not sue Pastor Jenson for alleged inappropriate sexual touching. *Jane Doe went into therapy specifically to recover*

*memories of Russell Hustwaite.* The reason that everybody wanted her to recover memories of Russell Hustwaite was so that she could sue the Seventh Day Adventist Church which had a history of settling cases for extraordinary amounts without ever contacting Russell Hustwaite.

This entire case is fraudulent. As indicated earlier, Jane Doe is a virgin. Jane Doe has never been raped. She has been induced through hypnotherapy to believe that she was raped. Sally Roe, likewise, had no memories . . . but is now working with Roberta Riley to sue the Seventh Day Adventist Church.

In the interest of justice this case should be dismissed with prejudice. To put the Defendant Russell Hustwaite through a criminal trial based upon the scenario outlined above is fundamentally unfair.

In addition to the foregoing, there are further grounds as noted in the Motion to Dismiss and in the Briefs in Opposition to Quash Discovery which, taken together form the basis collectively to dismiss this case in the interest of justice:

(1) This is a case of repressed memory and there is no scientific basis or validity to allow this type of evidence in a criminal case.

(2) The forms of therapy that were used in this case were trance inducing and therefore a form of hypnosis which should not be permitted.

(3) The only evidence against Russell Hustwaite are the statements of Jane Doe, Sally Roe and Mary Jo Porter, all of which were induced through therapy. None of them had any independent recollection of any of these events.

(4) This is a case of selective prosecution where Jane Doe is a sexual molester but because she is a woman the County Attorney will not prosecute her, yet will seek to

prosecute a man, Russell Hustwaite.

(5) Prosecutorial misconduct as noted earlier.

## Conclusion

This case should be dismissed with prejudice. There are multiple grounds upon which to dismiss this case, any one acting alone should be sufficient.

There is no scientific basis for the theory of repressed memory. Repressed memory is merely fantasy that has been induced by therapy and social influence. Likewise, the type of therapy involved in this case involves guided imagery, visualization, regression, and relaxation therapy, all of which are forms of hypnotherapy. The testimony of the "alleged" victims is based on this form of hypnosis and should not be permitted.

The State is selectively prosecuting Russell Hustwaite based upon his sex. The charges are based upon confabulated memories with no physical evidence. Yet, the State refuses to investigate and/or prosecute Jane Doe when she has declared against her penal interest that she is *in fact* a child molester.

There is prosecutorial misconduct which is further grounds for dismissal.

Finally, this case should be dismissed in the interest of justice. In addition to the foregoing grounds, there is also the underlying facts of this case. There are a number of zealots who have relentlessly presumed Russell Hustwaite guilty. The facts set forth in this Brief in Support of Motion to Dismiss and the accompanying exhibits demonstrate the tactics involved.

For the foregoing reasons the Court should not allow the State to go forward. Justice requires that this case be dismissed with prejudice.