

TRIAL BY THERAPISTS

By Ryan A. MacDonald

Therapists should be held professionally and civilly liable when they promote junk science to help convict innocent men.

September 23, 1994, Rev. Gordon MacRae, a New Hampshire Catholic priest, was convicted of raping a male counseling client. At the time of Fr. MacRae's trial, accuser Thomas Grover was 28 years old. His core testimony was simple. Grover stated that, in 1983, he sought MacRae out for counseling for his drug addiction in the months preceding his 16th birthday. He claimed that during each session he was berated, made to cry, and then forced to submit to oral sex in a Church rectory office. His claim that these events occurred during counseling sessions enhanced the charges to five counts of aggravated felonious sexual assault. When asked by defense counsel why Grover, at almost age 16 – being 5' 11 and weighing in excess of 180 pounds – would return from week to week after having been raped, Grover answered, "I don't know – I repressed it." When the defense pressed for an explanation, Grover said, "I had out of body experiences; I don't remember how I got there."

During this remarkable testimony, a woman in the spectator section of the court was taking copious notes. She wasn't with reporters in the press section. When defense counsel approached her during a break, she identified herself as "a student interested in the trial."

Following Thomas Grover's testimony, the prosecution was permitted to call to the stand an expert witness Leonard Fleischer, Ed.D. whose role was purportedly to "educate" the jury about Child Abuse Accommodation Syndrome, Post Traumatic Stress Disorder, and "delayed reporting." His description of PTSD included a reference to "out of body experiences" even though, as a witness, he was not present during Thomas Grover's testimony. During the trial, however, Dr. Fleischer was seen in a restaurant with the "student" who had been taking notes during Grover's testimony.

Thomas Grover also testified that between ages 15 and 27 he sought, or was court referred to, treatment in six drug abuse treatment centers, the first being Beech Hill Hospital in New Hampshire. Following this, Dr. Fleischer testified that he had once been a therapist at Beech Hill Hospital, and "in my experience 70% to 80% of the males who had been treated at Beech Hill Hospital had been sexually abused." On appeal, the State conceded that this uncorroborated statistical testimony should not

have been allowed. The state appellate court agreed, but determined that it was “harmless error beyond a reasonable doubt.” In post-trial interviews with jurors, several stated that their verdict was swayed solely by Dr. Fleischer’s testimony. One juror said she voted for guilty because she watched the defendant carefully during the trial, “and he did not look remorseful.” The jury never heard that this trial came after MacRae’s rejection of the State’s plea offer of a sentence of one to three years. He rejected this offer twice before trial and again following Thomas Grover’s testimony. After the trial, he was sentenced by Judge Arthur Brennan to a term of up to 67 years – more than 30 times the maximum of the State’s proffered deal.

Far more troubling was the role played in this trial and its aftermath by psychotherapist Pauline Goupil, M.A. As defense counsel Ron Koch (pronounced “Coke”) stood at the defense table to cross-examine Thomas Grover, Mr. Grover turned in protest to the judge. This 28-year-old, 220 lb. man complained that he did not want to see the defendant during the trial and therefore could not answer Mr. Koch’s questions if he stood in the middle aisle by the defense table. In apparent disregard of the Constitutional right of defendants to confront an accuser at trial, Judge Brennan ordered defense counsel to cross-examine Thomas Grover from a position in the court as far from the defendant as possible.

Later, during a break in the trial, an observer approached Attorney Koch. The issue, she said, had nothing to do with the lawyer standing near the defendant. She pointed out the presence of a woman seated with spectators on the center aisle. The observer said she saw that women influencing Thomas Grover’s testimony with hand signals, and defense counsel was blocking Grover’s view of her. The observer said that when Attorney Koch asked Mr. Grover to explain to whom he first brought his sexual abuse claims, the police or a contingency lawyer, Thomas Grover looked directly at the woman seated in the center aisle at which point she gestured with her index finger over her eye and down her cheek. Grover, the observer said, then began to sob uncontrollably causing the judge to declare a recess. The observer pointed the woman out, and defense counsel approached her.

The woman identified herself as Pauline Goupil, M.A., Thomas Grover’s therapist. The defense approached the bench, the jury was dismissed for the day, and Ms. Goupil was ordered to the stand. Ms. Goupil testified that she had been retained by Thomas Grover’s lawyer, Robert Upton, to provide counseling and to keep Grover “clean and sober” until the trial. Ms. Goupil stated that she had practice specializations in substance abuse and in treating victims of sexual abuse and assault.

For an entire afternoon, Pauline Goupil, M.A. testified about her role, and vehemently protested defense attempts to obtain her file. Pre-trial, the defense moved for copies of all of Thomas Grover’s treatment records, but few were

available and the defense was never told of Grover's on-going treatment with Ms. Goupil.

In the end, the judge ruled that he would conduct an in-camera review of Ms. Goupil's treatment file which she was ordered to produce the next day. She was then barred from the court for the remainder of trial. The presence of Ms. Goupil, and the matter of her giving Grover hand signals during his testimony, was never heard by the jury and the defense counsel did not move for a mistrial.

Pauline Goupil's file was submitted that day for in-camera review. In it was a letter from Ms. Goupil to Thomas Grover in which she chastised him for not showing up for her sessions, and assured him:

“I have good news, Jim [Keene, NH sex crimes detective Jim McLaughlin] assured me that MacRae is being offered a plea deal he will accept so there will be no trial. We can just move on with the settlement phase.”

Neither the letter, nor Ms. Goupil, were ever mentioned to the jury.

Once her role in the case was known, however, Thomas Grover was put back on the stand. He testified that Ms. Goupil arranged for him to be drugged before his testimony. Thomas Grover claimed that part of the residual effect of the abuse he suffered was chronic unemployment due to his emotional state. He was asked by defense counsel how – since he could not hold a job – could he afford weekly therapy with Ms. Goupil. Grover stated, “She worked something out with my lawyer. She'll be paid after the settlement.” Earlier in his testimony, Grover denied having any awareness of plans to sue the Catholic Church.

Pauline Goupil had just two years earlier obtained her B.A. in psychology from “The School of Lifelong Learning,” and an M.A. in counseling from Antioch College in Keene, NH where Leonard Fleischer, Ed.D., was a faculty member and mentor. Months after the trial ended and Fr. MacRae was sentenced to prison for life, Pauline Goupil was seen in the prison visiting room by the same observers who reported her hand gestures during trial. She was visiting her son who, five years earlier, was convicted at age 19 of serial rape. His conviction came three years before Ms. Goupil began a practice specialization in treating victims of sexual assault.

Two years after the criminal trial, Pauline Goupil offered extensive testimony in the lawsuit against the Catholic Church brought by Thomas Grover and his brothers. Her testimony was in support of Grover's attempt to defeat the state's three-year statute of limitations on tort actions by claiming, successfully, that the statute of limitations should begin to toll only when a victim becomes aware he was injured and makes a causal connection with abuse.

Toward this end, Ms. Goupil testified that Grover's particular version of Post Traumatic Stress Disorder caused him to "suppress" all emotional awareness of the abuse he suffered, and caused him to forget many crucial details of that abuse until his pre-trial treatment sessions with her.

From the 1996 testimony of Pauline Goupil, M.A.:

Q: Now, one of the ways that a person avoids trauma is inability to recall important aspects of the trauma?

Ms. Goupil: Yes.

Q: That's not true in Tom's case is it?

Ms. Goupil: Yes, it is true.

Q: Didn't he tell you all about this trauma?

Ms. Goupil: He told me some incidences of trauma, but there were some details that were very relevant that I heard when I was sitting in court that he had never spoken with me about that he could remember. One of the symptoms of [PTSD] is that the person forgets information that is really quite relevant to the trauma.

Q: How do you know that he forgot these things?

Ms. Goupil: The point [is] that a person who suffers from Post Traumatic Stress Disorder will forget relevant information, meaning that it's relevant to the trauma that they experienced, but they will remember irrelevant information.

Q: Tom remembered this trauma, isn't that right?

Ms. Goupil: Parts of the trauma.

Q: Is it fair to say that, as you understand it...that he did not forget any aspect of what happened to him that he had reported to you?

A: He did forget some aspects of what happened to him.

Q: No. That he had reported to you.

Ms. Goupil: Your questions are very complicated.

Q: All right. Let me start again...It was apparent that he had always remembered the things that he told you?

Ms. Goupil: No, that is not apparent.

Q: Okay. Tell me. Did he say, "I just remembered these."?

Ms. Goupil: Yes.

Q: And what did he say that he just remembered?

Ms. Goupil: I can't tell you any specific memory because all the memories are just sort of there, but he would come into a – I can't name a particular session – I would have to consult the file – where he would say...you know, something happened and I just remembered it.

Elsewhere in the 1996 lawsuit transcript, Ms. Goupil testified about her diagnosis of Tom Grover:

Q: ...Now did you review your records in the time that you were away about the number of visits that you had with Tom?

Ms. Goupil: Yes.

Q: ...And what's the total number?

Ms. Goupil: Twenty-eight.

Q: And those sessions each lasted about an hour in the usual course?

Ms. Goupil: Fifteen minutes.

Q: And the diagnosis you made was when? At the end of the line? At the beginning?

Ms. Goupil: At the beginning. It usually takes two or three sessions to make an assessment.

Q: You said you gave him a dual diagnosis?

Ms. Goupil: Yes.

Q: One thing I heard was Post Traumatic Stress Disorder?

Ms. Goupil: Uh-huh.

Q: The other problem?

Ms. Goupil: Substance abuse. In remission.

Q: ...So, now we're talking about PTSD, and you're diagnosing it with regard to someone who has had a sexual experience.

Ms. Goupil: That's correct...In 1980 PTSD was taken out of the battlefields and brought into the battlefields of persons who have been abused because the symptomatology was very obviously similar to people who were returning from war.

Q: ...Would you say psychotherapy is an art, science, or both?

Ms. Goupil: My degree is a Master of Arts so I guess it's probably an art.

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