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False memory syndrome: Undermining the credibility of complainants in sexual offences

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1. Introduction

Within the last 10 years the concept of false memory syndrome (FMS) has entered the legal arena. It is a label increasingly used to describe and account for adults' recollection of sexual abuse committed against them during childhood. The phenomenon first appeared in the courts in 1994 in the U.S. civil case of *Ramona* v *Isabella*,[1] and since then has appeared on numerous occasions in courts throughout the Anglo-American jurisdictions (including the United States, Canada, Scotland, and England, all of which feature in the present article). Vigorous debates have taken place within the academic and professional literatures across several disciplines (e.g., psychology, psychiatry, law) addressing the reliability of memory processes and their significance in legal testimony.

The purpose of this article is not to rehearse the claims and counterclaims concerning the validity of repressed memories or FMS, as these have been thoroughly aired in the literature (e.g., Ceci & Bruck, 1995; Conway, 1997; Lindsay & Read, 1995; Ofshe & Watters, 1994; Koocher, 1998). Instead, this article explores the extent to which this phenomenon plays an increasingly important role in the legal construction of credibility, one of the determining features of a reliable witness in the courtroom. Determining that a witness is incredible is the most effective route to dismissing their testimony. Historically, there have been numerous rules of evidence and procedure that have had the effect of rendering the testimony of women and children incredible. Although attempts have been

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[1] In this case, Gary Ramona was accused of incest by his adult daughter, Holly. He successfully sued her therapists, counsellor Marche Isabella and psychiatrist Richard Rose, for malpractice, claiming that they had falsely implanted the memories of childhood sexual abuse. For discussion, see Johnston (1997).

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made (sometimes successfully) to dilute the impact of these rules, those that remain still adversely affect the manner in which testimony concerning sexual assault is received. This article contends that the courtroom use of FMS is the latest in that tradition. It argues that those who bring charges concerning childhood abuse (most of whom are women) are disadvantaged, not primarily because of unreliable memory processes about traumatic events, but more importantly because of the historical tendency to doubt women's credibility. This distrust continues to be reflected in the contemporary debate surrounding FMS and is even exacerbated by the rules of evidence that allow testimony on the phenomenon into the courtroom.

2. False memory syndrome

In order to make sense of the controversies surrounding FMS, it is necessary to understand its origins. The term "false memory" arose in the early 1990s as part of the debate surrounding child sexual abuse, particularly in the context of reports of recovered memories of childhood sexual abuse. Such reports originate from adults who have made allegations of sexual abuse, based on incidents that occurred during their childhood, the memory of which they have forgotten for a period of time and only later recalled. The phenomenon gained such attention within the psychological and psychiatric communities, as well as within society more generally, that the British Psychological Society carried out an investigation into the matter in 1995 (Andrews et al., 1995), and The Royal College of Psychiatrists did so in 1998 (Brandon, Boakes, Glaser, & Green, 1998).

These investigations revealed that recovered memories occur in response to a variety of events, such as a further trauma, media accounts of sexual abuse, reading accounts of abuse, joining an incest survivors' group, or the death of the abuser (e.g., Andrews et al., 1995; Bass & Davis, 1994; Brandon et al., 1998; Freyd, 1996; Hall & Lloyd, 1989). Memories may also be recovered during a period of therapy, and it is this route that has attracted the most controversy and attention. This is because there are concerns that poor therapeutic practice may "implant" false memories, rather than assist in the "recovery" of accurate ones (e.g., Gardner, 1992; Hochman, 1994; Pendergrast, 1998; for reviews, see Lindsay & Read, 1994; Prozan, 1997).[2] A variety of labels now exist in the literature for memories that have apparently been remembered after a period of quiescence, and the distinctions in terms are important because they embody different perspectives on the accuracy of the memories. Terms such as "repressed memories," "recovered memories," and "delayed memories" imply that the recollections are accurate, while the term "false memory" implies that the memories are fabricated, either partially or entirely.

[2] Interestingly, although it is this source that has raised particular controversy and professional concern, recovery during therapy has been found to be less frequent than is commonly believed. The Royal College of Psychiatrists (Brandon et al., 1998) concluded that false memories "usually but not always" occurred during a course of therapy, while the survey carried out by British Psychological Society (Andrews et al., 1995, p. 211) found that "the most common context in which memory recovery occurred was prior to any therapy."

The term "false memory" and the associated psychiatric condition of FMS are the currency of an organization called the FMS Foundation.[3] This foundation was set up in 1992 in the United States by Ralph Underwager and his wife, Holly Wakefield, following a well-publicized case of repressed memories of alleged incest. It is a highly effective lobby group with the backing of a Scientific and Professional Advisory Board of over 30 members, including many prominent academic and clinical psychologists and psychiatrists. It has a sister body within the United Kingdom, the British False Memory Society, founded in 1993 by Roger Scotford, who argued he had been wrongly accused of sexual abuse by his daughter after she recovered memories of abuse while undergoing therapy. It, too, has an Advisory Committee comprising eminent British psychologists, and it has been actively involved, among other activities, in the formal investigations into the phenomenon of recovered memories carried out by the British Psychological Society and the Royal College of Psychiatrists. The Foundation's website[4] describes their aims as seeking scientific knowledge regarding memory processes, as investigating the increasing occurrence of FMS, and as supporting those families whose lives are damaged by false memories. Critics, in contrast, maintain that the aims of these groups are partisan, alleging that their primary purpose is not to facilitate the use of scientific knowledge, but to "form an advocacy group" for those accused of abuse (Schuman & Galvez, 1996, p. 9).

It is important to acknowledge that there will be casualties of the FMS controversy, including parents who suffer as a result of their children's inaccurate claims regarding sexual abuse, whether intentional or sincerely mistaken. The painful consequences of such errors for their families' lives have been explored in detail by authors such as Pendergrast (1998) and Loftus (1993). However, given the frequency of childhood sexual abuse, our concern in this article is to draw attention to the consequences of the FMS controversy for those women (and men) who have suffered such abuse. Estimates of the occurrence of sexual abuse during childhood suggest that between 5% and 33% of girls suffer abuse, with equivalent figures for boys varying from between 3% to as much as 30% (Finkelhor, 1986; Ghate and Spencer, 1995; Hall & Lloyd, 1989; Herman, 1981). Estimates of the occurrence of repressed memories, although difficult to derive, have been found to range between 20% and 40% in samples of adults who report childhood sexual abuse (Elliot, 1997; Epstein & Bottoms, 2002; Melchert, 1996; Melchert & Parker, 1997).

FMS as yet has no formal status as a psychiatric or psychological disorder. There is no entry for it in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV, American Psychiatric Association, 1994) or the *International Statistical Classification of Diseases and Related Health Problems* (ICD-10, 1992), which are the two key reference manuals for mental illness throughout the world. The proponents of the syndrome would be keen to see it

[3] This ownership is explicitly acknowledged in the 2003 website of the False Memory Syndrome Foundation (http://www.fmsfonline.org).

[4] www.fmsonline.org.

included, however. The 2003 website of the FMS Foundation, for example, supplies the following definition for the syndrome.

> [A] condition in which a person's identity and interpersonal relationships are centered around a memory of traumatic experience which is objectively false but in which the person strongly believes … [T]he syndrome may be diagnosed when the memory is so deeply ingrained that it orients the individual's entire personality and lifestyle, in turn disrupting all sorts of other adaptive behavior.

Explicit parallels have been drawn by the Foundation between FMS and multiple personality disorder, a condition that has been included within the DSM for more than 20 years. Thus, there is a large group of informed and influential professionals who would be keen to see it acquire formal recognition. Ironically, it could be argued that such endorsement, while helpful to the groups' aims, is not essential, for the term FMS has already gained extensive societal and legal currency.

The dispute over FMS, and the choice between terms such as "false" and "recovered," has given rise to deep divisions within the therapeutic and research communities of psychology and psychiatry, with consequent confusion for professions such as law, social work, and the media. From the research perspective, the phenomenon of repressed memories is an area of scientific enquiry, to be investigated using empirical methods that produce reliable, verifiable, and objective evidence. Research outcomes have, so far, emphasized the complexities and fallibility of the memory process, with few findings obtained to support the claim that memories can be forgotten over the long periods of time that the "delayed memories" account advocates (e.g., Ceci & Bruck, 1993, 1995; Ceci & Loftus, 1994; Hochman, 1994; Lindsay & Read, 1994; Loftus, 1993; Pendergrast, 1998). From the therapeutic perspective, the dispute is essentially an epistemological one. It is argued that cognitive scientists have failed to find evidence of delayed memories because they have not asked the right research questions, searching for generalizable, objective characteristics of memory at the expense of its contextualized, subjective qualities. This group tends to see delayed memories of child sexual abuse as a credible occurrence, in part because the repression of memories is associated with posttraumatic stress disorder, an accepted psychiatric condition. Moreover, the phenomenon of delayed memories is consistent with the "continuum of violence" (Kelly, 1988) that women and children experience (e.g., Armstrong, 1978, 1996; Bass & Davis, 1994; Hall & Lloyd, 1989; Hester, Kelly, & Radford, 1996; Kelly, 1988; Russell, 1984; Schuman & Galvez, 1996). Abusers exert a considerable amount of power and psychological "conditioning" over their child victims, and that may help to explain why it is often not until individuals reach adulthood, with its attendant autonomy, that they are able to face such memories and to break their silence.

The debate generated by these two perspectives is lively and provocative (for a review, see Courtois, 1997), but our concern here is not with establishing which side has a better claim to "truth." Rather, we seek to highlight the ramifications of legal arguments that utilize the concept of FMS, given its inherent accusation that adult memories of childhood abuse are untrustworthy and should be regarded with suspicion.

3. Women, children, and credibility

One of the enduring concerns of feminist critique has been the way in which the criminal justice process devalues women's experiences, undermining and distorting their testimonial accounts within the courtroom. The prosecution of sexual offences offers compelling examples of this treatment. Attacking the credibility of a witness is the most effective route to dismissing her testimony as unreliable, and research has shown that victims of sexual violence are consistently discredited when they act as witnesses in the courtroom (Adler, 1987; Brownmiller, 1975; Estrich, 1987; Naffine, 1994; Smart, 1989; Temkin, 1987). This practice becomes relevant to the issue of delayed and false memories because sexual violence lies at the heart of such memories. The vociferous FMS debate does not pertain equally to all kinds of childhood memories and experiences (either positive or negative), but is concerned about a particular type of childhood trauma: sexual abuse.

When accusations of sexual assault are received in the courtroom, they are met with suspicion. The force of this response has been revealed most powerfully in the literature on rape, where the theme of the mendacious woman making false accusations of rape has resonated down the centuries. One of the early indicators of attitudes towards women in rape cases is recorded in the writings of the 17th century English jurist, Sir Matthew Hale (1678, p. 635) who declared:

> It must be remembered that [rape] is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho' never so innocent.

Even at the end of the 20th century, scholars claimed that the focus in societal and legal discourse of rape still "falsely remains on the victim as an instigator of most rapes" (Allison & Wrightson, 1993, p. 2). In legal theory and in courtroom practice, it makes little difference whether the alleged sexual assault was carried out against an adult woman or a child, for the response of the court to either is suspicion and disbelief.

This can be seen in both historical and contemporary cases (for review, see Raitt & Zeedyk, 2000). For example, in the 1887 U.S. case of *Dodson* v *State*, a young woman's allegations that her father had raped her were discounted on the grounds that "her reputation for truth and chastity was bad long before the birth of the child which she alleged was the result of the alleged incestuous intercourse," resulting in a finding that she was an accomplice to the crime of incest (*American Law Reports Annotated*, 1960, p. 713). In the 2002 Scottish case of *E* v *HM Advocate*,[5] the appeal court upheld an appeal on the ground of defective representation in regard to criminal charges against *E* for the rape of his two daughters, who were aged 3 and 5 at the time of the alleged rapes. The trial defense team had chosen what the appeal court described as a "gently, softly, softly approach" to the cross-examination of the children, and the court agreed with the appellant that he was entitled to have expected a much more vigorous attack on their credibility. One of the three

[5] *E* v *HM Advocate* 2002 SLT 715.

appeal court judges, Lord McCluskey, explained that if the defense was to succeed "there was no escape from facing up to the need to challenge the evidence of the two girls as being deliberately false." Although there was no basis for suggesting the girls had themselves concocted a story, Lord McCluskey agreed that "the defense should positively argue with as much force as the evidence would permit that the children had been manipulated by their mother" (*Scots Law Times* 715 at 732).

One of the processes by which this legal skepticism is facilitated is the use of the rules of evidence on credibility (Hunter, 1996; Lees, 1997; MacCrimmon, 1991; MacKinnon, 1987; Temkin, 1987). Credibility is a crucial feature of litigation in most legal systems, and certainly within the adversarial environment of Anglo-American jurisdictions, in which oral testimony occupies a pivotal role. The credibility of a witness is paramount to the outcome of a case. In cases of rape, for example, a complainant's failure to conform to the expected behaviors and normative standards of the "ideal" rape victim typically has harsh consequences, including debilitating and humiliating cross-examination by defense counsel. As Ellison (2000, p. 41) notes:

> Routinely, complainants are questioned extensively about their 'sexually suggestive' clothing, 'sexually provocative behaviour,' their financial situation and their role as mothers.

Tactics to discredit rape victims are a feature of adversarial litigation throughout the common law world, where the principal objective in the cross-examination process appears to be to underline a belief in the tendencies of women to mislead and prevaricate in matters relating to sex (Heenan & McKelvie, 1997; Lees, 1997; Brown, Burman, & Jamieson, 1993; Smart, 1989; Taslitz, 1999). The tactics are underpinned by a remarkably tenacious social mythology that has become embedded in legal discourse. It imposes considerable responsibility on women for rape and has led to judicial comments such as:

> Women who say no do not always mean no. It is not just a question of how she says it, how she shows and makes it clear. (Judge Wild, 1981, cited in Kennedy, 1993, p. 111)

As we have seen, children are explicitly caught up in the same mythology. The comments of Glanville Williams (1987, p. 188), a leading English academic lawyer, provide a good example of such views.

> It has been known for children to invent elaborate fantasies and tell rank falsehoods. Children can be extraordinarily precocious, well versed in sexual language and quite capable of making false accusations, especially when they believe this to be a form of self-defence.

Such constructions reveal compellingly the extent to masculinist constructions continue to shape expectations across all the Anglo-American jurisdictions about the behavior of women and children.

It is fair to say that critiques of the treatment of witnesses in cases of sexual offences have not been ignored. Reform of the prosecution of such cases has been a political aim in most jurisdictions over the past several decades. A variety of measures has been undertaken, including the introduction of screens and closed circuit television link to assist vulnerable witnesses in giving testimony, the widespread enactment of rape shield legislation, the redefinition of rape to acknowledge the possibility of male victims, and restrictions on rape defendants conducting their own defense (for reviews, see Ellison, 2001; Hunter, 1996). However, these protective measures are almost exclusively mechanistic changes that provide formalistic improvement and superficial relief. They do little to address the more fundamental problem caused by negating women's perspectives and excluding them from the courtroom (Hunter, 1996; Ellison, 2001; Matoesian, 2001). A comprehensive study of rape law reform in the United States concluded that:

> The ability of rape reform legislation to produce instrumental change is limited. In most of the jurisdictions we studied, the reforms had no impact. (Spohn & Horney, 1992, p. 173)

UK researchers (e.g., Brown et al., 1993; Temkin, 2000) have drawn similarly disappointing conclusions about the effectiveness of legislative changes. Barristers, for example, continue to be heavily influenced in their professional strategies by personal views about the propriety of women's behavior.

> I mean the silly woman is prepared to be picked up by a stranger and go back for, quotes, coffee, you know, what does she expect? If a woman does that, can she really be surprised that a jury will say that she may have consented to sex? Again a hitch-hiker or somebody like that. (Temkin, 2000, p. 225)

It is against this backdrop of long-standing doubt about women's credibility in relation to matters of sex and sexual violence that we turn to examine in more depth the phenomenon of false memories, given that it has begun to emerge as a fresh strategy for discrediting complainants of sexual violence.

However, before doing so, it is important to comment on the relevance of our argument to the distinction in civil and criminal cases. It is only in criminal cases, especially those involving sexual assault, that credibility occupies a central role. This is because, in criminal cases, the complainant is a key prosecution witness, and her credibility and status will therefore be fundamental to the success of the case. If she is not perceived as believable, then the State's case is likely to collapse. In civil cases, issues of credibility rarely arise, because this is not an issue that is usually relevant to the categories that can serve as the basis for civil suits (e.g., breach of contract, personal injury, divorce, adoption). Notably, FMS first came to public attention through the civil courts (*Ramona* v *Isabella*, 1994), and it has remained most strongly associated with civil cases, as a result of law suits filed against therapists. Within such civil cases, and in contrast to criminal cases, the contentious issues do not normally give rise to an attack on the plaintiff's credibility. However, as we shall see, the criminal courts are beginning to make increased reference to the issue of false memories (e.g., *US* v *Rouse and*

others, 1997;[6] *R* v *Jenkins*, 1998;[7] for a review, see Raitt & Zeedyk, 2000). With that increase, concerns about the credibility of witnesses are given a new lease of life.

4. False memories and credibility

The accusation of "false memory" strikes at the very heart of a witness's credibility, signifying as it does that this is a person incapable of offering accurate or reliable testimony. Whether the charge relates to recollection of a specific event or to the broader psychiatric syndrome, the outcome is equally damaging. This is an observation that may seem rather obvious, given that it might have appeared predictable that the law would respond to FMS in a manner that was in keeping with its usual wary response to claims of sexual violence. However, that similarity is obscured in most of the legal literature on the topic. Indeed, it was the covert nature of that link that prompted the analysis undertaken in this article. We would argue that three factors have been central in achieving this shroud: a scientific focus on memory processes, the inherent nature of sexual violence to FMS, and the rules governing the production of evidence within the courtroom. This final section of the article examines each of these factors in turn.

4.1. FMS as a scientific debate over memory processes

Within the field of psychology, the debate about FMS has focused on scientific arguments about the nature of memory processes. Although authors stress the abhorrent nature of child sexual abuse, it is an issue that remains fairly peripheral to their theoretical inquiry. Abuse tends to be treated as background societal context, rather than as one of the components central to an understanding of the syndrome and its symptoms. The comments of Loftus (1993, p. 521), in one of the classic papers within this domain, illustrate that composition.

> There is little doubt that actual childhood sexual abuse is tragically common. Even those who claim that the statistics are exaggerated still agree that child abuse constitutes a serious social problem. I do not question the commonness of childhood sexual abuse itself but ask here about how the abuse is recalled in the minds of adults . . . Despite the confidence with which assertions [about repressed memories] are made, there are few studies that provide evidence of the extent to which repression occurs.

Such comments seek to emphasize the distinction between, rather the integration of, sexual abuse and memories of it.

The accusatory split between scientists and therapists, discussed earlier, has been encouraged by this separation of psychological processes from their context. It is not

[6] *United States* v *Rouse*, 111 F.3d 561 (8th circuit 1997).
[7] [1998] 4 All ER 411.

surprising to find that when the methods of investigation used by researchers and clinicians differ, it is the scientific account that the courts prefer. This is because, like science, the law esteems qualities such as rationality, generalizability, and objectivity (Raitt & Zeedyk, 2000). Crucially, it is precisely such a decontextualized account that allows historical prejudices about women's credibility to be obscured, despite the irony that taking account of such factors might be the key to understanding the phenomenon of delayed memories.

The mainstream psychological and psychiatric communities regard the issue of delayed memories and FMS as one of cognitive function. This is the reason that so much of the psychological literature on the topic makes only passing reference to the social context of child sexual abuse (e.g., Groff, 1994; Kihlstrom, 1997; Loftus & Ketcham, 1994; Memon & Young, 1997; Schacter, Norman, & Koutstaal, 1997; Yapko, 1997). Cognitive psychologists seek to understand the generalizable principles by which basic human memory processes operate, just as empirical researchers in other psychological domains usually seek to discover the universal, decontextualized principles that govern the processes they study. That emphasis is illustrated in the definitions provided in introductory psychology textbooks, such as that written by Gleitman, Fridlund, & Reisberg, 1999, p. 11, which is one of the best selling texts on the market.

> Like all other sciences, psychology looks for general principles—underlying uniformities among different events. A single event as such means little; what counts is what any one event shares with others . . . [T]he science's main concern is with the discovery of the general principles.

Psychologists consider memory to be a topic on which they have preeminent expertise, given that it was amongst the issues studied by the field's forefathers. Ebbinghaus (1885) developed the method of studying patterns of forgetting through the recitation of nonsense syllables, and that is the basic paradigm still used in much contemporary cognitive work, despite advances in the technological delivery of visual and audio stimuli. These laboratory-based methods are preferred not only because they can be tightly controlled and manipulated to test theoretical hypotheses, but also because laboratories are viewed as neutral environments where contextual factors are less likely to influence experimental outcomes. In short, the appeal of laboratories for many cognitive theorists is their simplicity as decontextualized contexts.

This preference provides a good example of the ways in which researchers' perspectives contrast with those of therapists. Therapists argue that context is highly relevant to the experience of, and the recollection of, sexual abuse. They argue that adherence to the use of decontextualized methods to investigate decontextualized processes cannot provide the kinds of insights that are necessary for understanding the more complicated aspects of memory, such as autobiographical knowledge and the effect of trauma (e.g., Fivush, 2000; Freyd, 1996; Freyd & DePrince, 2001). Moreover, their professional interest lies not in reaching an objective determination of what occurred between an adult and child, but in understanding the meaning that the victim has assigned to the event(s). This explicit preference for subjectivity over objectivity leads the scientific community to have serious doubts about the usefulness of

the therapeutic community's contribution to an understanding of delayed and false memories. This conflict becomes particularly sharp when such memories are subjected to the scrutiny of the courts, whose responsibility it is to determine the guilt or innocence of an accused individual.

At the core of the debate between the communities lies a difference in epistemological orientations. Therapists are not seeking a single objective truth. Memory has value for them, regardless of whether or not it meets the criteria of scientific objectivity, because the primary goal of therapists is to return patients to good health. They are comfortable with the possibility that there may be two contrasting, but equally valid, perspectives on an event. For experimental psychologists, the lack of information about the memory's veracity is precisely the problem. The data that they see as helpful in this area are those that are derived by controlled, replicable procedures, for these are regarded as objective and truthful.

Locating the issue of delayed/false memories within the experimental cognitive paradigm serves to divert attention from the issue of sexual abuse in a way that, intentionally or not, sanitizes the debate by configuring it as an internal scientific dispute that has little external context. The discussion becomes elevated in a way that would not be possible were the phenomenon located primarily in the social science lexicon within which child sexual abuse is most commonly analyzed. Just as the antiabortion lobby has promoted the medical concept of Postabortion Syndrome in a bid to make their rhetoric more palatable to a society increasingly concerned with women's health (Hopkins, Reicher, & Saleem, 1996), there is an advantage to be gained in keeping the debate defined in scientific rather than political terms. This may explain the very clear commitment on the part of the FMS societies to the scientific basis for this syndrome, and the drive for its inclusion in the DSM. Such an analysis echoes the points made by numerous theorists over the past three decades (e.g., Chesler, 1972; Downs, 1996; Herman, 1992; Lee & Gilchrist, 1997; Nicolson, 1991; Szasz, 1972) concerning the social construction of mental disorders and psychological syndromes. In short, while the debate over FMS rightly includes consideration of scientific knowledge about the memory processes, the debate is about much more than those findings. Making sense of the phenomenon and its consequences will require an explanation that extends well beyond the boundaries of cognitive science.

4.2. Memories of sexual violence

A second factor that obscures the tie between child sexual abuse and FMS is the nature of the incidents that are remembered. Memories of sexual violence are intrinsic to the concept of FMS.[8] It this therefore predictable that the law will respond to FMS in a manner that is in keeping with its customary response to charges of sexual offence, which is one of suspicion. As we have seen, individuals who bring charges of sexual assault (usually women and

[8] Although the relevance of repressed memories has been explored in relation to a range of traumatic experiences, including warfare, natural disasters, physical abuse, and even alien abduction, FMS is specifically concerned with memories of sexual abuse.

children) are liable to be portrayed as emotionally labile, unreliable, and disordered (Chesler, 1972; Showalter, 1987; Smart, 1992; Ussher, 1997). The concept of FMS serves to disadvantage them because it so easily feeds into the existing juridical tapestry that treats complaints of sexual abuse as incredible.

Disbelief of the frequency of sexual abuse as well as the veracity of the complainant underscores much of the reaction of the legal system to child sexual abuse. The comments of Lord Justice Salmon are frequently cited because they provide such an exemplary illustration of this view. In the 1969 case of *R* v *Henry and Manning*,[9] in which two men had appealed against their convictions of raping a 16-year-old girl, Lord Justice Salmon commented that:

> Human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all.

The insidious nature of such views is demonstrated in the 1997 Canadian case of *R.* v *N.R.*[10] In that case, the court permitted a rape victim's medical records to be released to the defendant's lawyers in order to assist in the preparation of his defense. The permission was granted on the basis that the records contained details of when she had lost her virginity, a piece of information that the judges accepted would have a bearing on her credibility "in the sense that she has both a motive and a propensity to fabricate" (cited in Gotell, 2001, p. 328).

Belief in the propensity of women and children to fabricate false stories is hard to dispel. Fact construction serves as the basis for legal argument in adversarial systems. As a vehicle for ascertaining "the truth," however, this is a method that has been roundly exposed as a fallacy (Amsterdam & Bruner, 2000; Bennett and Feldman, 1981; Nicolson, 1994; Scheppelle, 1992). Fact construction may be expedient within an adversarial system, but it cannot do more than reproduce the narratives of those actors within the system who are empowered to provide the dominant version of the "truth." In regard to stories of sexual assault, the complainant's version is rarely the dominant one, and it is not just the substantive content that attracts doubt but also the manner in which that story is recounted.

> Women who delay telling their stories of abuse at the hands of men or who appear to change their stories over time about such abuse are particularly likely to be discredited as liars. The very fact of delay is used as evidence that the delayed or changed stories cannot possible be true. But women frequently have exactly this response: they repress what happened; they cannot speak; they hesitate, waver, and procrastinate; they hope the abuse will go away; they cover up for their abusers; they try harder to be "good girls"; and they take the blame for the abuse upon themselves. Such actions produce delayed or altered stories over time, which are then disbelieved for the very reason that they have been revised. (Scheppele, 1992, pp. 126–127, fns 10–19)

[9] *R.* v *Henry and Manning* [1969] 53 Cr App R 150 at 153.
[10] *R.* v *N.R.* [1997] O.J. No. 80 (QL)(Prov.Div).

The turn to postmodernism that has occurred within the social sciences, including law and some marginal domains of psychology, has highlighted the contextual nature of truth. Postmodernists stress that the meaning of a behavior does not lie within the behavior itself. Rather, meaning is assigned by those providing an account of the behavior, who will naturally draw on some contextual elements while ignoring other possible elements in order to ensure that the account they are providing ends up as a sensible, coherent one. The adversarial process of fact construction, in contrast, implies that facts contain their own truth, yielding no need to consider their context or the variety of meanings that might legitimately pertain to the issues under consideration.

We have already discussed the similar attachment to decontextualized fact production that exists within cognitive psychology. Freyd (1996) is among the few cognitive scientists who have sought to incorporate context within their theoretical predictions concerning memory (but see also the review by Epstein and Bottoms, 2002). Freyd argues that the memory processes associated with recall of childhood sexual abuse may differ from those associated with other memories, including those that are traumatic (e.g., the death of a loved one, natural disasters, car accidents, hospitalization). This is because, unlike most other events, sexual abuse usually involves emotional betrayal, given that it is most often perpetrated by a known and trusted adult. She suggests that coping with such betrayal may result in particular memory processes, of which we as yet have little knowledge. It may well be "normal" for the recall of trauma involving betrayal to show the fragmentation, partiality, and lack of coherence described in patients' recovered memories. However, because the experimental cognitive approach to studying memory has failed to explore the ways in which (traumatic) context may influence the generation and maintenance of memory, scientists are unable to speak to the normality or otherwise of such characteristics.

The inability of psychologists to offer detailed information concerning the extent to which childhood sexual trauma normally causes memories to be fragmented, partial, and incoherent takes an ominous turn when it is realized that such characteristics already have a preexisting meaning for lawyers: a fragmented, partial, and incoherent story is the mark of an unreliable witness.

4.3. The rules of evidence

The rules of evidence constitute one further means by which the link between FMS and sexual violence continues to be obscured. This could be viewed as a rather extreme claim, given that the rules of evidence are generally viewed as neutral legal artifacts. They are regarded as having a rational, objective, internal logic, which excludes them from critique or analysis. They have been designed to structure the legal process so that it operates consistently and fairly. However, this means that they also have the power to control and constrain the ways in which witnesses can tell their stories—indeed, they are expressly designed for that purpose (Hunter, 1996; Hunter & Mack, 1997; Kinports, 1991; Scheppele, 1992). It is therefore rules of evidence that serve as the legal mechanisms that govern which stories will (and will not) get told in court about women and children (and men), including what is reasonable and unreasonable for them to claim about their own experiences.

The law's distrust of women's credibility, especially in regard to sexual matters, owes much to the framework of evidentiary rules within which testimony can be heard. Evidence rules and discourse are modeled upon the rationalist tradition (Twining, 1990), of which J. H. Wigmore was a major advocate. The rationalist tradition remains the dominant pedagogy in law schools throughout the common law world and is the lynchpin of legal practice (Nicolson, 1994; Twining, 1985, 1990). Wigmore is regarded one of the great 19th century American jurists, with his treatise, *Wigmore on Evidence* (1937), described as "the most famous legal text ever published in [the US]" (Herman, 2000, p. 11). Wigmore ensured that the issue of credibility remained firmly embedded in the epistemology of evidence discourse, when he declared in his treatise (para. 924a) that:

> [N]o judge should ever let a sex offence charge go to the jury unless the female complainant's social history and mental make-up have been examined and testified to by a qualified physician.

This instruction neatly creates an alignment of rape victim status with that of a potential psychiatric condition. It is fatal to the presentation of a witness as credible, and it is an alignment to which the accusation of FMS commends itself.

In effect, the rules of evidence tend to endorse and perpetuate the value judgments that are made within wider societal and professional contexts. Although this insight continues to prove startling to the legal literature, it has been argued to be the case with a large number of rules, such as those concerned with hearsay (Raitt, 2000), privilege (Kinports, 2000), and character (Childs, 2000). When it comes to the issue of sexual offences against children, there are several additional rules that help to keep credibility at the forefront of the court's considerations.

The first of these is the rule on expert testimony. When experts are permitted to give opinion evidence, there is considerable scope for their testimony to be privileged over the complainant's own story. The effect is to drown the authentic voice of the complainant, or to restrict her to being "heard" only through the interpretive powers of the expert (O'Donovan, 1993). For example, in *United States* v *Rouse and others*[11] (1997), the appeal court allowed a retrial in a case involving four defendants who had been convicted of a series of sexual offences against various children. The appeal was allowed on the basis that the trial judge should have permitted expert testimony to test whether or not suggestive questioning in the investigation had tainted the children's testimony, thereby raising the possibility that false memories might have been induced by the questioning. Moreover, the appeal court criticized the trial judge for refusing to permit the defendants' request for an independent psychological examination of the children to test their credibility. If children are regarded as untrustworthy when reporting contemporaneous sexual abuse, there is a concomitant likelihood that adult women (and men) will be distrusted when recalling memories of abuse that occurred some years previously. Societal attitudes towards adults suspected of having false memories of

[11] *United States* v *Rouse*, 111 F.3d 561 (8th circuit 1997).

childhood sexual abuse risk becoming indistinguishable from the attitudes expressed towards children who complain of sexual abuse. The rules of evidence perpetuate that risk, for in introducing expert testimony on FMS into the court, those who wish to challenge accounts of childhood sexual abuse have access to a register that is regarded as more authoritative and valid than the victim's own voice.

A second rule of evidence that endorses traditional views of credibility is that of corroboration. This rule states the law's preference, if not demand, that corroborative evidence be presented before conferring credibility on certain disputed facts. Interestingly, the law's preference for corroboration is affirmed by the FMS Foundation, which states that

> [T]he professional organizations agree: the only way to distinguish between true and false memories is by external corroboration. (FMSF Website, 2003)

Corroboration is not a requirement in every type of case or in all jurisdictions, but even in those jurisdictions that have abolished the general need for corroboration in criminal cases, the testimony of children and the complainer's testimony in sexual offences are often exceptions to the rule. Such exceptions leave judges with the discretion to warn juries that they should be wary of the uncorroborated testimony of children or of a complainer in a case of sexual offence (Hunter, 1996; McEwan, 1998). Noticeably, such warnings are not applied to the testimony of complainers or witnesses in other types of crime, such as robbery, fraud, and physical assault. It is notoriously difficult to obtain corroborative evidence in cases involving only two people, where the activities concerned tend to occur in "private," as opposed to "public." This has been highlighted by Cheit (1998), who brought a well-publicized lawsuit against his abuser. Unlike most victims, he was able to supply considerable corroborative evidence of his claims, but he still found his account was met by substantial doubt. That experience prompted him to compile a database of recovered memories of childhood abuse that have been independently corroborated and that he believes can be proven to be accurate. He observed that

> The fact remains that, in 1994, it is extremely difficult to come forward with allegations of sexual abuse. And the external forces of denial are almost overwhelming. If a case as verified as mine meets with denial, I dread to think about the experience of people who don't have the kind of corroboration that I do. And I really worry that we're getting close to a point where it's going to be impossible to prosecute child molesters, because we don't believe children, and now we don't believe adults. (Cheit, 1994; quoted in Freyd, 1996, p. 59)

Cheit's experience demonstrates the suspicion with which law continues to greet certain narratives, resisting granting them credence unless they meet the more demanding standards set for them.

The rules pertaining to discovery offer a third example of those rules of evidence that foreground credibility. Discovery is the process by which one party in litigation seeks access to the private records belonging to the other party. The prosecution of sexual offences

provides rich, and contested, territory for the recovery of medical, therapeutic, educational, and child welfare records of complainants. Defense lawyers are interested in details of previous allegations of abuse and/or proof of prior abuse. The former, if unproven, demonstrates a propensity to fabricate, while the latter demonstrates a motive to fabricate. Either way, the credibility of the complainant is doomed. She is either mendacious, and thus unreliable, or else she is vindictive, and thus equally unreliable. As Busby (1997, p. 163) has observed, "Evidence of prior sexual abuse is perfect defence evidence on credibility." Utilizing the discovery process is an increasingly common strategy and, although it may sometimes be deflected as a breach of constitutional privacy provisions, it is having a measure of success due to its easy attachment to the defendant's claim for due process and a fair trial, the procurement of which requires (it is claimed) a full disclosure of the complainant's history in sexual complaints. When the application for discovery arises in a case where FMS is an issue, the route to accessing records may be eased, because lawyers can draw on the debates raging within the cognitive field to demonstrate that the medical or therapeutic records are needed to eliminate the possibility that memories have been implanted (Gotell, 2001).

The three rules highlighted here comprise a small part of the complex doctrinal framework that regulates the admissibility of facts and determines their relevance and weight. Although orthodox jurisprudence holds that the rules of evidence operate neutrally in an apolitical context, closer examination of the workings of each rule reveals a reinforcement of particular social and cultural interpretations that derive from a deep suspicion of the complainant of sexual offences.

5. Conclusion

Legislative reform has had little impact on the image of the incredible female complainant. Traditional attempts to destabilize women's credibility in cases of rape and sexual assault, which continue to typify prosecutions to the modern day, are mirrored in the recent emergence of the phenomenon of FMS in the courtroom. The introduction of evidence relating to false memories replicates the stereotyping of female behavior as untrustworthy, reinforcing the courtroom disadvantage that women and children have historically faced. That reinforcement is in large part due to the tenacious quality of the rules of evidence, whose reductive force has so successfully impeded the spirit of political and strategic change underpinning reform.

We suggest that the underlying reasons for the relative failure of law reform to effect change in this area can be explained by the influential mythology regarding the behavior of men and women in sexual violence. Despite the significant amount of critical literature (e.g., Armstrong, 1996; Brownmiller, 1975; Kelly, 1988; Ussher, 1997), this mythology has survived, albeit in shifting form. The implication of our argument is that the rules on credibility need to be reconfigured, such that credibility ceases to play such a dominant role in the fact construction of sexual abuse cases. It is not satisfactory to claim, as many legal theorists and practitioners have done, that the problems of sexual assault cases require that the

complainant's credibility be established via particularly robust cross-examination practices that are inspired by disbelief. The call for such measures is based on precisely the kinds of presumptions that we have examined in this article—that the woman's and the child's claims are unlikely to be creditworthy. Instead, a call should be made for measures that will dispel such presumptions from the courtroom. These measures could take various forms, including reforming the rules of evidence and contextualizing the legal training of judges and law students. Until the existing mythology is comprehensively addressed, then efforts directed at protecting the vulnerable witness through law reform will always be diluted and, ultimately, unsuccessful.

References

Adler, Z. (1987). *Rape on trial*. London: Routledge.

Allison, J. A., & Wrightson, L. S. (1993). *Rape: The misunderstood crime*. Newbury Park: Sage.

American Law Reports Annotated, 2nd series (1960). 74 ALR 2d [and supplement].

American Psychiatric Association (1994). *Diagnostic and statistical manual of mental disorders* (4th ed. revised). Washington, DC: Author.

Amsterdam, A. G., & Bruner, J. (2000). *Minding the law.* Cambridge, MA: Harvard University Press.

Andrews, B., Morton, J., Bakerian, D. A., Brewin, C. R., Davies, G. M., & Mollon, P. (1995). The recovery of memories in clinical pratice: Experiences and beliefs of British Psychological Society practitioners. *The Psychologist, 209–214 (*May).

Armstrong, L. (1978). *Kiss daddy goodnight: A speak-out on incest*. New York: Hawthorn Books.

Armstrong, L. (1996). *Rocking the cradle of sexual politics: What happened when women said incest*. London: The Women's Press.

Bass, E., & Davis, L. (1994). *The courage to heal: A guide for women survivors of child sexual abuse*. New York: Harper & Row.

Bennett, W. L., & Feldman, M. (1981). *Reconstructing Reality in the Courtroom*. London: Tavistock.

Brandon, S., Boakes, J., Glaser, D., & Green, R. (1998). Recovered memories of childhood sexual abuse: Implications for clinical practice. *British Journal of Psychiatry*, *172*, 296–307.

British Psychological Society (1995). *The report of the working party of the British Psychological Society on recovered memories*. London: Author.

Brown, B., Burman, M., & Jamieson, L. (1993). *Sex crimes on trial*. Edinburgh: Edinburgh University Press.

Brownmiller, S. (1975). *Against our will: Men, women and rape*. London: Secker and Warburg.

Busby, K. (1997). Discriminatory use of personal records in sexual violence cases. *Canadian Journal of Women and the Law*, *9*, 148–177.

Ceci, S. J., & Bruck, M. (1993). Suggestibility of the child witness: A historical review and analysis. *Psychological Bulletin*, *113*, 403–439.

Ceci, S. J., & Bruck, M. (1995). *Jeopardy in the courtroom: A scientific analysis of children's testimony.* Washington, DC: American Psychological Association.

Ceci, S. J., & Loftus, E. (1994). 'Memory work': A royal road to false memories? *Applied Cognitive Psychology*, *8*, 351–364.

Cheit, R. (1994). *Paper presented at the Mississippi Statewide Conference on Child Abuse and Neglect*. Jackson, MS, April 29.

Cheit, R. (1998). Consider this, skeptics of recovered memory. *Ethics and Behavior*, *8*, 141–160.

Chesler, P. (1972). *Women and madness*. New York: Doubleday.

Childs, M. (2000). The character of the accused. In M. Childs, & L. Ellison (Eds.), *Feminist perspectives on evidence* (pp. 211–235). London: Cavendish.

Conway, M.A. (1997). *Recovered memories and false memories*. Oxford: Oxford University Press.

Courtois, C. A. (1997). Delayed memories of child sexual abuse: Critique of the controversy and clinical guidelines. In M. A. Conway (Ed.), *Recovered Memories and False Memories* (pp. 206–229). Oxford: Oxford University Press.

Downs, D. A. (1996). *More than victims: Battered women, the syndrome society and the law*. Chicago: University of Chicago Press.

Ebbinghaus, H. (1885). *Memory*. New York: Teacher's College, Columbia University, 1913. Reprinted in 1964, New York: Dover.

Elliot, D. M. (1997). Traumatic events: Prevalence and delayed recall in the general population. *Journal of Consulting and Clinical Psychology*, *65*, 811–820.

Ellison, L. (2001). *The adversarial process and the vulnerable witness*. Oxford: Oxford University Press.

Epstein, M. A., & Bottoms, B. L. (2002). Explaining the forgetting and recovery of abuse and trauma memories: Possible mechanisms. *Child Maltreatment*, *7*, 210–225.

Estrich, S. (1987). *Real rape*. Cambridge, MA: Harvard University Press.

Fivush, R. (2000). Accuracy, authorship and voice: Feminist approaches to autobiographical memory. In P. Miller, & E. Scholnick (Eds.), *Towards a feminist developmental psychology* (pp. 85–106). New York: Cambridge University Press.

Freyd, J. J. (1996). *Betrayal trauma: The logic of forgetting childhood abuse*. Cambridge, MA: Harvard University Press.

Freyd, J. J., & DePrince, A.P. (Eds.) (2001). *Trauma and cognitive science: A meeting of minds, science, and human experience*. New York: Haworth Press.

Gardner, R. A. (1992). *True and false accusations of child sex abuse*. Cresskill, NJ: Creative Therapeutics.

Ghate, D., & Spencer, L. (1995). *The Prevalence of Child Sexual Abuse in Britain: A Feasibility Study for a Large-Scale National Survey of the General Population*. London: HMSO.

Gleitman, H., Fridlund, A. J., & Reisberg, D. (1999). *Psychology* (*5th ed.*). New York: W.W. Norton.

Gotell, L. (2001). Colonization through disclosure: Confidential records, sexual assault complainants and Canadian law. *Social and Legal Studies*, *10*, 315–346.

Groff, S.E. (1994). Repressed memory or false memory: New Hampshire courts consider the dispute. *New Hampshire Bar Journal*, *35*, 57–58.

Hale, E. (1680). In E. Sollom (Ed.), *Pleas of the crown,* vol. 1. London: Nott and Gosling, Reprinted in 1972.

Hall, L., & Lloyd, S. (1989). *Surviving child sexual abuse: A handbook for helping women challenge their past*. Lewes, UK: The Falmer Press.

Heenan, M., & McKelvey, H. (1997). *Evaluation of the Crimes (Rape) Act 1991*. Melbourne: Department of Justice.

Herman, J. (1981). *Father-Daughter Incest*. Cambridge (Mass.): Harvard University Press.

Herman, J. (1992). *Trauma and recovery: The aftermath of violence: From domestic abuse to political terror*. New York: Harper Collins.

Herman, J. (2000). *Father–daughter incest*. London: Harvard University Press.

Heste, M., Kelly, L., & Radford, J. (Eds.) (1996). *Women, violence and male power*. Buckingham: Open University Press.

Hochman, J. (1994). Recovered memory therapy and false memory syndrome. *Skeptic*, *2*, 58–61.

Hopkins, N. P., Reicher, S. D., & Saleem, J. (1996). Constructing women's psychological health in anti-abortion rhetoric. *Sociological Review*, *44*, 539–565.

Hunter, R. (1996). Gender in evidence: Masculine norms vs. feminist reforms. *Harvard Women's Law Journal*, *19*, 127–167.

Hunter, R., & Mack, K. (1997). Exclusion and silence: Procedure and evidence. In N. Naffine, & R. Owens (Eds.), *Sexing the subject of law* (pp. 171–192). Sydney: LBC Information Services.

Johnston, M. (1997). *Spectral evidence, the Ramona case: Incest, memory, and truth on trial in Napa Valley*. Boston: Houghton Mifflin.

Kelly, L. (1988). *Surviving sexual violence*. Cambridge: Polity Press.

Kennedy, H. (1993). *Eve was framed: Women and British justice*. London: Vintage Books.

Kihlstrom, J. F. (1997). Suffering from reminiscences: Exhumed memory, implicit memory, and the return of the repressed. In M.A. Conway (Ed.), *Recovered memories and false memories*. Oxford: Oxford University Press.
Kinports, K. (1991). Evidence engendered. *Illinois University Law Review, 413.*
Kinports, K. (2000). The 'privilege' in the privilege doctrine: A feminist analysis of the evidentiary privileges for confidential communications. In M. Childs, & L. Ellison (Eds.), *Feminist perspectives on evidence* (pp. 79–103). London: Cavendish.
Koocher, G. P. (Ed.) (1998). The Science and Politics of Recovered Memory. *Ethics & Behavior, 8*(2), 99–193 (Special issue).
Lee, E., & Gilchrist, A. (1997). Abortion psychological sequelae: The debate and the research. In E. Lee, & M. Lattimer (Eds.), *Issues in pregnancy counselling: What do women need and want?. Canterbury: Pro-Choice Forum.*
Lees, S. (1997). Ruling passions: *Sexual violence, reputation and the law*. Buckingham: Open University Press.
Lindsay, D. S., & Read, D. J. (1994). Psychotherapy and memories of child sexual abuse: A cognitive perspective. *Applied Cognitive Psychology*, *8*, 281–338.
Lindsay, D. S., & Read, D. J. (1995). 'Memory work' and recovered memories of childhood sexual abuse: Scientific evidence and public, professional and personal issues. *Psychology, Public Policy and Law*, *1*, 845.
Loftus, E. F. (1993). The reality of repressed memories. *American Psychologist*, *48*, 518–537.
Loftus, E. F., & Ketcham, K. K. (1994). *The myth of repressed memory: False memories and accusations of sexual abuse*. New York: St. Martin's Press.
MacCrimmon, M. (1991). The social construction of reality and the rules of evidence. *British Columbia University Law Review*, *25*, 36.
MacKinnon, C. A. (1987). *Feminism unmodified: Discourses on life and law*. Cambridge, MA: Harvard University Press.
Matoesian, G. M. (2001). *Law and the language of identity*. Oxford: Oxford University Press.
McEwan, J. (1998). *Evidence and the adversarial process*. Oxford: Hart Publishing.
Melchert, T. P. (1996). Childhood memory and history of different forms of abuse. *Professional Psychology: Research and Practice*, *27*, 438–446.
Melchert, T. P., & Parker, R. L. (1997). Different forms of childhood abuse and memory. *Child Abuse and Neglect 21*, 125–135.
Memon, A., & Young, M. (1997). Desperately seeking evidence: The recovered memory debate. *Legal and Criminological Psychology*, *2*, 131–154.
Naffine, N. (1994). Possession: Erotic love in the law of rape. *Modern Law Review*, *57*, 10–37.
Nicolson, D. (1994). Truth, reason and justice; epistemology and politics in evidence discourse. *Modern Law Review*, *57*, 726–744.
Nicolson, P. (1991). Explanations of postnatal depression: Structuring knowledge of female psychology. *Research on Language and Social Interaction*, *25*, 75–96.
O'Donovan, K. (1993). Law's knowledge: The judge, the expert, the battered woman, and her syndrome. *Journal of Law and Society*, *20*, 427–437.
Ofshe, R., & Watters, E. (1994). *Making monsters: False memories, psychotherapy, and sexual hysteria*. New York: Scribner's.
Pendergrast, M. (1998). *Victims of memory: Incest accusations and shattered lives*. London: Harper Collins.
Prozan, C. K. (1997). *Construction and reconstruction of memory: Dilemmas of childhood sexual abuse*. Northvale, NJ: Jason Aronson.
Raitt, F. E. (2000). Gender bias in the hearsay rule. In M. Childs, & L. Ellison (Eds.), *Feminist perspectives on evidence* (pp. 59–77). London: Cavendish.
Raitt, F. E., & Zeedyk, M. S. (2000). *The implicit relation of psychology and law: Women and syndrome evidence*. London: Routledge.
Russell, D. E. H. (1984). *Sexual exploitation: Rape, child sexual abuse, and workplace harassment*. Newbury Park, CA: Sage.
Schacter, D. L., Norman, K. A., & Koustal, W. (1997). *The recovered memories debate: A cognitive neuroscience*

perspective. In M.A. Conway (Ed.), *Recovered memories and false memories*. Oxford: Oxford University Press.

Scheppele, K. M. (1992). Just the facts ma'am: Sexualised violence, evidentiary habits and the revision of truth. *New York Law School Law Review*, *37*, 123–172.

Schuman, J., & Galvez, M. (1996). A meta/multi-discursive reading of 'false memory syndrome'. *Feminism and Psychology*, *6*, 7–29.

Showalter, E. (1987). *The female malady: Women, madness, and English culture, 1830–1980*. London: Virago Press.

Smart, C. (1989). *Feminism and the power of law.* London: Routledge.

Smart, C. (1992). The woman of legal discourse. *Social and Legal Issues*, *1*, 29–44.

Spohn, C., & Horney, J. (1992). *Rape law reform: A grassroots revolution and its impact*. New York: Plenum.

Szasz, T. (1972). *The myth of mental illness*. St. Albans: Paladin.

Taslitz, A. (1999). *Rape and the culture of the courtroom*. New York: New York University Press.

Temkin, J. (1987). *Rape and the legal process*. London: Sweet and Maxwell.

Temkin, J. (2000). Prosecuting and defending rape: Perspectives from the Bar. *Journal of Law and Society*, *27*, 219–248.

Twining, W. (1985). *Theories of Evidence: Bentham and Wigmore*. London: Weidenfeld & Nicolson.

Twining, W. (1990). *Rethinking evidence: Exploratory essays*. Oxford: Basil Blackwell.

Ussher, J. M. (1997). *Fantasies of femininity: Reframing the boundaries of sex*. London: Penguin Books.

Wigmore, J. H. (1937). *Wigmore on evidence, volume IIIA*. Boston: Little Brown and Co. Reprinted and edited by Chadbourne in 1970.

Williams, G. (1987). Child witnesses. In P. Smith (Ed.), *Criminal Law Essays in Honour of J. C. Smith*. London: Butterworths.

Yapko, M. (1997). The troublesome unknowns about trauma and recovered memories. In M. A. Conway (Ed.), *Recovered memories and false memories*. Oxford: Oxford University Press.