

# ***RECOVERED AND FALSE MEMORIES IN THE CONTEXT OF LEGAL CASES***

***PREVENTING RUINATION, WRONGFUL CONVICTIONS, AND  
UNWARRANTED FAMILY ESTRANGEMENTS***

*ANZAPPL 2024 KEYNOTE*

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# *ABOUT ME*

Psychology academic (forensic area)  
My doctorate advisor was Elizabeth Loftus  
Research memory  
Serve as memory reliability “expert witness” in  
legal cases



# *INTRODUCTION*

If we aim to uncover truth in legal cases, then:

In memory-evidence-only cases:

This would mean digging for better evidence to avoid these **errors**:

		Legal Decision	
		Guilty	Not Guilty
Objective Truth	Guilty	Correct	Wrongful Acquittal
	Not Guilty	Wrongful Conviction	Correct

# *TODAY'S TALK*

Introduction

Section A: Memory

Part 1: The Problem with Recovered Memories

Part 2: Memory Research

Section B: Legal

Part 3: Precedent Legal Cases

Part 4: UK, US, Legal Systems

Conclusions

# Section A: Memory

## Part 1: The Problem with Recovered Memories

# HISTORY

- Hypnosis & hysteria (Jean Martin Charcot)



- Dissociation (Pierre Janet)

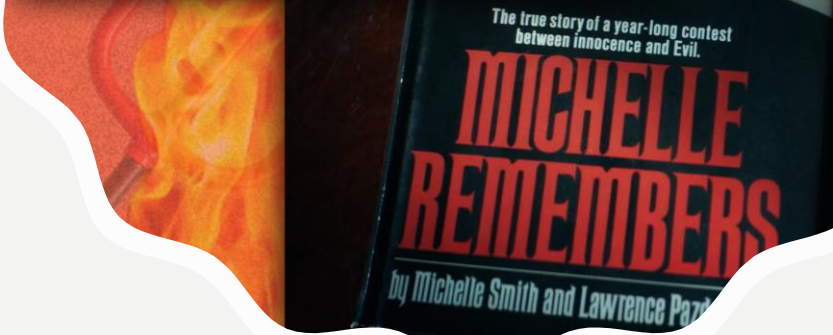


- Repression (Sigmund Freud)



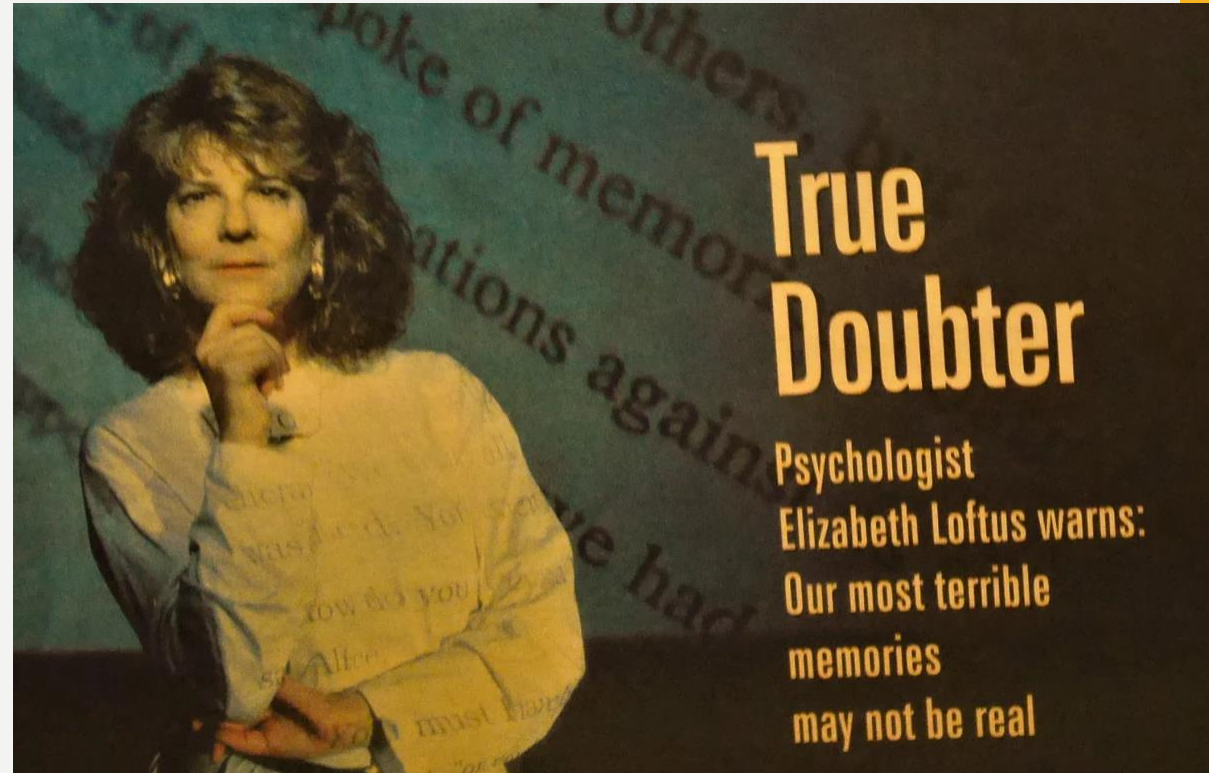
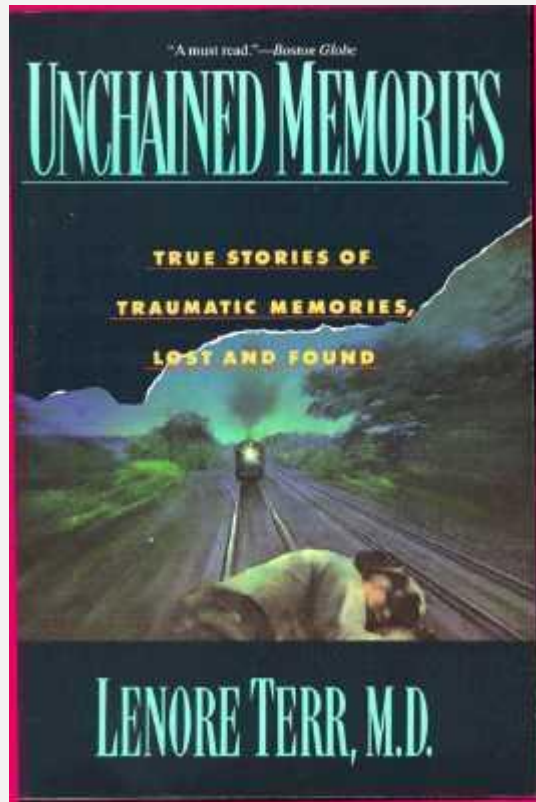
# 1980S: INCREASE IN FALSE MEMORIES

- An increase in therapies that deliberately tried to recover new previously unknown memories
- Increase in false memory cases



# 1990S : MEMORY WARS

- Rise of skepticism of whether repressed memories were reliable
- Or even possible as a mechanism, given 30 years of memory research

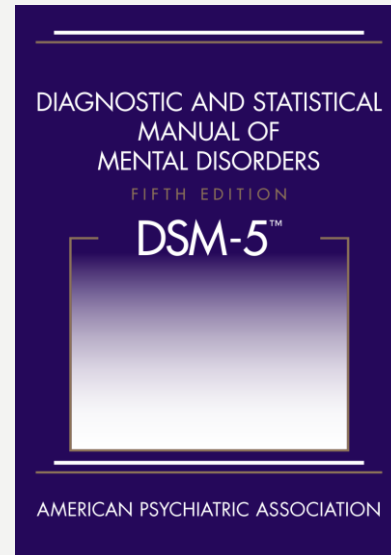


# RECENTLY

- I tested the theory that the memory wars were resolved, and I found they weren't
- Patihis et al (2014) Scientist practitioner gap in beliefs about repressed memory
- Patihis & Pendergrast (2019) 5% of US public recovered memories in therapy not known about before

# TODAY

- Dissociative amnesia in DSM
- Trauma and dissociation (e.g., Dalenberg)
- Body Keeps the Score (van der Kolk)
- And other terminology



# DEFINITIONS COMPARED

# FROM OTGAAR ET AL (2019)

## *Dissociative Amnesia and Repressed Memory Definitions*

<i>Dissociative Amnesia</i> from DSM-5 (APA, 2013; p. 298)	<i>Repressed memory</i> from Loftus (1993; p. 518)
“inability to recall autobiographical information”	[implied indirectly in quotes]
“usually of a traumatic or stressful nature, that is inconsistent with ordinary forgetting,”	“something happens that is so shocking...”
“and that it should be successfully stored,”	“...that the mind grabs hold of the memory and pushes it underground,”
“involves a period of time when there is an “inability to recall,”	“into some inaccessible corner of the unconscious. There it sleeps for years, or even decades, or even forever isolated from the rest of mental life”
not caused by “a substance” or “neurological... condition,”	[implied indirectly] Implied cause: an event “that is so shocking”
“always potentially reversible because the memory has been successfully stored,”	“Then, one day, it may rise up and emerge into consciousness

# SKEPTICS QUOTES

- “Many academic researchers who study memory...see a lack of credible scientific support for the notion that massive repression/dissociation of repeated brutalization routinely, if ever, occurs.”

- (p. 26)

- Source: Loftus, E. F., & Guyer, M. J. (2002). Who abused Jane Doe. *Skeptical Inquirer*, 26, 24-34. ([link](#))



**Dr. Elizabeth Loftus, PhD.**

Distinguished Professor  
University of California, Irvine  
Member of the National Academy of Sciences

- “recovered memory therapy,“: arguably the most serious catastrophe to strike the mental health field since the lobotomy era.’
- (p. 818)

- Source: McNally, R. J. (2005). Debunking myths about trauma and memory. *The Canadian Journal of Psychiatry*, 50(13), 817-822. ([link](#))



**Dr. Richard McNally, PhD**

Full Professor  
Director of Clinical Training  
Department of Psychology  
Harvard University

# BELIEFS IN THE UK TODAY

- **Radcliffe & Patihis (2024). Judges and lawyers' beliefs in repression and dissociative amnesia**
- <https://www.tandfonline.com/doi/full/10.1080/09658211.2024.2383311>
- % agree to some degree with “Repressed memories can be retrieved in therapy accurately”
- UK legal professionals: 39%
- UK therapists: 60%
- UK public: 75%



# Section A: Memory

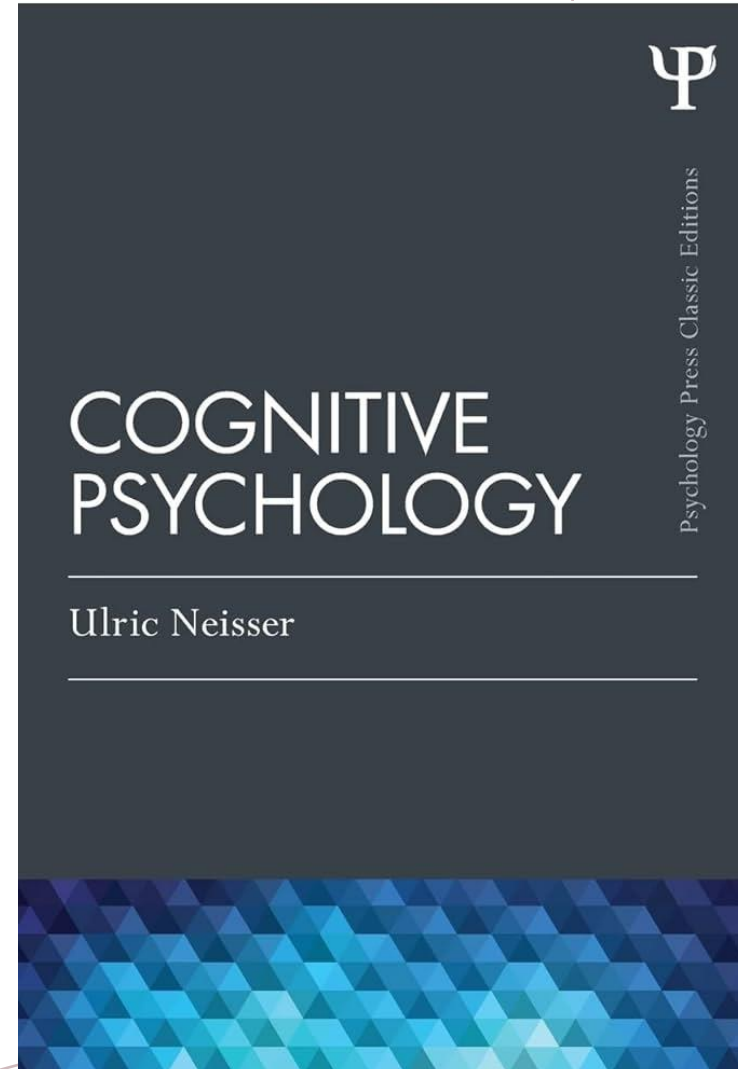
## Part 2: Memory Research

# *COGNITIVE PSYCHOLOGY 1960S ONWARD*

1000s of basic memory experiments

Revealed massive losses of information at each stage of memory

No discovery of blocked memory in any branch or research



# *THE MISINFORMATION EFFECT*

The misinformation effect

Using experiments, we have discovered that misinformation after the event can *cause* false memories

Pioneering research: Loftus & Palmer (1974), Loftus et al (1978)

It replicates over decades: Loftus (2005)

Patihis et al (2014) HSAM

Wylie et al (2015) Older adult meta-analysis

# MISINFORMATION EFFECT

Phase 1



Phase 2

“the  
yield  
sign”

Phase 3

Test

(seminal study: Loftus et al., 1978)

# SOURCE MONITORING FRAMEWORK

- Johnson, M. K., Hashtroudi, S., & Lindsay, D. S. (1993). Source monitoring. *Psychological Bulletin*, 114(1), 3-28.
- There are two parts to an imagining or memory: the detailed information and the source of the information
- However, we sometimes **fail to remember the source** of a piece of information
- This is called a source monitoring error.
- For example, we **imagine** experiencing something one year, and then we misattribute the source of that event to something that **really happened** to us.

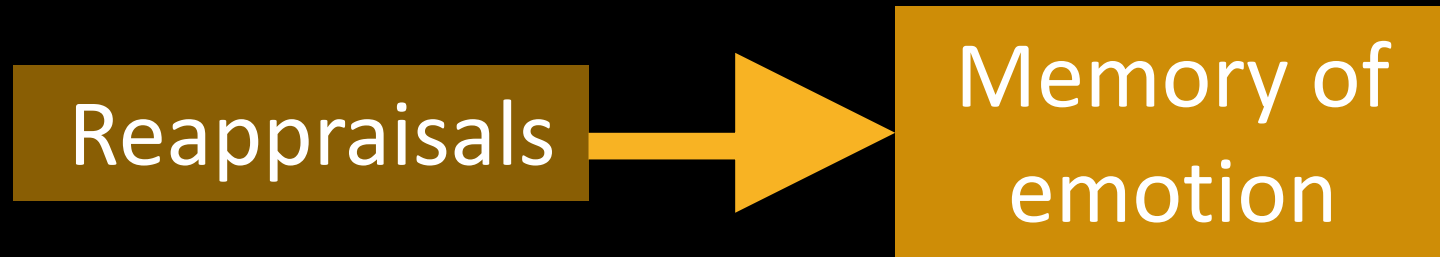
# RICH FALSE MEMORY STUDIES

- **Loftus and Pickrell (1995)**  
Lost in the mall
- accident at a family wedding (**Hyman et al. 1995**),
- victim of a vicious animal attack (**Porter et al. 1999**)
- Scoboria et al. (2017) meta-analysis found 30% had false memories on average
- Murphy et al (2013) Lost in the mall again



# REAPPRAISALS & MEMORY OF EMOTION

- We also know that memory of emotion is malleable according to current appraisals, (Levine, 1997)



Recent research:

- [Patihis et al. \(2019\)](#) and [Patihis & Herrera \(2024\)](#) found memory of childhood emotions towards mother can change with current cognitions
- Patihis & Carter (submitted) memory of first dates



# OTHER MEMORY DISTORTION BRANCHES

- Guided imagery can lead to false memories (Garry et al., 1996)
- Crashing memories (Crombag et al. 1996)
- Hypnosis can lead to false memories (Laurence & Perry, 1983).
- DRM false memory wordlists (Roediger McDermott, 1995)
- EMDR (Houben et al, 2020)
- Dream interpretation (Mazzoni et al., 1999)



# ARE SOME PEOPLE MORE SUSCEPTIBLE TO FALSE MEMORIES?

- Memory reconstructive processes seem common to all (Patihis et al., 2013; Patihis, 2018)
- Nevertheless, those with schizophrenia may be even more susceptible (Mammarella, et al., 2010; Fairfield et al., 2016)
- MS memory impairments (Thornton & Raz, 1997)
- But generally speaking, we all have reconstructive memory

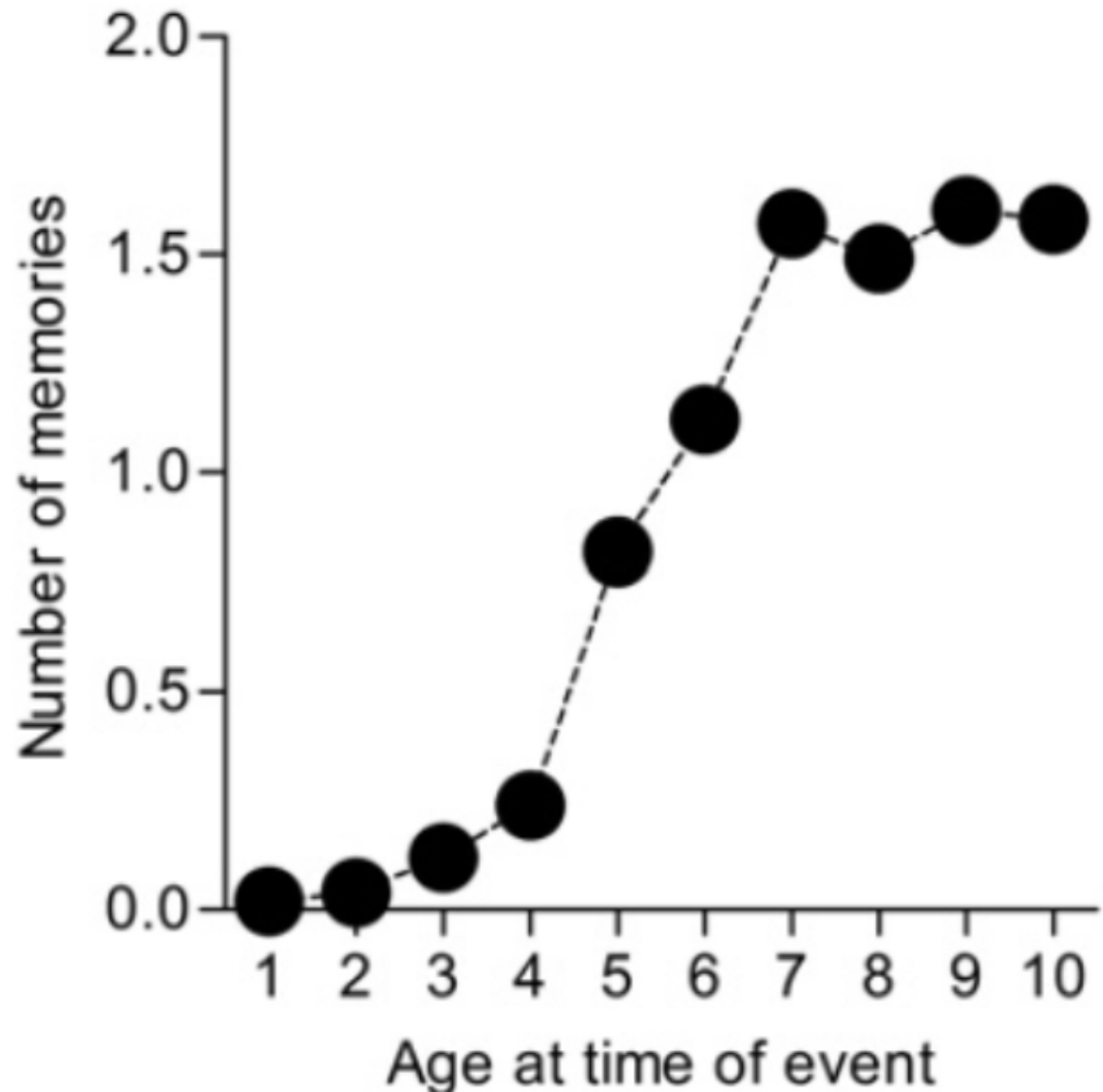
# ALCOHOL AND MEMORY

- Alcohol can dampen memory
- Memory blackout
  - Wetherill & Fromme, 2016
  - Conscious and with volition
  - But alcohol interrupts the consolidation into long term memory



# INFANTILE & CHILDHOOD AMNESIA

- Josselyn & Franklin (2012)



# CHILDREN MORE SUGGESTIBLE

- E.g., Bruck & Ceci (1993)



# SLEEP

- Sleep paralysis research (Sharpless & Doghramji, 2015)
- Sleep deprivation can lead to false memories (Frenda et al., 2014)

# BASIC BIOPSYCHOLOGY RESEARCH

- Consolidation research (McGaugh, 2000)
- Reconsolidation research (Nader et al, 2000)
- Long Term Potentiation (Bliss & Lomo, 1973)
- All converge with other memory research: traumas not blocked, memory fades, memory changes



# Section B: Legal

## Part 3: Precedent Legal Cases

## *McMARTIN CASE (1980S)*

- Features of case:
- Preschoolers highly suggestible
- Multiple false reports



# George Franklin Case (1990s)

- Feature of case: DNA evidence reveals false memories



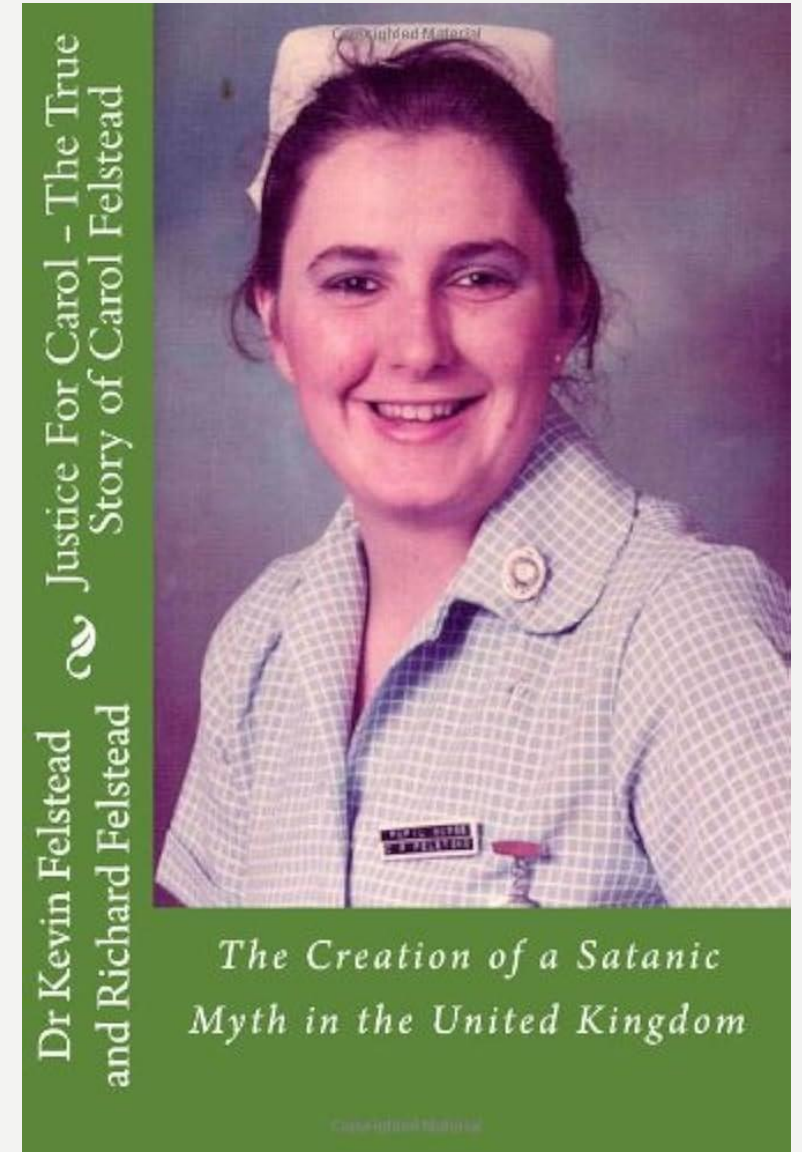
# GARY RAMONA CASE

- *Case feature: accused sued the therapist and won (1994)*



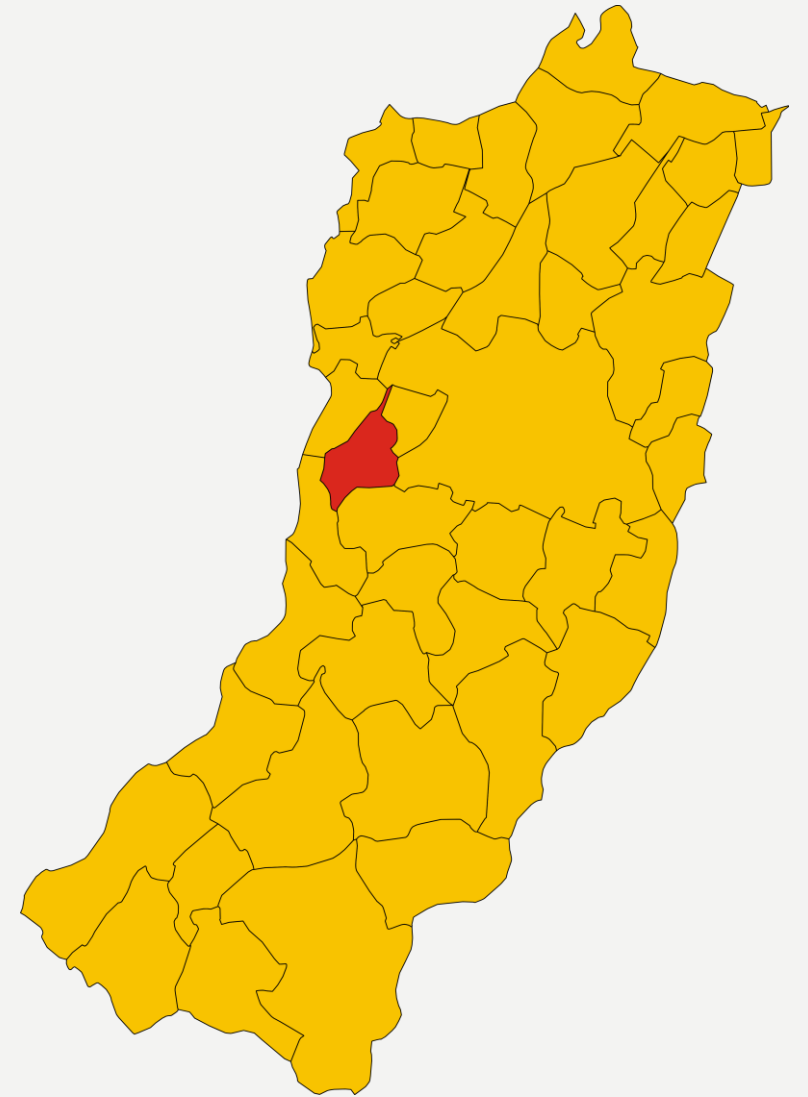
# CAROL FELSTEAD CASE (UK)

- ***Case features***
- ***Demonstratable false memories***
- ***Multiple personalities***



# BIBBIANO CASE (ITALY)

- Case feature
- Therapist found guilty of implanting false memories:
- Dr X got 4 years in prison
- [Otgaar, Curci, Mangiulli, Battista, Rizzotti, Sartori \(2020\) A court ruled case on therapy-induced false memories.](#)



# THOUGHTS AND CONNECTIONS

- Relate to the subtitle of this talk:
- Ruination, Wrongful Convictions, and Unwarranted Family Estrangements
- How many more cases do not make it to court?

# Section B: Legal

## Part 4: UK, US, Legal Systems

*UK*

R v H (2014) tends to prevent  
memory expert witness work  
getting to the jury

A believe the victim movement  
began late 2000s

Accusers cannot be named,  
since 1994



# *USA*

- Easier to get memory expert witness work to the jury
- More open system than UK



# *AUSTRALIA*

Let me ask you!

Is there a bias in Australia, with regards to memory evidence?

If so, do Australian courts tend to:

- A. Favour the defence?
- B. Favour of the prosecution?
- C. Balanced?

# Conclusions

# CONCLUSION

This talk has focused on wrongful convictions, but I am concerned about wrongful acquittals as well.

Digging for better evidence than just memory evidence would reduce both these errors:

		Legal Decision	
		Guilty	Not Guilty
Objective Truth	Guilty	Correct	Wrongful Acquittal
	Not Guilty	Wrongful Conviction	Correct



*THANK YOU*

If time:

Questions and answers

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