

**MIND-WITNESS TESTIMONY: THE
UNRELIABILITY OF FIRST-PERSON
ACCOUNTS IN SEX TRAFFICKING
DISCOURSE**

*Maggie McNeill**

INTRODUCTION: THE FALLIBILITY OF MEMORY 57
I. AN OLD MORAL PANIC IN A NEW GUISE 59
II. THE POWER OF SUGGESTION 70
III. STRANGER DANGER AND THE RESCUE INDUSTRY..... 79
CONCLUSION 88

* Maggie McNeill received her BA (English) from the University of New Orleans in 1987 and her MLIS from Louisiana State University in 1993. After several years as a librarian, economic necessity spurred her to take up sex work; from 1997 to 2006 she worked first as a stripper, then as a call girl and madam. She eventually married her favorite client, retired and moved to a ranch in the rural Upper South. There she writes a daily blog called “The Honest Courtesan” which examines the realities, myths, history, lore, science, philosophy, art, and every other aspect of prostitution; she also reports sex work news, critiques the way her profession is treated in the media and by governments, and is frequently consulted by academics and journalists as an expert on the subject.

INTRODUCTION: THE FALLIBILITY OF MEMORY

Ever since the very earliest judicial trials, eyewitness testimony has been the central and most highly-respected form of evidence; as the renowned memory expert, Dr. Elizabeth Loftus, once said, “there is almost *nothing more convincing* than a live human being who takes the stand, points a finger at the defendant, and says ‘That’s the one!’”¹ But as an increasing body of data shows, this instinct to trust the statements of “live human beings” over all other forms of evidence is at best misguided, and at worst completely counter to the discovery of truth.² Nowhere is this more clearly demonstrated than in the statistics of the Innocence Project, which found that seventy-two percent of the 311 people so far exonerated by DNA evidence were convicted by eyewitness testimony.³ In the author’s previous essay “Imagination Pinned Down,” it is explained this way:

Many people believe that human memory is like a video camera, in that it objectively records perceived events and stores the images and sounds in some sort of indelible medium which can be erased, mislaid or purposefully hidden, but never distorted . . . but . . . [this] simply isn’t true. The human mind doesn’t passively record events as a camera does; memory is an active and dynamic process which retains information by fitting it into schemata, mental frameworks which shape our thinking and give meaning to perceptions. For example, a chess master shown a board in the middle of a real game can quickly memorize the positions of the pieces with a high degree of accuracy and retention, but if shown a board in which the pieces are randomly arranged he cannot memorize the positions any better than anyone else. This is because in the former case the board layout fits neatly into his highly-developed schema of chess rules and strategy, while in the latter case it’s just a bunch of objects with no discernible order or meaning. . . . [The human mind has a powerful tendency to] look for order in even the most chaotic arrangement of objects or events. The same psychological mechanism which causes us to find pictures in Rorschach’s inkblots also causes us to fit memories into the complex web of schemata by which we interpret the world. And just as we ignore those topological elements of a cloud or inkblot which do not fit the meaning our minds have imposed upon

¹ *Watkins v. Sowders*, 449 U.S. 341, 352 (1981) (Brennan, J., dissenting).

² *See, e.g.*, Press Release, Innocence Project, DNA Exonerations Nationwide, http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php# (last visited August 16, 2013).

³ *Id.*

it, so do we forget or distort elements of a memory which fail to conform to the schema in which we have embedded it, or even *invent elements which were not in reality present*, but which the schema predicts should be.⁴

The longer the amount of time between the event to be recalled and the occasion on which the witness is asked to recall it, the greater the distortion tends to be: events that fit the schema are embellished or even fabricated, and those that do not fit are downplayed and eventually forgotten.⁵ But this is only the simplest mechanism by which memory is distorted, and not the one of greatest interest for the specific topic of this paper. While some fraction of the firsthand accounts, related by those who represent themselves as victims of “sex trafficking,” are almost certainly true as related (subject to the usual distortion of time), and another probably larger fraction have been altered by the process of stereotypical conformation described above,⁶ it is likely that the majority of reported narratives are not factually correct in any way, however real they may seem to the self-identified victim. I realize this is an extremely bold and controversial claim; however, in this paper I will present three types of evidence to support it: first, that “sex trafficking” is neither as common as the public has been led to believe, nor as consistently and stereotypically exploitative; second, that there is extremely strong evidence for a mechanism for the formation of absolutely false memories, and that the narratives reported by self-identified “trafficking victims” bear a striking resemblance to past examples that experts and the legal system alike now agree are undoubtedly false; and third, that there are strong sociological, political, and economic reasons for certain parties to encourage the development, dissemination, and public acceptance of these narratives.

⁴ Maggie McNeill, *Imagination Pinned Down*, THE HONEST COURTESAN (June 12, 2012), <http://maggie-mcneill.wordpress.com/2012/06/12/imagination-pinned-down/>. See also JOSHUA FOER, *MOONWALKING WITH EINSTEIN: THE ART AND SCIENCE OF REMEMBERING EVERYTHING* 63 (2011); Henry L. Roediger III & Kathleen B. McDermott, *Creating False Memories: Remembering Words Not Presented in Lists*, 21 J. EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, AND COGNITION 803, 804 (1995).

⁵ Heather M. Kleider et al., *Schema-Driven Source Misattribution Errors: Remembering the Expected from a Witnessed Event*, 22 APPL. COGNIT. PSYCHOL. 1, 3 (2008).

⁶ *Id.*

I. AN OLD MORAL PANIC IN A NEW GUISE

The Age of Steam made it possible for large numbers of people to move about the globe freely in a way previously unprecedented in human history.⁷ While before, long-distance travel was for the few and the migration of large groups was a slow, arduous, overland process, the railroad and the steamship made it relatively inexpensive for individuals seeking a better life to go almost anywhere on Earth where they thought such a better life might be found.⁸ Many of those migrants chose to seek their fortunes in the young and relatively open United States, much to the chagrin of the white Anglo-Saxon Protestants who dominated the country at that time.⁹ And though the Jews, Irish, and Italians all suffered from prevailing racism, they were all at least European and their customs were not quite so alien.¹⁰ When Chinese immigrants began to pour into California, however, it was another matter entirely; white Americans feared these new arrivals whose ways were so different from their own.¹¹ Congress was loath to ban anyone from immigration on the basis of race or national origin, so it chose a stealthier approach:

Both prostitution and polygamy were deeply entrenched practices in Chinese immigrant culture . . . most female Chinese immigrants during this period were either prostitutes or second wives in polygamous marriages . . . The children of these “slave-like” Chinese immigrants would become American citizens, and these practices would thus become part of the fabric of American democracy. To prevent this from happening, it was necessary to prevent Chinese women—especially prostitutes and second wives—from entering the country.

In 1875, Congress passed the first federal restrictive immigration statute: the Page Law . . . [which] banned the immigration of women who had entered into contracts for “lewd and immoral purposes,” made it a felony to import women into the

⁷ See generally Ran Abramitzky et al., *Europe's Tired, Poor, Huddled Masses: Self-Selection and Economic Outcomes in the Age of Mass Migration*, 102 AM. ECON. REV. 1832, 1832, 1836 (2012).

⁸ See generally Charles A. Wills, *European Emigration*, PBS.COM, http://www.pbs.org/destinationamerica/usim_wn.html (last visited August 18, 2013); Abramitzky et al., *supra* note 7, at 1836.

⁹ See generally Abramitzky et al., *supra* note 7.

¹⁰ See generally LEONARD DINNERSTEIN, *THE SUPREME COURT AND THE RIGHTS OF ALIENS* (reprinted from *THIS CONSTITUTION: A BICENTENNIAL CHRONICLE* (1985)).

¹¹ See generally Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 642–43 (2005).

United States for purposes of prostitution, and included enforcement mechanisms specifically targeting Chinese women.¹²

In a way, the law backfired; Chinese men flooded into the country anyway (especially into California and New York), and since there was a shortage of Chinese women, many of them either patronized white prostitutes or set up small brothels and hired them; others married or cohabited with working-class white women.¹³ Needless to say, the self-appointed guardians of public morality were scandalized, and the seeds of moral panic were sown.

The existence of prostitutes required considerable cognitive gymnastics to reconcile with the Victorian view that women were intrinsically asexual.¹⁴ While some writers opined that prostitutes were simply “lazy”¹⁵ and wished to avoid “real work,”¹⁶ the popular scholarly view was that prostitutes represented regressions to a more “primitive” type of woman.¹⁷ “Cesare Lombroso . . . claimed that literally *all* prostitutes . . . had receding foreheads and large jaws, and that some had ‘exaggerated’ growth of the labia or clitoris”¹⁸; he furthermore claimed that this made them more akin to “savages” than their white sisters: “We have only to remember that virility was one of the special features of the savage woman . . . we have portraits of Red Indian and Negro beauties, whom it is difficult to recognise for women, so huge are their jaws and cheekbones, so hard and coarse their features.”¹⁹

This racist view could be used to explain away non-European sex workers or those of nationalities classed as *degraded* (such as the aforementioned Irish, Italians, and Jews); even working-class Anglo-Saxon types could be rationalized as atavisms, as explained above. But as these earnest scholars, and the white middle-class ladies involved in the increasingly popular “rescue” movement,²⁰ discovered to their horror, not all white prostitutes

¹² *Id.* at 643.

¹³ See Mary Ting Yi Lui, *Saving Young Girls from Chinatown: White Slavery and Woman Suffrage, 1910–1920*, 18 J. HIST. SEXUALITY 393, 394–95, 413 (2009).

¹⁴ Maggie McNeill, *Déjà Vu*, THE HONEST COURTESAN (June 25, 2011), <http://maggiemcneill.wordpress.com/2011/06/25/deja-vu/>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ NICKIE ROBERTS, WHORES IN HISTORY: PROSTITUTION IN WESTERN SOCIETY 229 (1992).

²⁰ See generally Lucy Bland, *Purifying’ the Public World: Feminist Vigilantes*

were working-class; some were solidly middle-class girls of “good breeding” and education.²¹ In the United States, where the idea of class was less acceptable, *any* white woman involved in prostitution was apt to induce that same incredulity. As the experimental psychologist N.R.F. Maier expressed it in 1960: “If the facts do not conform to the theory, they must be disposed of”;²² since the observable fact that an appreciable fraction (5% is a typical estimate) of urban-dwelling white women were choosing to take money for sex could not be reconciled with the theory that women were asexual, the facts had to be discarded.²³ Dr. William Acton and others proposed that since *normal* women had no “natural desire,” many prostitutes “had obviously fallen into the hands of ‘professional seducers’, who had manipulated their sexless victims into submission.”²⁴

This narrative of helpless young white women forced into a life of exploitation had tremendous popular appeal; it was heavily promoted from the 1880s on, by organizations like the Salvation Army,²⁵ and found especially fertile soil in the United States, particularly in areas where white prostitutes worked alongside those of other ethnicities or catered to a nonwhite clientele, as in the aforementioned Asian brothels. The myth of “white slavery”²⁶ (as it was then called) also appealed to middle-class discomfort with female autonomy; if women who travelled large distances

in Late Victorian England, 1 WOMEN’S HIST. REV. 397, 400–01, 407 (1992) (discussing middle-class feminists in Victorian England and the circumstances that led to their efforts to “save” prostitutes through religious purity and the repression of prostitution).

²¹ See ROBERTS, *supra* note 19, at 211–12, 218–19 (providing examples of upscale parlor houses where whores were paid very well, enabling a whore to “make her fortune.” Many were educated and showed “elegance and refinement of manner.” Specifically, discussing Cora Pearl, a whore born to middle-class, musician parents, who achieved worldwide fame and fortune and was mistress to Prince Jérôme Bonaparte).

²² N.R.F. Maier, *Maier’s Law*, 15 AM. PSYCHOLOGIST 208, 208 (1960).

²³ See generally Maggie McNeill, *Handy Figures*, THE HONEST COURTESAN (June 11, 2011), <http://maggie-mcneill.wordpress.com/2011/06/11/handy-figures/> (providing various statistics and estimates regarding prostitutes and/or trafficked persons, which lend support for this estimate). See also ROBERTS, *supra* note 19, at 222–25 (discussing Victorian views of women as sexless).

²⁴ ROBERTS, *supra* note 19, at 225.

²⁵ See generally Maxwell Ryan, *Rescue the Perishing*, SALVATIONIST.CA (May 17, 2011), <http://salvationist.ca/2011/05/rescue-the-perishing/> (providing a historical background of the Salvation Army which supports the viewing of many prostitutes as victims in need of rescuing).

²⁶ See generally LAURA MARIA AGUSTÍN, SEX AT THE MARGINS: MIGRATION, LABOUR MARKETS AND THE RESCUE INDUSTRY 119 (2007).

(either to or within the United States, or from Europe to Asia and South America or vice-versa) and made their way by either casual or professional prostitution, could be cast as the victims of evil men, there was no need to rethink the notion of female helplessness.²⁷ Women working as prostitutes far from their original homes did not get there by their own devices and then make the pragmatic decision to do a form of labor which paid vastly more than other “women’s work” and offered much better conditions;²⁸ no, they were *brought* there against their wills and forced into it by evil (but far more competent) men. Like all moral panics, the “white slavery” hysteria thus posed a challenge to prevailing social norms as a threat from outside forces to be fought.²⁹ In truth,

The average whore in the 19th century was a working-class woman who, after sexual initiation around puberty, and casual relationships with partners of her own age and class, chose the sex trade in her late teens because it afforded better pay, easier conditions, and greater autonomy than other forms of female work [P]rostitution for many women was a conscious and positive decision in the face of grinding poverty and lack of opportunity. Far from being “feeble-minded” victims of degradation, the majority of whores used their wits to enter a trade through which they could at least hope to better themselves, dragging themselves out of living conditions which their middle-class judges would never have to experience.³⁰

But to accept that this simple and straightforward pattern was indeed the typical one would have required the slaughter of a number of sacred cows; it’s no wonder that so many people preferred to believe in the exciting melodrama of damsels in distress who could be rescued from moustache-twirling villains by heroic policemen armed with the new anti-prostitution laws (including the infamously-vague³¹ White Slave Traffic Act, better

²⁷ *See id.*

²⁸ See ROBERTS, *supra* note 19, at 231 (discussing the difficulties women faced in obtaining living wages through other employment, and also other factors which may lead to calculated decision to enter into prostitution).

²⁹ *See generally* STANLEY COHEN, *FOLK DEVILS AND MORAL PANICS* 9 (1972) (broadly discussing a wide variety of “moral panics,” defined by that author as occurring when a “condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests”).

³⁰ ROBERTS, *supra* note 19, at 235–36.

³¹ *See* Javier Lavagnino, *What is the Mann Act and is It Still Used by Law Enforcement?*, FINDLAW BLOTTER (April 1, 2009, 10:02 AM), <http://blogs.findlaw.com/blotter/2009/04/what-is-the-mann-act-and-is-it-still-used-by-law-enforcement.html> (discussing the broadness and vagueness of the Act, and ways

known as the Mann Act)³² which swept the United States during the first two decades of the 20th century (most especially in the years 1910–1914).³³ Before that time, most American prostitution laws were municipal ordinances dealing with where, when, and how a professional might ply her trade; after that time, every single state criminalized the act itself, a condition which has persisted to this day (with the exception of the extremely limited form allowed in some counties in the state of Nevada).³⁴

Though it is widely recognized today that “white slavery” was largely a figment of overwrought Progressive-Era imaginations,³⁵ the laws were never repealed and, in recent years, the panic itself has reappeared under a new label—but with the original mythology virtually intact. Prostitution is still dominated by women who choose the trade for its flexibility, high rate of pay and low entry requirements;³⁶ it is still a rational choice born of pragmatic concerns,³⁷ and many sex workers write books and articles, maintain web logs, make public appearances, and otherwise share their views and experiences in the sex trade with the general public (this author is among their number). Nor does this apply only to women born in the global north; researchers such as Kimberly Hoang,³⁸ Rhacel Parrenas,³⁹ Pardis Mahdavi,⁴⁰

in which this has led to abuse of the Act for racial or political purposes).

³² *Historical Timeline of Prostitution*, PROCON.ORG (last updated Jan. 31, 2012, 12:38 PM), <http://prostitution.procon.org/view.resource.php?resourceID=000117>. See also White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910).

³³ See *Historical Timeline of Prostitution*, *supra* note 32 (offering a simple historical timeline of prostitution-related events from 2400 B.C. through the present).

³⁴ See *id.* (providing examples of early ordinances, including one requiring registration and medical examination of prostitutes, and another prohibiting prostitution only on the first floor of buildings).

³⁵ See ROBERTS, *supra* note 19, at 253.

³⁶ Ronald Weitzer, *New Directions in Research on Prostitution*, 43 J. CRIME, L. & SOC. CHANGE 211, 213–14, 218–19 (2005) (discussing different experiences of persons involved in various types of prostitution, asserting that many prostitutes prefer their job to another and take such employment through free will).

³⁷ Maggie McNeill, *Validation*, THE HONEST COURTESAN (May 25, 2011), <http://maggiemcneill.wordpress.com/2011/05/25/validation/> (citing *Affluent, Educated Women May Choose Sexual Prostitution*, UNIVERSITY OF ARKANSAS NEWSWIRE (May 12, 2011), <http://newswire.uark.edu/articles/16181/affluent-educated-women-may-choose-sexual-prostitution>).

³⁸ See U.C. Berkeley Public Affairs, *Berkeley Ph.D. Wins Top Sociology Prize for Dissertation on Sex Work in Vietnam*, UC BERKELEY NEWS CENTER (May 9, 2012), <http://newscenter.berkeley.edu/2012/05/09/best-dissertation-award/>.

³⁹ See Rhacel Salazar Parrenas, *What I Learned by Being a Migrant Sex Worker (Part Two)*, BLOOMBERG BUSINESSWEEK (October 13, 2011), <http://www>.

and most especially Laura Agustín,⁴¹ have studied migrant sex workers in and from the global south for years, and have all demonstrated that the vast majority of migrant sex workers are not the passive victims of trafficking lore, but rational actors consciously choosing the best course from among limited options. Moreover, sex workers in the developing world have formed unions and activist groups, and regularly speak out for themselves;⁴² there have been studies released, commissioned and even authored by the EMPOWER Foundation of Thailand,⁴³ the Sex Workers' Education and Advocacy Taskforce of South Africa,⁴⁴ and Veshya Anyay Mukti Parishad of India.⁴⁵ Yet, all this is completely ignored by those who promote the "sex trafficking" panic; advocates are told they are "not representative" despite their numbers, or they are declared to be suffering from the Marxist construct called "false consciousness," or they are slandered as pimps (this last has been repeatedly used by *New York Times* columnist Nicholas Kristof against Durbar Mahila Samanwaya Committee, a twenty-year-old Indian sex worker rights organization with over 65,000 members).⁴⁶

businessweek.com/news/2011-10-13/what-i-learned-by-being-a-migrant-sex-worker-part-2-parrenas.html.

⁴⁰ Prabha Kotiswaran, *Coerced Victims or Exploited Workers? Prabha Kotiswaran reviews Pardis Mahdavi's New Book "Gridlock: Labor, Migration, and Human Trafficking in Dubai,"* RIGHTSWORK.ORG (Feb. 20, 2012), <http://rightswork.org/2012/02/migration-and-human-trafficking-in-dubai-by-pardis-mahdavi-reviewed-by-prabha-kotiswaran/>.

⁴¹ See AGUSTIN, *supra* note 26.

⁴² Laura Agustín, *Kolkata Sex Worker Collective DMSC Celebrates 20 Years*, THE NAKED ANTHROPOLOGIST (Mar. 8, 2012), <http://www.lauraagustin.com/kolkata-sex-worker-collective-dmsc-celebrates-20-years> (quoting Kolkata Chromosome & Shamik Bag, *The New Rhythms of Sonagachi*, LIVEMINT (Feb. 24, 2012, 9:51 PM), <http://www.livemint.com/Leisure/zc6wRB1Jmjj9cJKrSCLIWP/The-new-rhythms-of-Sonagachi.html>).

⁴³ EMPOWER FOUNDATION, HIT & RUN: THE IMPACT OF ANTI-TRAFFICKING POLICY AND PRACTICE ON SEX WORKER'S HUMAN RIGHTS IN THAILAND (2012), available at <http://maggiemcneill.files.wordpress.com/2012/03/hit-run-by-empower-foundation.pdf>.

⁴⁴ STACEY-LEIGH MANOEK, "STOP HARASSING US! TACKLE REAL CRIME!" A REPORT ON HUMAN RIGHTS VIOLATIONS BY POLICE AGAINST SEX WORKERS IN SOUTH AFRICA (The Women's Legal Centre, 2012); available at <http://maggiemcneill.files.wordpress.com/2012/12/stop-harassing-us.pdf>.

⁴⁵ See Aziza Ahmed & Meena Seshu, "We Have the Right Not to be 'Rescued'...": When Anti-Trafficking Programs Undermine the Health and Well-Being of Sex Workers, 1 ANTI-TRAFFICKING REV. 149, 149-50 (2012).

⁴⁶ See Chromosome & Bag *supra* note 42. See generally Nicholas D. Kristof, *Legalizing Prostitution—A Solution?*, NEW YORK TIMES: ON THE GROUND (Apr. 24, 2007, 11:28 AM), http://kristof.blogs.nytimes.com/2007/04/24/legalizing-prostitution-a-solution/?_r=0&pagewanted=print.

In place of the mundane, credible, and sociologically feasible accounts presented by real sex workers, promoters of “sex trafficking” hysteria, like their predecessors in the “white slavery” panic, prefer to focus on lurid stories told by self-identified “trafficking survivors” and to endlessly repeat grandiose, incredible, and ever-increasing numerical claims which even the more honest trafficking researchers admit are unbelievable.⁴⁷ Because those personal accounts are the primary focus of this paper, an exhaustive debunking of bogus statistics is not within its purview; however, a brief overview of three of the more popular and sensational claims will give some perspective, and support the central premise of this section.

The first such pretense is that “modern-day slavery,”⁴⁸ as trafficking is often called, is a tremendous and growing phenomenon that a noticeable fraction of the minor population of the United States is entrapped within,⁴⁹ and that it is the third (more recently, second) largest criminal enterprise in the world.⁵⁰ The “estimates” produced by different groups vary wildly,⁵¹ from 500,000 people per year worldwide to 4 million per year worldwide; even a single organization’s estimates can oscillate without apparent rhyme or reason from year to year,⁵² though they generally increase. Probably the most popular figure is

⁴⁷ See generally Johnny E. McGaha & Amanda Evans, *Where are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 251–53 (2009).

⁴⁸ Matthew DeLuca, *‘Modern-Day Slavery’: State Dept. Says Millions of Human Trafficking Victims Go Unidentified*, U.S. NEWS ON NBCNEWS.COM (Jun. 19, 2013, 7:07 PM), http://usnews.nbcnews.com/_news/2013/06/19/19042103-modern-day-slavery-state-dept-says-millions-of-human-trafficking-victims-go-unidentified?lite.

⁴⁹ See RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 11–14 (Sept. 19, 2001), available at <http://maggiemcneill.files.wordpress.com/2011/04/estes-weiner-2001.pdf>.

⁵⁰ Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI LAW ENFORCEMENT BULLETIN (Mar. 2011), http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking; William Spindler, *Conference Puts Focus on Human Trafficking, Fastest Growing Criminal Industry*, THE UN REFUGEE AGENCY (Oct. 11, 2010), <http://www.unhcr.org/print/4cb315c96.html>.

⁵¹ *Worldwide Trafficking Estimates by Organizations Data Comparison Sheet #1*, UNESCO TRAFFICKING PROJECT (Sep. 2004), available at <http://maggiemcneill.files.wordpress.com/2011/06/trafficking-estimate-comparison.jpg>.

⁵² See Ronald Weitzer, *Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation*, 101 J. CRIM. L. & CRIMINOLOGY 1337, 1349 (2012).

27,000,000 slaves worldwide, a figure derived by Kevin Bales, of Free the Slaves, from media reports and NGO claims, weighted by his own assessment of their reliability.⁵³ Another popular claim is that 100,000–300,000 children are trafficked for sex in the United States each year;⁵⁴ this is actually a corruption of the statistically-dubious claim made by Richard Estes and Neil Weiner that roughly 100,000–300,000 children and youth are at risk for sexual exploitation,⁵⁵ which was explained in the author's earlier essay, "A Tale That Grew in the Telling,"⁵⁶ thus:

[T]his guess is for BOTH sexes, for "children and youth" (not just children), and most importantly represents those at risk of *some* form of "exploitation", not currently involved in one *specific* form (sex trafficking). . . . Estes and Weiner rank types of "exploitation" by frequency, and . . . domestic and international "sex trafficking" are second and third from the bottom. Even these highly biased and excitable gentlemen believed that "sex trafficking" affected only a tiny part of their "youth at risk". The categories are, in order from most common to least common, sexual molestation by acquaintances, sexual molestation by family members, pornography (including, apparently, just *looking* at porn), gay sex, stripping, sexual contributions by girls to gangs, pimped prostitution (for girls) and entrepreneurial prostitution (for boys).⁵⁷

It is unclear exactly what Estes and Weiner meant by "youth," but, given they included legally employed strippers in their youth at risk, it seems likely their cutoff was twenty-one.⁵⁸ Furthermore, one criterion of young people who were declared at risk was residence within a short drive of the Mexican or Canadian border.⁵⁹ Yet, as broad as this net was, it cannot

⁵³ Maggie McNeill, *Held Together with Lies*, THE HONEST COURTESAN (Apr. 2, 2012), <http://maggiecmneill.wordpress.com/2012/04/02/held-together-with-lies/> (citing Kevin Bales, *Defining and Measuring Modern Slavery*, FREE THE SLAVES (2007), <http://www.freetheslaves.net/Document.Doc?id=21> (This number represents people enslaved in all forms of slavery worldwide)).

⁵⁴ Bridgette Carr, *Sex Trafficking: An American Problem Too*, CNN.COM (Nov. 25, 2009, 6:58 AM), <http://www.cnn.com/2009/OPINION/11/25/carr.human.trafficking/index.html?s=PM:OPINION>.

⁵⁵ ESTES & WEINER, *supra* note 49, at 11–14.

⁵⁶ Maggie McNeill, *A Tale That Grew in the Telling*, THE HONEST COURTESAN (Apr. 2, 2011), <http://maggiecmneill.wordpress.com/2011/04/02/a-tale-that-grew-in-the-telling/>.

⁵⁷ *Id.*

⁵⁸ ESTES & WEINER, *supra* note 49, at 7.

⁵⁹ Martin Cizmar et al., *Real Men Get Their Facts Straight*, VILLAGE VOICE (June 29, 2011), <http://www.villagevoice.com/2011-06-29/news/real-men-get-their-facts-straight-sex-trafficking-ashton-kutcher-demi-moore/>.

compare to its misquotation by myth-promoters.

A similar process of distortion seems to have produced the third largest criminal enterprise claim,⁶⁰ which Ann Jordan suggests is likely a distortion of the estimate that *smuggling* is.⁶¹ This, and the distortions discussed in the paragraph above, is further complicated by the fact that there is no standard international definition of “trafficking”:

[M]any countries lump smuggling and illegal migration into the trafficking category, while others separate the figures. Independent analysts concur with these assessments, citing the lack of a standard definition of “victims” as a basis for estimates, the “lack of methodological transparency” and source documentation for the figures, and the practice of extrapolating from a few cases of identified victims who may be quite unrepresentative of the victim population. In some reports, all “migrant sex workers are defined as trafficking victims regardless of consent and conditions of labour, while other reports emphasize abusive conditions of employment or deceptive recruitment policies.”

We are left with a hodgepodge of numbers that hardly lend themselves to evidence-based policymaking.⁶²

Yet, despite this, sloppy or agenda-driven researchers will try to compare apples to oranges, drawing grand conclusions from data that is hardly credible, much less comparable.⁶³

The second sensational and oft-repeated claim is that “the average age of entry into . . . prostitution is 13–14 . . . ”⁶⁴ Anyone with the most rudimentary degree of mathematical literacy can see this is quite impossible. Roughly speaking, it would mean that for every woman who debuted at twenty-five—a more

⁶⁰ Ann Jordan & Lynn Burke, *Is Human Trafficking Really the Third Most Profitable Business for Organized Crime?*, RIGHTS WORK (March 1, 2011), <http://rightswork.org/2011/03/is-human-trafficking-really-the-third-most-profitable-business-for-organized-crime-3/>.

⁶¹ *Id.*

⁶² Weitzer, *supra* note 52, at 1353–54 (footnotes omitted) (quoting Elzbieta M. Gozdziaik & Elizabeth A. Collett, *Research on Human Trafficking in North America: A Review of Literature*, DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY 108 (Offprint of 43 ½ INT’L MIGRATION (Special Issue)) (2005)).

⁶³ Tim Worstall, *Legal Prostitution and Sex Trafficking: From the Annals of Bad Economic Research*, FORBES (June 15, 2013), <http://www.forbes.com/sites/timworstall/2013/06/15/legal-prostitution-and-sex-trafficking-from-the-annals-of-bad-economic-research/>.

⁶⁴ Melissa Farley, *Myths and Facts About Trafficking for Legal and Illegal Prostitution*, PROSTITUTION RESEARCH (March 2009), available at <http://www.prostitutionresearch.com/pdfs/Myths%20&%20Facts%20Legal%20&%20Illegal%20Prostitution%203-09.pdf>.

credible estimate of the average⁶⁵—another debuted at one.⁶⁶ This rather lurid disinformation is bruited about constantly, sometimes in more construed forms such as “[t]he average age of sex workers is . . . 12–14.”⁶⁷ Unpublished research by Mary Setterholm⁶⁸ traced the origin of the myth to a 1982 article by M.H. Silbert and A.M. Pines, which stated that the average age of first (unpaid) sex for the group of underage prostitutes examined by the study was 13.5; the average age at which these young women actually became prostitutes was 16.1.⁶⁹ Anti-prostitution researcher Melissa Farley appears to have willfully conflated the figures for a propaganda effect (a practice which was among the ethical violations listed in a 2011 complaint to the American Psychological Association (APA) about her).⁷⁰ But even Farley only claimed that the age of debut for underage prostitutes was thirteen;⁷¹ the legend that it was the average for all prostitutes appears to have resulted from the distorting effect of repetition.⁷²

The third of these popular myths is that a very large number (typically 40,000) of prostitutes—usually said to be trafficked—follow major sporting events around the world. The myth first prominently appeared in reference to the 2006 World Cup in Germany,⁷³ though it had occurred in a more limited form in connection with the Athens Olympics of 2004,⁷⁴ and despite

⁶⁵ See generally Maggie McNeill, *The Law of Averages*, THE HONEST COURTESAN (Nov. 27, 2011), <http://maggiemcneill.wordpress.com/2011/11/27/the-law-of-averages/> (discussing ways in which the estimate of 13 as the average of entry into prostitution appears flawed).

⁶⁶ *Id.*

⁶⁷ Lauren Souch, *Walk to End Human Sex Trafficking Draws a Crowd*, BLOGTO (Sept. 20, 2011), http://www.blogto.com/city/2011/09/walk_to_end_human_sex_trafficking_draws_a_crowd/.

⁶⁸ See Maggie McNeill, *The Source*, THE HONEST COURTESAN (November 27, 2012), <http://maggiemcneill.wordpress.com/2012/11/27/the-source/> (discussing the results of this research).

⁶⁹ Mimi H. Silbert & Ayala M. Pines, *Entrance into Prostitution*, 13 YOUTH & SOC'Y 471, 483 (1982).

⁷⁰ Complaint Against Melissa Farley by Calum Bennachie to the APA (2011), available at <http://maggiemcneill.files.wordpress.com/2011/07/complaint-to-apare-melissa-farley.pdf>.

⁷¹ Farley, *supra* note 64.

⁷² See, e.g., *Frequently Asked Questions*, CONN. DEP'T OF CHILD. AND FAMILIES, <http://www.ct.gov/dcf/cwp/view.asp?a=4127&Q=492900#3> (last modified 12/13/2012 10:28:46 AM).

⁷³ ANN JORDAN, PROGRAM ON HUMAN TRAFFICKING AND FORCED LABOR, FACT OR FICTION: WHAT DO WE REALLY KNOW ABOUT HUMAN TRAFFICKING? 3 (2011), available at <http://rightswork.org/wp-content/uploads/2012/05/Issue-Paper-3.pdf>.

⁷⁴ BOWEN & SHANNON FRONTLINE CONSULTING, SEX INDUSTRY WORKER SAFETY ACTION GROUP, HUMAN TRAFFICKING, SEX WORK SAFETY AND THE 2010 GAMES:

statements from the German Police and a European Union report debunking the claim,⁷⁵ it has been repeated at nearly every large sporting event since—from the Vancouver⁷⁶ and London Olympics⁷⁷ to several Super Bowls.⁷⁸ Despite the lack of any evidence whatsoever,⁷⁹ police and other officials insist that past events saw a tremendous surge in “human trafficking,”⁸⁰ and tough-talking “trafficking” hype became a regular part of the buildup to any reasonably large American sporting event, including the Kentucky Derby,⁸¹ Formula 1,⁸² and the Dixie Rodeo.⁸³

What all of these myths have in common is that one does not need access to research to refute them; basic mathematical literacy will suffice. Promoters of the myth ask us to believe that

ASSESSMENTS AND RECOMMENDATIONS 17 (2009), available at <http://maggie-mcneill.files.wordpress.com/2011/02/humanc2a0traffickingc2a0-sex-c2a0work-c2a0safety-c2a0and-c2a0the-c2a02010-gamesc2a0.pdf> (hereinafter BOWEN AND SHANNON).

⁷⁵ See COUNCIL OF THE EUR. UNION, EXPERIENCE REPORT ON HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION AND FORCED PROSTITUTION IN CONNECTION WITH THE 2006 FOOTBALL WORLD CUP IN GERMANY (German Delegation, trans., 2007), available at <http://maggie-mcneill.files.wordpress.com/2012/04/eu-trafficking-report-on-world-cup-2006.pdf>.

⁷⁶ BOWEN & SHANNON, *supra* note 74, at 69–70.

⁷⁷ Robin de Peyer, *Olympic Sex Trafficking Fears Cost Police £500,000 - Assembly Member*, THE DOCKLANDS & EAST LONDON ADVERT. (January 16, 2013), http://www.eastlondonadvertiser.co.uk/news/olympic_sex_trafficking_fears_cost_police_500_000_assembly_member_1_1795600.

⁷⁸ Maggie McNeill, *Learning Curve*, THE HONEST COURTESAN (Feb. 25, 2013), <http://maggie-mcneill.wordpress.com/2013/02/25/learning-curve/>.

⁷⁹ Julie Ham, *What's the Cost of a Rumour? A Guide to Sorting Out the Myths and the Facts About Sporting Events and Trafficking*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN (2011), available at <http://www.gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf>.

⁸⁰ Maggie McNeill, *Hidden Hordes of Hookers*, THE HONEST COURTESAN (Nov. 23, 2010), <http://maggie-mcneill.wordpress.com/2010/11/23/hidden-hordes-of-hookers/> (citing Jeff Mosier, *State, FBI Commit Staff to Fight Sex Trade During Super Bowl*, DALLAS NEWS (Nov. 18, 2010), <http://www.dallasnews.com/news/community-news/arlington/headlines/20101118-state-fbi-commit-staff-to-fight-sex-trade-during-super-bowl.ece>).

⁸¹ Joe Arnold, *LMPD: Prostitution Triples, Sex Trafficking a Concern at Derby Time*, WHAS11.COM (Apr. 29, 2013, 6:18 PM), <http://www.whas11.com/news/local/LMPD-Prostitution-triples-sex-trafficking-a-concern-at-Derby-time-205301341.html>.

⁸² Jade Mingus, *Expected Rise in Human Trafficking for Formula 1*, KVUE.COM (Sept. 26, 2012, 6:26 PM), <http://www.kvue.com/news/Expected-rise-in-human-trafficking-for-Formula-One-171418201.htm>.

⁸³ Howard Ballou, *Prostitutes from Other States Hitting Jackson*, MS NEWS NOW (Feb. 9, 2011, 10:08 PM), <http://www.msnewsnow.com/Global/story.asp?S=14002431>.

a minimum of 100,000 teenage girls have been “trafficked” into the sex trade every year since the panic began around 2004,⁸⁴ a figure which would now represent some four percent of school aged girls if it were true.⁸⁵ The absurdity of the “average debut at 12–14” claim is evident, and it strains credulity to believe that “gypsy harlots” could effectively compete with local sex workers given the sky-high lodging costs—and frequent shortages—associated with major sporting events.⁸⁶ These narratives are the stuff of belief, not rational analysis; they are based on faith rather than facts. But as we shall see in Part II, that is no impediment to widespread acceptance of them.

II. THE POWER OF SUGGESTION

Dr. Elizabeth Loftus, the memory expert mentioned at the beginning of this paper, began her pioneering work in the early 1970s with a series of very simple experiments demonstrating how memories could be “reprogrammed”:

[W]hen people who witness an event are later exposed to new and misleading information about it, their recollections often become distorted. In one example, participants viewed a simulated automobile accident at an intersection with a stop sign. After the viewing, half the participants received a suggestion that the traffic sign was a yield sign. When asked later what traffic sign they remembered seeing at the intersection, those who had been given the suggestion tended to claim that they had seen a yield sign. Those who had not received the phony information were much more accurate in their recollection of the traffic sign In [later] studies, people “recalled” a conspicuous barn in a bucolic scene that contained no buildings at all, broken glass and tape recorders that

⁸⁴ Adam Mazmanian, *CTO Talks Tech Role in Fighting Sex Trade*, FCW (May 2, 2013), <http://few.com/articles/2013/05/02/sex-trafficking-todd-park.aspx>. See Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25, 2004, § 6; Emi Koyama, *Trade Secrets*, BITCH MAGAZINE, <http://bitchmagazine.org/article/trade-secrets> (last visited Sept. 3, 2013) (author is using 2004 as an estimated start date based on her own research primarily focusing on the discussions after *The Girls Next Door* article was published).

⁸⁵ Maggie McNeill, *That Was the Week That Was #319*, THE HONEST COURTESAN (May 10, 2013), <http://maggiemcneill.wordpress.com/2013/05/10/that-was-the-week-that-was-319/#tale>; Mazmanian, *supra* note 84. See *Age and Sex Composition in the United States: 2011*, U.S. CENSUS BUREAU, available at <http://www.census.gov/population/age/data/2011comp.html> (last updated Nov. 28, 2012) (four percent is a rough estimate).

⁸⁶ Brooke Magnanti, *London 2012: Will the Olympics Bring More Prostitutes?*, THE SEX MYTH (June 8, 2012), <http://sexonomics-uk.blogspot.com/2012/06/london-2012-will-olympics-bring-more.html>.

were not in the scenes they viewed, a white instead of a blue vehicle in a crime scene, and Minnie Mouse when they actually saw Mickey Mouse.⁸⁷

The notion that this does indeed happen is uncontroversial among psychologists, and is even becoming common knowledge within the justice system and police departments.⁸⁸ The numerous DNA exonerations of people who were convicted on eyewitness testimony⁸⁹ demonstrate that such identifications are highly unreliable no matter how certain the witnesses claim to be. There are many factors that can distort memory:

[V]iolence, stress, and the presence of a weapon during an incident actually weaken memory. Racial differences between the witness and the suspect can impair identifications. Unconscious transference, or confusing someone seen in one place with someone seen in another place, is common. Identification can also be impaired by how long the witness is exposed to the suspect, the delay between the incident and the identification, and post-event information, such as feedback from the police or other witnesses.⁹⁰

The last factor is the most crucial for purposes of this discussion—after-the-fact input from other people, either peers or authority figures, can distort memories so powerfully that after many repetitions the false memory will actually be much more powerful than real ones from the same time frame.⁹¹ When confronted with proof of the falsity of their memories, some people have even insisted that such proof is either mistaken or manufactured.⁹² Some police departments have changed their lineup procedures so as to eliminate the possibility of detectives either consciously or unconsciously suggesting a “correct”

⁸⁷ Elizabeth F. Loftus, *Creating False Memories*, SCI. AM., Sept. 1997, at 71.

⁸⁸ See generally Elizabeth F. Loftus, *Planting Misinformation in the Human Mind: A 30-Year Investigation of the Malleability of Memory*, 12 LEARN. MEM. 361 (2005) (discussing how thirty years of research has shaped our understanding of the misinformation effect). See, e.g., Erica Goode & John Schwartz, *Police Lineups Start to Face Fact: Eyes Can Lie*, N.Y. TIMES, Aug. 29, 2011, at A1.

⁸⁹ Innocence Project, *supra* note 2.

⁹⁰ Aileen P. Clare, *Is Eyewitness Testimony Inherently Unreliable?*, A.B.A. (May 28, 2012), <http://apps.americanbar.org/litigation/committees/trialevidence/articles/winterspring2012-0512-eyewitness-testimony-unreliable.html>.

⁹¹ See, e.g., Elizabeth F. Loftus, *Make-Believe Memories*, 58 AM. PSYCHOL. 864, 871 (2003).

⁹² *Interview by Frontline, PBS with Elizabeth F. Loftus, Ph.D.*, PBS.COM, <http://www.pbs.org/wgbh/pages/frontline/shows/dna/interviews/loftus2.html> (last visited Aug. 25, 2013).

answer,⁹³ due to mounting evidence that such suggestion occurs on a regular basis.⁹⁴ But even if there has been no external interference at all, the mere repetition of a distorted memory has the effect of strengthening it:

Memory is affected by retelling, and we rarely tell a story in a neutral fashion. By tailoring our stories to our listeners, our bias distorts the very formation of memory—even without the introduction of misinformation by a third party. The protections of the judicial system against prosecutors and police “assisting” a witness’s memory may not sufficiently ensure the accuracy of those memories. Even though prosecutors refrain from “refreshing” witness A’s memory by showing her witness B’s testimony, the mere act of telling prosecutors what happened may bias and distort the witness’ memory

[P]articipants [in a study] were asked to play prosecutors presenting a summation to the jury. Participants first read a murder story, where two men were suspects. Participants were then asked either to prepare a neutral recounting of all they remembered about one suspect, or to prepare a summation to the jury about one suspect. Later, participants were asked to recall the original story. Participants who wrote summations recalled more incriminating details and wrongly attributed details among suspects more often than participants who originally wrote a neutral recounting.⁹⁵

The retelling of stories within a group, biased toward a particular view, produces an even more pronounced distortion, thanks to a psychological mechanism called group polarization:

When opponents of a hazardous waste site gather to talk about it, they will become convinced the site is more dangerous than they originally believed. When a woman who believes breast implants are a threat gets together with women who feel the same way, she and all the women in the meeting are likely to leave believing they had previously underestimated the danger. The dynamic is always the same. It doesn’t matter what the subject under discussion is. It doesn’t matter what the particular views are. . . .

In part, this . . . stems from our tendency to judge ourselves by comparison with others. . . . Inevitably, most people in the group . . . do not hold the most extreme opinion, which suggests they are less correct than others. And so they become more extreme. . . . [W]hen [psychologists] put people in groups and had

⁹³ See Clare, *supra* note 90; Goode & Schwartz, *supra* note 88.

⁹⁴ Clare, *supra* note 90.

⁹⁵ Laura Engelhardt, *The Problem with Eyewitness Testimony*, 1 STAN. J. LEGAL STUD. 25, 27–28 (1999).

them state their views without providing reasons why . . . polarization still followed.

[I]nformation that is pooled . . . [in such groups] is [also] deeply biased, making it ideal for radicalizing opinions. . . . [P]olarization is based on information-sharing . . . it does not require . . . a face-to-face conversation—a fact amply demonstrated every day on countless political blogs.⁹⁶

Obviously this dynamic tends to intensify moral panics but, because it alters the mental schemata of those involved, it also affects the process of stereotypic conformation discussed in the introduction: memories which fit the individual's preconceptions are reinforced, and those memories which do not are discarded, *regardless of whether those memories are true or false.*⁹⁷ And again, the longer the amount of time between the event to be recalled and the occasion on which the witness is asked to recall it, the greater the distortion tends to be:⁹⁸ many sex-trafficking *survivor* narratives are represented as having taken place years or even decades in the past.⁹⁹

But, the examples given so far are only distortions of existing memory; is it possible to actually fabricate a memory of something that did not happen? Here is Elizabeth Loftus again:

We asked our subjects . . . to try to remember childhood events that had been recounted to us by a . . . close relative. We prepared a booklet for each participant containing one-paragraph stories about three events that had actually happened to him or her and one that had not. We constructed the false event using information about a plausible shopping trip provided by a relative, who also verified that the participant had not in fact been lost at about the age of five. The lost-in-the-mall scenario included the following elements: lost for an extended period, crying, aid and comfort by an elderly woman and, finally, reunion with the family.

After reading each story in the booklet, the participants wrote what they remembered about the event. If they did not remember it, they were instructed to write, "I do not remember this." In two follow-up interviews, we told the participants that we were

⁹⁶ DANIEL GARDNER, *THE SCIENCE OF FEAR* 114–15 (2008).

⁹⁷ See Kleider, *supra* note 5, at 14.

⁹⁸ *Id.* at 3, 9, 16.

⁹⁹ See *Theresa Flores*, TRAFFICKFREE, <http://www.traffickfree.com/Bio.html> (last visited Aug. 27, 2013); Michelle Bearden, *Group to Fight Sex Trafficking at RNC*, THE TAMPA TRIBUNE (Aug. 6, 2012), <http://tbo.com/ap/politics/group-to-fight-sex-trafficking-at-rnc-455673>; *Woman 'Raised by Monkeys' Brings Mowgli to Life*, THE TIMES OF INDIA (Oct. 23, 2012), http://articles.timesofindia.in/times.com/2012-10-23/science/34679069_1_black-doll-mowgli-british-woman.

interested in examining how much detail they could remember and how their memories compared with those of their relative. The event paragraphs were not read to them verbatim, but rather parts were provided as retrieval cues. The participants recalled something about 49 of the 72 true events (68 percent) immediately after the initial reading of the booklet and also in each of the two follow-up interviews. After reading the booklet, seven of the 24 participants (29 percent) remembered either partially or fully the false event constructed for them, and in the two follow-up interviews six participants (25 percent) continued to claim that they remembered the fictitious event.¹⁰⁰

Other researchers demonstrated similar results in implanting memories of childhood birthday parties or overnight hospital stays, which never occurred.¹⁰¹ Obviously, experimental ethics prohibit allowing the individuals to continue believing these false memories after the completion of the experiment, but there is absolutely nothing to suggest that the memories would not strengthen with repetition just as the merely distorted ones do. Furthermore, it has been demonstrated that actively *imagining* a fictional event strengthens the false memories so produced;¹⁰² this is especially troubling considering that both psychological and law enforcement officials who wish to create such a memory (albeit while convincing themselves that they are simply “helping” their subjects to “remember”) often used guided imagination in their efforts:

[W]hen trying to obtain a confession, law officers may ask a suspect to imagine having participated in a criminal act. Some mental health professionals encourage patients to imagine childhood events as a way of recovering supposedly hidden memories.

Surveys of clinical psychologists reveal that 11 percent instruct their clients to “let the imagination run wild,” and 22 percent tell their clients to “give free rein to the imagination.” Therapist Wendy Maltz, author of a popular book on childhood sexual abuse, advocates telling the patient: “Spend time imaging that you were sexually abused, without worrying about accuracy, proving anything, or having your ideas make sense Ask yourself . . . these questions: What time of day is it? Where are you? Indoors or outdoors? What kind of things are happening? Is there one or more person with you?” Maltz further recommends that therapists

¹⁰⁰ Loftus, *supra* note 87, at 72.

¹⁰¹ *Id.* at 73.

¹⁰² *Id.* at 74.

continue to ask questions such as “Who would have been likely perpetrators? When were you most vulnerable to sexual abuse in your life?”¹⁰³

Given what we know about the power of suggestion on memory, there is little doubt that such efforts actually create new, false memories based on the content of the imagination exercise, rather than uncovering supposedly “repressed” memories. In some people, the memories need not even be plausible; Loftus mentions the case history of a woman who was convinced by her therapist that as a child she had been in a Satanic cult, eaten babies, had sex with animals, and watched a friend murdered before her eyes; another “remembered” being regularly raped by her father while her mother held her down, resulting in two pregnancies the parents forced her to abort herself (she was later medically demonstrated to be a virgin who had never been pregnant).¹⁰⁴ The “Satanic Panic”¹⁰⁵ of the 1980s produced literally hundreds of such examples, such as the claims by children in the McMartin Preschool case that they had seen people fly under their own power,¹⁰⁶ been molested in a secret room reached by underground tunnels,¹⁰⁷ dug up coffins and mutilated corpses,¹⁰⁸ been attacked by lions,¹⁰⁹ had drills inserted under their arms,¹¹⁰ travelled in a plane to see “goatmen,”¹¹¹ and been sodomized by actor Chuck Norris.¹¹² Because the case was so sensational and so highly publicized, considerable research has been done on the methods used to produce these outrageously false memories:

¹⁰³ *Id.* at 73–74 (alteration in original).

¹⁰⁴ *Id.* at 71.

¹⁰⁵ Nadja Schreiber et al., *Suggestive Interviewing in the McMartin Preschool and Kelly Michaels Daycare Abuse Cases: A Case Study*, 1 *SOC. INFLUENCE* 16, 16 (2006).

¹⁰⁶ Katherine Ramsland, *The McMartin Daycare Case—Chapter 8 The Rest of the Case*, CRIME LIBRARY, http://www.trutv.com/library/crime/criminal_mind/psychology/mcmartin_daycare/8.html (last visited Aug. 27, 2013); Katherine Ramsland, *The McMartin Daycare Case—Chapter 3 Hysteria Builds*, CRIME LIBRARY, http://www.trutv.com/library/crime/criminal_mind/psychology/mcmartin_daycare/3.html (last visited Aug. 27, 2013) [hereinafter Ramsland Chapter 3].

¹⁰⁷ Ramsland Chapter 3, *supra* note 106.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Katherine Ramsland, *The McMartin Daycare Case—Chapter 5 Shoring Up the Case*, CRIME LIBRARY, http://www.trutv.com/library/crime/criminal_mind/psychology/mcmartin_daycare/5.html (last visited Aug. 27, 2013).

Reinforcement by an interviewer can . . . includ[e] praising or otherwise rewarding the child for saying what the interviewer wants . . . giving the child negative feedback for failing to say what the interviewer wants . . . , or . . . indicating that praise, rewards, or negative consequences are forthcoming, depending on what the child says.

[R]epetition of questions within and between interviews . . . can . . . [indicate] to a child that previous answers to a question were unacceptable. . . .

[C]o-witness information involves telling a . . . witness what other witnesses have supposedly already said or observed. It is well established that such “social consensus” . . . can create conformity pressure to “go along” with other witnesses and induce stereotypes that influence responses to other questions.

[I]nviting speculation involves asking a child to speculate whether a particular event may have or could have happened, or to pretend that it has happened.

[I]ntroducing new information involves introducing new post-event information (either accurate or inaccurate) into an interview via a question or a statement, even though that information was not previously mentioned by the child¹¹³

It must be pointed out that the power of such techniques can be inferred by the fact that even those who should well understand the unlikelihood of some such statements, the wild implausibility and absolute physical impossibility of others, can nonetheless get caught up in the fervor, and not only accept, but aggressively champion the supposed truth of the fantasy narrative. For example, an archeologist, hired by McMartin parents who refused to accept that their children had *not* been horribly abused, interpreted the remains of a rural trash pit from the 1940s as evidence of the supposed tunnels;¹¹⁴ Massachusetts Attorney General Martha Coakley has strongly opposed expungement of the criminal record of Bernard Baran, whose 1985 conviction was overturned in 2006 because of the same sort of coerced testimony as in the McMartin case;¹¹⁵ and Nassau County District Attorney Kathleen Rice continues to adamantly insist that Jesse Friedman be treated as a sex offender,¹¹⁶ despite the fact that the exact

¹¹³ Schreiber, *supra* note 105, at 21–22 (italics in original).

¹¹⁴ See W. Joseph Wyatt, *What Was Under the McMartin Preschool? A Review and Behavioral Analysis of the “Tunnels” Find*, 12 BEHAV. AND SOC. ISSUES 29, 29, 31, 33 (2002).

¹¹⁵ Maggie McNeill, *Absolute Corruption*, THE HONEST COURTESAN (Mar. 19, 2013), <http://maggiemcneill.wordpress.com/2013/03/19/absolute-corruption/>.

¹¹⁶ See Peter Applebome, *Friedman’s Sexual Abuse Conviction in 1988 Was*

same techniques produced absurd claims of sodomy during leapfrog games and a child being molested an average of six times in every ninety minute period they spent with him.¹¹⁷

The interview techniques which distort or create memories are closely related to the group polarization discussed earlier; moral panics and false memories are really just two aspects of the same phenomenon. In her book, *Hystories: Hysterical Epidemics and Modern Culture*, Elaine Showalter further links them to fad illnesses and UFO abduction experiences:

When anxiety mounts on a cultural scale, collective narratives . . . begin to emerge and build. Whole masses of people develop common physical symptoms that she believes are emotional in origin. The form these symptoms take depends on what kinds of behavior are acceptable within a given culture — and then promoted by journalists, therapists, physicians, drug companies, or whoever else might benefit from them.

Showalter places chronic fatigue and gulf war syndromes in the same category as alien abduction fantasies, multiple personality disorder and satanic ritual abuse. They are culturally fashionable narratives that blame an external source. Not that she means this in a disparaging way . . . the symptoms are real. They just aren't attributable to aliens, abusers, chemicals, or viruses.

[E]ach of these seemingly diverse narratives, according to Showalter, exhibit similar plot lines.

As people join these groups, they gain further exposure to the accepted beliefs. "Statistically, the longer they stay in the groups," says Showalter, "the less likely it is that they will be cured." They also grow more sensitized to those who contradict them — people who then become The Enemy. "There's always an enemy or a conspiracy against them."¹¹⁸

While the connection to psychosomatic illness is far beyond the scope of this paper, the amplification and refinement of the shared narrative via group polarization is seen again here, and the connection to UFO experience is an important one. Though most people perhaps view those who believe they have been abducted by extraterrestrials as not quite in possession of all their faculties, in truth, the memories of their experiences are

Justified, a Report Says, N.Y. TIMES, June 25, 2013, at A21.

¹¹⁷ Nick Pinto, *Uncapturing the Friedmans: Jesse Friedman Spent 13 Years in Prison as a Notorious Child Rapist—He May Soon Get an Apology*, THE VILLAGE VOICE, May 29, 2013, at 10.

¹¹⁸ Katherine Ramsland, *The McMartin Daycare Case—Chapter 7, Cultural Contagion*, CRIME LIBRARY, http://www.trutv.com/library/crime/criminal_mind/psychology/mcmartin_daycare/7.html (last visited Aug. 27, 2013).

likely to have been formed by the mechanisms already discussed above, sharpened and refined by group polarization within the community of believers. Kathryn Gow and other researchers who have studied self-identified abductees have discovered that they have certain psychological characteristics in common, one of which is *fantasy proneness*.¹¹⁹ A *fantasy prone person* (FPP) is one who shares a majority of the following characteristics:

1. They are easy to hypnotize;
2. As children they played in a fantasy world;
3. They believed in fairies, guardian angels, etc.;
4. As children they had invisible playmates;
5. Even as adults they spent a significant part of their time fantasizing;
6. They often believe they have psychic abilities;
7. Most have had out-of-body experiences;
8. They often believe they have healing powers;
9. They are subject to hypnagogic experiences;
10. They have very vivid dreams;
11. They have good memories;
12. They receive messages from unknown forces.¹²⁰

Though nearly all children are hyper-suggestible, as explained above, an FPP could be described as an adult who “can be readily convinced that bizarre, unusual, fantastic or even impossible things really did happen to them.”¹²¹ “They make up roughly 4% of the population.”¹²² The accounts related by individuals who claim to have been victims of sex trafficking bear an extremely powerful resemblance to those of UFO abductees, ritualized sex abuse trial witnesses, and those who claim to have recovered memories of Satanic ritual abuse, particularly the latter:

Most FPPs are also extremely sexual; many of them can achieve orgasm through fantasy alone¹²³ and their false memories usually

¹¹⁹ Kathryn Gow et al., *Fantasy Proneness and Other Psychological Correlates of UFO Experience*, 2 EUROPEAN JOURNAL OF UFO AND ABDUCTION STUDIES 1, 2, 14–15 (2001), available at <http://www.anomalistik.de/gow.pdf>. (last visited Sept. 10, 2013).

¹²⁰ Per Andersen, *The Search for a Psychology of UFO Experience*, UFO FOLKLORE CENTER, <http://www.qtm.net/~geibdan/a1998/jan/cni1.html> (last visited Aug. 27, 2013).

¹²¹ McNeill, *supra* note 4.

¹²² *Id.*; Susan Marie Powers, *Fantasy Proneness, Amnesia, and the UFO Abduction Phenomenon*, 4 DISSOCIATION 46 (1991).

¹²³ McNeil, *supra* note 4; The Am. Bd. of Hypnotherapy, *FAQ 4.2. The “Fantasy-Prone Personality”*, THE OFFICIAL AMERICAN BOARD OF HYPNOTHERAPY AND NEURO LINGUISTIC PROGRAMMING (NLP) WEBSITE, <http://www.abh-abnlp.com>

have a strong sexual element, often with powerful [bondage and/or sadomasochistic] overtones “[M]emories” of witchcraft, Satanic ritual abuse, alien abduction and the like often include sexual elements, especially ones in which the person was raped, subjected to bondage, sexually tortured, mind controlled or “hypnotized” . . . they all come from the same shadowy part of the brain, and the identity of the abusers (and other particulars of the false memory) are just window dressing . . . [which] depend on the individuals’ beliefs and associates: traditionally-religious FPPs are likely to believe they’ve been possessed by demons or sexually abused by cultists; those with a strong interest in science fiction or UFOs are likely to identify their imaginary tormentors as aliens; and women with an unhappy history of sex work, or who become too immersed in “sex trafficking” porn, remember lurid experiences of vast pimp networks and over a dozen clients a day, etc.¹²⁴

The process by which the false memories are shaped by preconceptions, outside input, and peer pressure are the same ones discussed throughout this section. It is clear, then, that all human memory is subject to transformation due to various internal and external mechanisms, both conscious and unconscious. Furthermore, most children, and some adults, are susceptible to false memories of an elaborate and fantastic nature. But, what remains to be seen in Part III is how and why society as a whole nurtures, encourages, and embraces such narratives against all logic, reason, and evidence.

III. STRANGER DANGER AND THE RESCUE INDUSTRY

The first incarnation of sex trafficking hysteria, the “white slavery” panic, was largely driven by third-person narratives such as books, plays, articles, public speeches,¹²⁵ and newspaper series, like William Stead’s “The Maiden Tribute of Modern Babylon” (1885),¹²⁶ which not only touched off the moral panic in earnest, but also led to the age of consent in the UK being raised from thirteen to sixteen.¹²⁷ And though such third-party fabrications are still a large part of the modern hysteria, they are not the subject of this paper. How, then, did first-person narratives assume such a central role in the modern panic? The star of

/faq/faq4-2.html (last visited August 17, 2013).

¹²⁴ McNeill, *supra* note 4.

¹²⁵ ROBERTS, *supra* note 19, at 253–54.

¹²⁶ *Id.* at 256.

¹²⁷ *Id.* at 257.

virtually every human trafficking presentation for police, schools, women's organizations, and other non-academics is the "survivor," who ritually repeats her story (and it's *always* a "she," despite the fact that an estimated half of all underage sex workers are male¹²⁸) to set the mood or punctuate the inflated statistics and spurious claims already discussed in Part I. Part of the reason for this emphasis is, no doubt, the impact of the eyewitness mentioned in the opening sentence of this paper, but another, and perhaps more important factor, is that the trafficking narrative is not merely the reincarnation of a century-old moral panic, but also the current form of a living tradition which began over forty years ago and underwent two major shifts in focus and one schism to reach its current form.¹²⁹ Sociologist Rael Jean Isaac discusses the specific event that gave birth to it:

There is a widespread belief that sexual abuse of children is endemic to society. This is a relatively new notion. In fact, it can be traced to a particular moment in history: April 17, 1971. On that day the New York Radical Feminists, a group that at its height boasted no more than 400 members, held a groundbreaking conference on rape Susan Brownmiller, who would go on to write *Against Our Will* . . . later described a speech given by Florence Rush as the highlight of the event . . .

Rush . . . outlined statistical studies suggesting that sexual abuse of children, including incest, was a more widespread problem than was generally recognized. It was Rush's conclusion that electrified her audience: "The family itself is an instrument of sexual and other forms of child abuse [I]t is an unspoken but prominent factor in socializing and preparing the female to accept a subordinate role In short the sexual abuse of female children is a process of education that prepares them to become the wives and mothers of America" Beyond racism, imperialism, and capitalism lay the true root of evil: patriarchy.¹³⁰

Isaac further explains that, though the conference was small, its effect on feminists was powerful; Catharine MacKinnon soon announced, without any evidence, "that 4.5 percent of all women are victims of incest by their fathers and, if brothers, stepfathers, uncles, and family friends are thrown in, the figure rose to 40

¹²⁸ See, e.g., RIC CURTIS et al., THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS 34 (2008).

¹²⁹ See generally Maggie McNeill, *Traffic Jam*, THE HONEST COURTESAN (May 20, 2012), <http://maggiemcneill.wordpress.com/2012/05/20/traffic-jam/>.

¹³⁰ Rael Jean Isaac, *Sex, Lies, and Audiotapes*, 28 THE WOMEN'S Q. 7, 7-8, (J. INDEPENDENT WOMEN'S F. 2001).

percent. ‘In fact,’ wrote MacKinnon, ‘it is the woman who has not been sexually abused who deviates.’¹³¹ Feminists were already insisting by this time that all rape accusations by women be believed, and now accusations by children, no matter how seemingly unbelievable, were added to that doctrine.¹³² It is not difficult to see where that led; the mechanisms discussed in Part II generated the outrageous, lurid, sexualized narratives of abuse and exploitation which drove the “recovered memory” and daycare sex abuse hysterias.¹³³ But why did so many of these tales involve Satanism, and what turned a rather extreme radical feminist theory into a full-blown moral panic?

It seems likely that the answer to both questions is the same. Though the radical feminists spread the “incest” narrative in order to “abolish the patriarchal family,”¹³⁴ folklore does not remain under the control of its original disseminators, and most American women are not radical feminists. In other words, once the story began to spread it was retold by many people of both sexes who had absolutely no interest in destroying the traditional family; in fact, many of them were suffering considerable angst over the breakdown of that institution due to rising divorce rates and ever-larger numbers of women working outside the home.¹³⁵ So, even though the early 1980s saw increasing awareness of actual child sexual abuse, most people were unwilling to accept that the great majority of sexual assaults are committed by someone known to the victim or her family, no matter what her age,¹³⁶ they instead preferred to focus on “stranger danger,” obsessing about the minority of assaults which are committed by strangers.¹³⁷ Likewise, rather than recognize that ninety-four percent of legal minors reported missing are runaways, most of them teenagers who leave home under their own power (many in response to parental rejection of their homosexuality or variant gender identity),¹³⁸ and rather than accept that, of the remaining

¹³¹ *Id.* at 8.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ James R. Wetzel, *American Families: 75 Years of Change*, MONTHLY LAB. REV., Mar. 1990, at 4, 5, 9.

¹³⁶ *Myths and Facts About Sex Offenders*, CTR. FOR SEX OFFEND. MGMT (Aug. 2000), <http://www.csom.org/pubs/mythsfacts.html>.

¹³⁷ *See Id.*

¹³⁸ Sean Gardiner, *Study Undermines Kidnapping Fears*, THE WALL ST. J., April 7, 2011, at A21. *See Gay and Transgender Youth Homelessness by the Numbers*, CENTER FOR AMERICAN PROGRESS (June 21, 2010), <http://www>.

fraction, over ninety-nine percent are taken by someone they know¹³⁹ (usually a non-custodial spouse, and often with their cooperation), people concentrate entirely on the infinitesimal minority of missing adolescents and children who are abducted by strangers. In the 1980s, when daycare centers were a relatively new social institution,¹⁴⁰ and one which, perhaps, engendered considerable guilt in women whose own mothers had been housewives, it is not too difficult to see them as a convenient scapegoat both for guilt-ridden working mothers and the increasingly-popular social conservatism of the time.

But, those who unconsciously wished to blame daycare providers, or other strangers, for their problems were still faced with the necessity of squaring these accusations with their conscious impressions of those people as decent human beings; this dilemma must have been even more pronounced in those who were being coached by therapists to blame their parents for molesting them. Some accusers felt sexual “perversion” was a sufficient motive, especially in cases like that of Bernard Baran (who was an openly gay man),¹⁴¹ the “San Antonio Four” (who were lesbians),¹⁴² and Jesse Friedman (whose father was caught with child pornography).¹⁴³ But others apparently felt the psychological need to literally demonize those they believed had wronged them by casting them as cultists obeying the orders of Satanic priests.¹⁴⁴ Though this may seem outlandish today,

americanprogress.org/issues/lgbt/news/2010/06/21/7980/gay-and-transgender-youth-homelessness-by-the-numbers/.

¹³⁹ Maggie McNeill, *Who Watches the Watchmen?*, THE HONEST COURTESAN (Apr. 13, 2011), <http://maggiemcneill.wordpress.com/2011/04/13/who-watches-the-watchmen/> (citing Gardiner, *supra* note 138).

¹⁴⁰ See Rebecca Frey, *Working Mothers*, GALE ENCYCLOPEDIA OF CHILDREN'S HEALTH, <http://www.answers.com/topic/working-mother> (last visited Aug. 18, 2013). See also PBS, *What Meaning Can We Draw From These Cases?*, THE CHILD TERROR, <http://www.pbs.org/wgbh/pages/frontline/shows/terror/meaning/> (last visited Aug. 18, 2013) (showing an increasing trend of women using daycare providers).

¹⁴¹ McNeill, *supra* note 115 (citing Radley Balko, *Innocent Man Freed, But Shabby Prosecutor Still Works as Judge*, REASON.COM (Aug. 17, 2009), <http://reason.com/archives/2009/08/17/innocent-man-freed-but-shabby>).

¹⁴² See Harvey Silverglate, *The San Antonio Four Show the Injustice of Sex Abuse Witch-hunts*, FORBES (Nov. 12, 2012, 11:28 AM), <http://www.forbes.com/sites/harveysilverglate/2012/11/12/the-san-antonio-four-show-the-injustice-of-sex-abuse-witch-hunts/>.

¹⁴³ Nick Pinto, *Jesse Friedman Spent 13 Years in Prison as a Notorious Child Rapist—He May Soon Get an Apology*, THE VILLAGE VOICE (May 29, 2013), <http://www.villagevoice.com/2013-05-29/news/jesse-friedman/full/>.

¹⁴⁴ See PBS, *supra* note 140.

consider that these people were products of their time; people in their late twenties and early thirties in the 1980s would have been children or young teenagers during the Satanic movie craze of the early 1970s, which produced such films as *The Exorcist*, *The Omen*, and *Rosemary's Baby*, and the imagery and thematic content of those films would, therefore, be a part of the psychosexual landscape available to their unconscious minds for generation of false memories or construction of interpretations for the wild scenarios created from a combination of childish imagination and sex-obsessed, abusive adult interrogation patterns.¹⁴⁵ And, once the media began to popularize these fantastic claims, they became part of the body of folklore upon which others, too young or too sheltered to have been exposed to the original stimuli, could draw for the creation of their own stereotyped narratives, as discussed in Part II. The longer and more intensely a fantasy narrative of this type is repeated in public discourse, the greater the pressure for stereotypic conformation exerted by both the individual's own psyche and the process of group polarization; the same process is responsible for the increasing convergence in descriptions of alien abductors,¹⁴⁶ due to the increasing ubiquity of the "grey" alien description in popular culture.¹⁴⁷ One would expect the same psychological and sociological pressures to produce increasing conformity in the narratives of self-declared "sex trafficking survivors," and the popularity of elements which are common in their accounts, but for which there is never any corroborating evidence,¹⁴⁸ would seem to suggest this is indeed going on.

There is, however, a more direct source for these lurid details, and that is the leadership of the anti-trafficking/anti-prostitution movement. According to Jill Brenneman, a victim of coerced prostitution who was involved with the "antis" for a time, before rejecting their methods, they "encourage lies, which they call 're-framing experiences', to make their point. As difficult and

¹⁴⁵ See generally Nadja Schreiber et al., *Suggestive Interviewing in the McMartin Preschool and Kelly Michaels Daycare Abuse Cases: A Case Study*, 1 SOC. INFLUENCE 16, 17, 21–22 (2006).

¹⁴⁶ See David M. Jacobs, *Aliens and Hybrids*, in ALIEN DISCUSSIONS: PROCEEDINGS OF THE ABDUCTION STUDY CONFERENCE 86, 86–87 (Andrea Pritchard et al. eds., 1994).

¹⁴⁷ See Robert Sheaffer, *A Skeptical Perspective on UFO Abductions*, in ALIEN DISCUSSIONS: PROCEEDINGS OF THE ABDUCTION STUDY CONFERENCE 382 (Andrea Pritchard et al. eds., 1994).

¹⁴⁸ See McNeill, *supra* note 4.

extreme as my experiences were, they wanted me to re-frame them, meaning add things that didn't happen to make it worse."¹⁴⁹ Two public exposures of something very similar are associated with well-known anti-trafficking activist Somaly Mam.¹⁵⁰ In the first,

Somaly Mam... [falsely claimed] that when police raided her Afesip centre in Phnom Penh in 2004, eight of the girls were... murdered.

....

83 women... [were taken to the] centre... after a raid... on the *Chai Hour 11 Hotel*, where it was alleged that underage girls were providing sexual services... .

However, the following day, the centre itself was raided by government officials and members of the detained women's families, and the women released... Somaly Mam [claimed] these officials colluded with the owners of the hotel, but a number of the women released [insisted] to reporters that they... resented being "rescued." It was also disputed that any of the women were underage... .

No reports... suggested any of the women... were missing... [and] the *UN High Commissioner on Human Rights* [expressed] surprise at Mam's... claim... .

[Pierre Legros, Mam's ex-husband and] Afesip's international director at the time of the raids, also denied that any... girls were murdered... .

... [H]e said that previous claims by his ex that their daughter had... been kidnapped and gang-raped in revenge for her mother's activism were also untrue. [The] daughter had simply run off with her boyfriend... .¹⁵¹

The second incident was far more egregious:

For years now, the scarred face of Long Pros has symbolized... sex slavery in Cambodia.

....

"My eye was stabbed by a brothel owner," Ms. Pros recounted in [Nicholas Kristof's documentary] "*Half the Sky*,"... .

... [W]ith blood still flowing from the destroyed eye socket, Ms. Pros said that she was still forced to have sex with clients.

....

¹⁴⁹ Maggie McNeill, *Interview: Jill Brenneman (Part Four)*, THE HONEST COURTESAN (Feb. 24, 2011), <http://maggiemcneill.wordpress.com/2011/02/24/>.

¹⁵⁰ Geoffrey Cain, *What's the Truth Behind Somaly Mam?*, NEW MANDALA (May 25, 2012), <http://asiapacific.anu.edu.au/newmandala/2012/05/25/whats-the-truth-behind-somaly-mam/>.

¹⁵¹ *Somaly Mam Overreaches Herself*, PENH PAL (Apr. 23, 2012), <http://penhpal.com/2012/04/somaly-mam-overreaches-herself/>.

... “[W]hen I returned home, my mother and father didn’t want me around.”

[But] Pros’ parents . . . denied that their daughter was ever a victim of human trafficking, had ever been enslaved in a brothel, or had lost her right eye at the hands of a savage brothel owner.

Long Hon, 60, and Sok Hang, 56, described . . . their daughter’s . . . eye condition [to be] a non-malignant tumor that had developed when she was just 7 years old . . . [and] was . . . removed by an eye surgeon . . . in 2005 when she was 13 . . .

Te Sereybonn, the . . . director of the . . . hospital . . . said that . . . medical staff . . . contacted [Somaly Mam’s organization] to . . . admit Ms. Pros to one of their vocational training programs . . . and said that it had nothing to do with the sex industry.¹⁵²

Even the form of the fictional attack changed over time; when the story was first publicized in 2008, Pros claimed to have “*lost her eye after a pimp kicked her in the face.*”¹⁵³ A similar (though far less dramatic) transformation can be seen in the case of Justine Reilly, who was convicted of brothel-keeping in Dublin in 2001;¹⁵⁴ in a newspaper interview 18 months later she claimed “[m]yself and a few girls decided to get an apartment and when the police came I accepted responsibility because these other girls had husbands and children and I didn’t.”¹⁵⁵ But since going to work for the anti-prostitute organization Ruhama (the new face of the religious orders who ran the infamous Magdalene Laundries),¹⁵⁶ Reilly has changed her story and now claims not to have been an independent escort who took a fall for her friends, but rather the helpless victim of malevolent “pimps” who

¹⁵² Simon Marks & Khy Sovuthy, *Questions Raised Over Symbol’s Slavery Story*, THE CAMBODIA DAILY (Oct. 26, 2012), <http://www.cambodiadaily.com/archive/questions-raised-over-symbols-slavery-story-4809/>.

¹⁵³ Maggie McNeill, *That Was the Week That Was #43*, THE HONEST COURTESAN (Oct. 27, 2012), <http://maggiemcneill.wordpress.com/2012/10/27/that-was-the-week-that-was-43/> (quoting Marks & Khy, *supra* note 152).

¹⁵⁴ Maggie McNeill, *Puppet Show*, THE HONEST COURTESAN (Mar. 4, 2013), <http://maggiemcneill.wordpress.com/2013/03/04/> (citing *Woman is Fined £11,500 for Running Brothels in Dublin*, THE IRISH TIMES, March 15, 2001, at 4).

¹⁵⁵ Tim Healy, *Brothel Keeper Gets Taxi Licence to Pay Off a Fine*, THE INDEPENDENT (Oct. 10, 2002), <http://www.independent.ie/irish-news/brothel-keeper-gets-taxi-licence-to-pay-off-a-fine-26030448.html>.

¹⁵⁶ See *About Ruhama*, RUHAMA, <http://www.ruhama.ie/page.php?intPageID=4> (last visited Aug. 15, 2013); Patsy McGarry, *Laundry Orders Run Sex Workers’ Aid Group*, THE GOD SQUAD (June 25, 2011), <http://www.paddydoyle.com/laundry-orders-run-sex-workers-aid-group/>.

supposedly control all sex work in Ireland¹⁵⁷ (a representation dramatically at odds with both the statements of Irish sex workers,¹⁵⁸ and the beliefs of Irish police).¹⁵⁹

Ruhama and Somaly Mam are but two examples of organizations with a vested interest in spreading disinformation about sex work; there are many, many others,¹⁶⁰ and all of them would collapse without the steady flow of private and corporate donations, and governmental funds the trafficking hysteria generates. Anthropologist Laura Agustín refers to these groups as the “rescue industry”¹⁶¹ for their common stated goal of “saving” sex workers from their work, whether they want it or not.¹⁶² And it is a very big business indeed; Michael Horowitz of the Hudson Institute, one of the main authors of the Federal Trafficking Victims Protection Act of 2000,¹⁶³ recently referred to the anti-trafficking movement as “one big federal entitlement program . . . everybody is more worried about where they’re going to get their next grant and whether they are going to get it.”¹⁶⁴ Nor are non-governmental organizations the only beneficiaries of “anti-trafficking” largesse; local police departments can cash in merely by rebranding their anti-prostitution schemes as “anti-

¹⁵⁷ See McNeill, *supra* note 154 (citing *Sex Worker Hearing Shambles*, SEXWORK.IE (Feb. 6, 2013), <http://sexwork.ie/2013/02/06/sex-worker-hearing-shambles/>).

¹⁵⁸ *Frequently Asked Questions*, SEX WORKERS ALLIANCE IRELAND, <http://www.sexworkersallianceireland.org/frequently.html> (last visited Aug. 14, 2013).

¹⁵⁹ See Jim Cusack, *Gardai Target People Who Profit from Prostitutes*, INDEPENDENT.IE (June 3, 2012), <http://www.independent.ie/irish-news/gardai-target-people-who-profit-from-prostitutes-26860448.html>.

¹⁶⁰ See *generally Anti-Trafficking Organizations Directory*, FREEDOM4 INNOCENCE.ORG, <http://freedom4innocence.org/anti-trafficking-organizations-directory/> (last visited Aug. 22, 2013).

¹⁶¹ Laura Agustín, *Sex at the Margins: The Book that Named the Rescue Industry*, THE NAKED ANTHROPOLOGIST (Apr. 8, 2013), <http://www.lauraagustin.com/sex-at-the-margins-how-to-get-the-book-that-named-the-rescue-industry>.

¹⁶² Maggie McNeill, *Against Their Will*, THE HONEST COURTESAN (July 23, 2011), <http://maggiemcneill.wordpress.com/2011/07/23/against-their-will/> (citing DJ Yap et al., *Hookers Rescued ‘Against Their Will’ in Angeles City*, INQUIRER.NET (June 29, 2011), <http://newsinfo.inquirer.net/19208/hookers-rescued-against-their-will-in-angeles-ci>). See *generally* Ahmed & Seshu, *supra* note 45, at 155–56, 164; MELISSA DITMORE, *THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS*, SEX WORKERS PROJECT 24–25 (2009).

¹⁶³ Victims of Trafficking & Violence Prot. Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

¹⁶⁴ Tom Ragan, *Nevada Movement Draws the Line on Human Trafficking*, LAS VEGAS REV. J. (May 26, 2013), <http://www.reviewjournal.com/news/las-vegas/nevada-movement-draws-line-human-trafficking>.

trafficking operations.”¹⁶⁵ Hollywood celebrities who promote the panic gain free publicity and the cachet which comes from association with a popular cause,¹⁶⁶ and anti-prostitution groups with Christian and feminist rationales alike are able to disguise a crusade grounded in their own restrictive ideas of sexual morality¹⁶⁷ as a fight for human rights.¹⁶⁸ Finally, there are governments who are willing to expend considerable funds on “anti-trafficking” efforts because they provide an attractive and popular “humanitarian” rationale for restricting immigration and deporting migrants:

“[A]nti-trafficking” . . . essentialises [sic] gender and childhood, it confuses and obfuscates, and . . . it . . . acts against the interests of many that it purports to serve.

...

. . . [T]he state is directly and inescapably the source of vulnerability . . .

...

[T]hose formally excluded are given . . . the right NOT to enter, to be protected from movement. The [victim of “trafficking”] . . . is supposed to return home. Indeed the narrative is that she wants to return home, and part of her innocence and victimhood is that she never wanted to move in the first place.

. . . [I]mmigration controls are claimed to be a mechanism of protection for migrants, rather than a mechanism of oppression.¹⁶⁹

The advantages gained by the various players—whether

¹⁶⁵ See Maggie McNeill, *Law of the Instrument*, THE HONEST COURTESAN (Aug. 26, 2011), <http://maggiemcneill.wordpress.com/2011/08/26/law-of-the-instrument/> (quoting *Pimps Feed on Twisting Californian Dream*, THE CNN FREEDOM PROJECT (Aug. 9, 2011), <http://thecnnfreedomproject.blogs.cnn.com/2011/08/09/pimps-feed-on-twisting-californian-dream/>); Maggie McNeill, *That Was the Week That Was (#139)*, THE HONEST COURTESAN (Mar. 2, 2013), <http://maggiemcneill.wordpress.com/2013/03/02/that-was-the-week-that-was-139/#hell> (quoting Omar Torres, *Neighborhood Groups Come Together to Combat Prostitution*, SAN JOSE INSIDE (Feb. 22, 2013), http://www.sanjoseinside.com/news/entries/2_22_13_community_police_prostitution_neighborhood/).

¹⁶⁶ Dina Francesca Haynes, *The Celebritization of Human Trafficking*, ANNALS AM. ACAD. POL. & SOC. SCI. (forthcoming) (currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250705##).

¹⁶⁷ *Are Evangelicals Monopolizing, Misleading U.S. Anti-Trafficking Efforts?*, PATHEOS (Jan. 17, 2013, 11:54 AM), <http://www.patheos.com/blogs/religionnow/2013/01/are-evangelicals-monopolizing-misleading-us-anti-trafficking-efforts/>.

¹⁶⁸ See, e.g., MICHAEL SHIVELY ET AL., DEVELOPING A NATIONAL ACTION PLAN FOR ELIMINATING SEX TRAFFICKING (2010).

¹⁶⁹ Bridget Anderson, *Stuck in Traffic: How Helpful is the Trafficking Framework?*, THE COMPAS BLOG (May 7, 2013), <http://compasoxfordblog.co.uk/2013/05/stuck-in-traffic-how-helpful-is-the-trafficking-framework/>.

monetary, political, or practical—continue to drive the narrative forward, despite the protests of sex workers, criminologists,¹⁷⁰ and even trafficking researchers:

[T]he Bush administration, supported by the evangelical right-wing and some radical feminists, spent eight years promoting laws to criminalize prostitution and clients as *the* means to abolish prostitution and stop human trafficking into the sex sector. The ideology-driven approach is notable for the absence of any concrete evidence that it works. Proponents of such an approach have also failed to demonstrate that it avoids harming women or provides other livelihoods for those it aspires to help. It reduces all adults in the sex sector (even highly paid “call girls” and those working legally) to victim status and considers all prostitution to be a form of trafficking.

Unfortunately for many of the women who are objects of this policy, the ensuing crackdowns have meant prison, violence, forced “rehabilitation” and no means to earn an adequate livelihood. At the same time, the policy has not achieved its goal of reducing the incidence of trafficking, prostitution, commercial sexual exploitation of children or HIV/AIDs.¹⁷¹

It is clear that there is ample incentive for those who profit from the “sex trafficking” hysteria to do whatever they have to do to ensure that it continues, no matter how much money is wasted, no matter how many people are hurt, and no matter how many false narratives and memories have to be created or promoted.

CONCLUSION

Even when we understand that memories can be altered, or even fabricated, through our own unconscious mental processes, through social interactions, or through deliberate manipulation by others, the truth is difficult to accept; after all, our memories certainly *seem* permanent, and we might like to believe that things we have forgotten have merely been mislaid, like old VHS tapes consigned to a box at the back of a closet and covered with old clothes. But, that is simply not the case; memory is a volatile and dynamic neurological function, and none of us are immune to the forces which either alter it subtly or rewrite it completely,

¹⁷⁰ Ronald Weitzer, *The Mythology of Prostitution: Advocacy Research and Public Policy*, 7 SEX RES. & SOC. POL'Y 15, 17–19, 25–26 (2010).

¹⁷¹ Ann Jordan, *Sex Trafficking: The Abolitionist Fallacy*, FOREIGN POLICY IN FOCUS (Mar. 18, 2009) (John Feffer ed.), http://www.fpi.org/articles/sex-trafficking_the_abolitionist_fallacy/.

even to the point of remembering things that did not happen or *could* not happen. Those whose memories are altered thus, even those who believe they remember false or quasi-supernatural events, are not mentally ill, cognitively deficient, or weak-willed; they merely have extraordinarily active imaginations and are misled by the common and wholly natural belief that what they remember must have actually happened. This does not mean we should completely abandon the concept of eyewitness testimony; what it means is that we should assign less weight to it, especially in cases where there is absolutely no corroborating physical evidence and the testimony is fantastical and contradicts the balance of what is objectively and provably known.

The first-person accounts, upon which the anti-trafficking movement relies so heavily, bear a close resemblance, both in form and in content, to accounts from the Satanic Panic, day care sex abuse cases, false memory syndrome cases, UFO abduction narratives, and even testimony from witch trials. The accounts adhere tightly to the movement's propaganda, even when that propaganda is demonstrably false or highly unlikely, and fail to intersect the experiences of the many thousands of sex workers who share their experiences with one another and the public, *even when those experiences are bad*, to any significant degree. Furthermore, other witnesses or hard data sometimes contradict the stories themselves, and earlier-published versions of the same story are often significantly different from later versions. And, while those who promote the accounts that support the narrative which brings them money, prestige, power, or furthers a political goal, insist that others accord their protégés the unconditional belief, which feminists teach is due to women's statements about their experiences, they are unwilling to grant the same courtesy to other women whose reported experiences contradict prohibitionist doctrines.

This is not to suggest that these women's reported experiences should be entirely ignored or summarily dismissed; however, the principles of reason and fairness dictate that they be supported with evidence and given no more weight than the many accounts which contradict them, merely because the "trafficking" accounts are more lurid. The maxim "hard cases make bad law" is surely applicable here; even if every account of every self-defined "trafficking survivor" were literally true as stated, they would still represent only a tiny minority of all sex worker accounts, and laws covering sex work, like those covering any other kind of

work, should be written to the typical situation, rather than the rare extreme. Too many times in recent history have grotesque stories of the perverse sexual exploitation of innocents been used to condemn innocent people to a judicial hell, and the vast majority of those cases were later recognized as grave miscarriages of justice; it would behoove the legal community to deeply consider how many more times the country must endure this same type of hysteria before proper safeguards are installed to prevent its happening again.