

Whores of the Court

*Psychologists as De Facto
Triers of Fact in Our Justice System*

In February 1992, [Eileen Lipsker] came to the Fairmont Hotel ballroom in San Francisco to explain the process of her memory return and her testimony at the trial to the American College of Psychiatrists. Afterward, the psychiatrists, including some of the most distinguished members of the profession in this country, crowded around Eileen. They believed her, they told her. They admired her. They felt intense compassion for her ordeal. At first, Eileen's big light-brown eyes looked doubtful. But along came another psychiatrist, and another, and yet another. With each one of their congratulations, Eileen brightened a bit. And soon she was glowing like the moon.

Lenore Terr, *Unchained Memories*, 1994

THE PSYCHOLOGY-BASED COURT CASE

One afternoon in early 1989, Eileen Franklin Lipsker, a young American mother, gazed deeply into her daughter's dark eyes and fell directly into a nightmare twenty years past. The merest accident of expression in her daughter's eyes brought Eileen face-to-face with another child, long dead, brutally murdered in California in 1969. With the vision of the dead child's face as the key, a whole vault of terrible memories of that long ago death became unlocked in Eileen Franklin's mind and she began to remember, slowly at first, but then

faster and faster, what her mind had fought so hard to keep hidden from view—that as a child herself she had witnessed the murder of her little friend, Susan Nason, at the hands of Eileen's own father, George Franklin. When these long-repressed memories were fully recovered and Eileen knew what she had, she also knew what she had to do. She brought before the legal authorities in California her memory of that terrible trauma from so long ago.

On November 28, 1989, the police arrested George Franklin and charged him with the murder of nine-year-old Susan Nason twenty years before.

There was not much direct evidence in this case. Susan's body had been found eight weeks after the murder in a rather remote wooded area. The material details of the case were widely published in the media—that Susan's head had been crushed by a rock, that she had worn a silver ring on her finger, that she was found lying not far from an old mattress—but at the time of the crime, no circumstantial evidence tied any particular individual to the crime and no eyewitnesses came forward.

Twenty years later there was still not much evidence other than Eileen's recovered memories. She said her father committed the murder; he said he did not. No one else saw anything. Eileen claimed that the trauma of witnessing the horrifying murder of her little friend had been so great that she repressed the memory for all those years and then, quite inexplicably, recovered it twenty years later.

Given the lack of physical evidence and the heavy reliance on psychological claims in this case, it is not surprising that in Franklin's trial for murder the bulk of the "evidence" presented was the opinion of experts—psychiatrists and psychologists—concerning the repression and recovery of memory, and the consequent reliability of Eileen's accusations against her father. Dr. Lenore Terr, a California psychiatrist, was the prosecution's principal witness in explaining to the court the obscure psychological phenomena the jury had to consider in weighing the case against George Franklin.

The prosecution's case rested on certain psychopolitical assumptions that have become popular in some segments of the mental health community. It is assumed that children who experience terrible trauma, like witnessing murder or experiencing sex abuse, often suffer, like some Vietnam vets, from post traumatic stress syndrome. It is also said

that one of the most common features of this stress disorder is the loss of the memory of the precipitating traumatic event—what psychiatrists call "repression" of the traumatic memories—because the mind seeks unconsciously to protect the person from having to reexperience the trauma in memory. Lastly, it is assumed that repressed memories can be recovered in the proper conditions, usually in the context of therapy, but perhaps through an accidental triggering as in Eileen's case.

These psychological assumptions and countless others like them—lacking any scientific basis but embraced unquestionably by their adherents—over the last twenty-five years have crept insidiously into our legal system, into legislative bodies and courtrooms all over the country.

In George Franklin's case, the judge and jury accepted as scientific fact Dr. Terr's testimony regarding trauma theory, repression, and recovered memories; they took as truth the startlingly assured statements of this psychological expert about historical facts and mental mix-ups, and her confident explanations of the way the mind works. On November 30, 1990, based on the word of his estranged daughter and the testimony of this expert psychological witness, George Franklin was convicted of murder and sentenced to life in prison.

Dr. Terr writes that when Elaine Tipton, the prosecutor, asked several jurors after the trial what led to their decision, "She told me that a number of them said my testimony had convinced them. I learned something from that: sometimes hypotheticals are just as compelling as specifics" (Terr 1994, p. 58).

Did George Franklin murder Susan Nason? Was Eileen really so scared by the awful event she witnessed that she immediately lost all memory of it, continuing to pal around happily with her father as before, riding around the state unconcernedly in the same vehicle where she supposedly witnessed the assault on her little friend? Can a memory really be blown out like a candle in an instant, only to be relit by accident twenty years down the line? When Dr. Terr lectured the courtroom in California on the mysterious operations of the mind that would permit just such a sequence of events to transpire, should the court have accepted what she said as reliable truth?

All over America today, psychological professionals like Lenore Terr are climbing confidently into the witness box to lecture judges