

# 9 Remembrance of Things Past

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*Psychic Injuries from Long Ago*

It is important to stress that, in considering the admissibility of repressed memory evidence, it is not the role of the court to rule on the credibility of this individual plaintiff's memories, but rather on the validity of the theory itself. For the foregoing reasons, the Court hereby denies the Defendant's Motion in Limine to Exclude Repressed Memory Evidence. For the law to reject a diagnostic category generally accepted by those who practice the art and science of psychiatry would be folly. Rules of law are not petrified in the past but flow with the current of expanding knowledge.

Edward F. Harrington, United States District Judge,  
District of Massachusetts, *Shahzade v. Gregory*, May 8, 1996

## **THE JUDGE AND THE EXPERT WITNESS**

**In** the spring of 1996, in Massachusetts, an elderly woman brought suit against her equally elderly male cousin from California for wrongs he allegedly had done her nearly half a century before.

Ann Shahzade, sixty-eight, claimed that from the time she was twelve years old until she was seventeen, her cousin George, five years older than she, had subjected her on a number of occasions to nonconsensual sexual touching.

Ann claimed also that she had been so traumatized by these events that she repressed all memory of them despite frequent con-

tacts with her cousin over the years, with frequent loans from George to Ann. In 1991, during a course of psychotherapy when, coincidentally, her cousin refused to lend her an additional \$30,000, Ann said she regained her memories of the numerous incidents of fondling of fifty years ago; she subsequently sued her cousin for damages.

Her cousin, George, objected to Ann's suit, arguing that the touching was consensual and, moreover, that suing fifty years after the alleged tort vastly exceeded the statute of limitations for a personal injury suit. Further, George claimed that Ann's failure to bring suit earlier could not possibly be due to traumatic repression with memory loss because no such thing existed in science.

U.S. District Judge Edward Harrington, of the First Circuit, heard George's objection and issued a ruling in May 1996, declaring that, at least for the First Circuit, repression of memory due to trauma—along with its long-delayed recovery years after the traumatic events—had been firmly established in science. Thus, Ann's civil suit could go forward, fifty years old or not.

In reaching his decision, Judge Harrington relied strongly on the testimony of Dr. Bessel van der Kolk, the psychiatrist from Harvard University Medical School whose work on trauma and memory was briefly described earlier. Dr. van der Kolk told the judge that repression was a scientific fact. Judge Harrington wrote that an expert witness claiming that a theory is scientific "must testify as to whether that theory can be, or has been, tested or corroborated, and, if so, by whom and under what circumstances, whether this theory has been proven out . . . whether the theory of repressed memory is widely accepted in the field of psychology. Dr. van der Kolk's testimony satisfies these fundamental factors" (*Shahzade v. Gregory, 1996*).

In an interesting application of modern technology, when the judge made his ruling accepting that the psychological evidence was truly scientific, the Harvard psychiatrist and trauma specialist had the ruling broadcast all over the Internet. The broadcast was no doubt in the interests of science rather than for the purpose of personal advertising.

### **"Scientific" Evidence Cited by the Expert**

Yesterday, the expert witness, Dr. Bessel van der Kolk, testified that the phenomenon of repressed memories among

trauma victims, especially those suffering childhood sexual abuse, is widely accepted by scientists and doctors. (Rakowsky, Boston Globe, April 10, 1996)

In support of his assertions, Dr. van der Kolk told the judge that he relied on a study by Judith Herman, who teaches in the Department of Psychiatry at the Harvard Medical School, and Emily Schatzow, who is Dr. Herman's colleague at the Women's Mental Health Collective in Massachusetts, on incest victims who were said to "recover" their lost memories through group therapy.

Dr. van der Kolk swore to the judge that with this study Dr. Herman and Dr. Schatzow have provided the world with unshakable proof that traumatic repression of the memories of childhood sexual abuse is common. The judge believed him.

As Judge Harrington explains:

One such study, which Dr. van der Kolk referred to as the Herman and Schatzow study, looked at victims of sexual abuse and found that only approximately one-third of the victims remembered all the details of the abuse. Another one-third of the victims had a partial memory of the abuse, while the final one-third of the victims remembered nothing relating to the abuse. Dr. van der Kolk stated that these figures represent "the sort of figures that every study comes in with, regardless of what the methodology is. . . ." (*Shahzade v. Gregory*, 1996)

Let's look at this study "proving" traumatic repression and recovery of memory.

### **The Miracle of Amnesia**

In group, Doris initially reported almost complete amnesia for her childhood. She spoke little until the sixth session, when she began to moan, whimper, and wring her hands. In a childlike voice she cried, "The door is opening! The door is opening!" She was instructed to tell her memories to go away and not to come back until she was ready to have them.