

Israel's Supreme Court Permits Delayed Memories of Childhood Abuse as Evidence
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On October 9, 2014 the Israeli Supreme Court rejected the appeal of Beni Shmuel, convicted more than 6 years earlier for sexual offenses committed against his daughter, age 10 at the time of the offenses. Shmuel's daughter had recovered her traumatic memories fully when she was 23 years old following a nightmare containing incestuous themes that she had dreamt repeatedly. The father's guilty verdict was upheld following two appeals. Beni Shmuel's line of defense was that recovered memory is not sufficiently reliable to be admitted into evidence, particularly if the memory unfolded following a dream. The Israeli media sensationalized the case and labeled it derogatorily as "The Dreamer Case".

Immediately following the Supreme Court's ruling, a scientist published an op-ed article in Ha'aretz Daily (a prominent Israeli newspaper) in an attempt to cast doubt on the validity of recovered memories of trauma. On October 13, 2014, he and forty-six prominent Israeli academics, including Nobel Prize winner Daniel Kahenman and American Israeli psychologist Edna Foa, published an opinion criticizing the Israel Supreme Court for admitting "recovered memory" into evidence. This "false memory opinion" received wide national media coverage and sparked hot debates on talk shows and other social media outlets. Ha'aretz also reported the rebuttal arguments of the two experts witnesses for the prosecution, one of whom was Dr. Eli Somer. In response to the rebuttal, Ha'aretz, published an interview by Edna Foa who stated that "Sexual trauma cannot be forgotten after age 3", despite a great deal of research that documents that people can have amnesia for all or parts of traumatic experiences, and that they can show delayed yet accurate recall of trauma after periods of not recalling trauma.

An evidence-based position paper was drafted by a group of trauma and dissociation scholars led by Dr. Constance Dalenberg. The document advocated that survivors of childhood abuse who have recalled their traumatic memories following a period of dissociative amnesia should not be denied their right for a fair and just evaluation in a court of law. The position paper was signed by 105 international trauma scholars and experts and published in Ha'aretz. A website (traumatic-memory.org) was created to present the background of the controversy, its media coverage, the evidence-based opinion, and a comprehensive reference list of research about repressed and recovered memories of trauma as well as three court rulings from three different U.S. states accepting recovered memories into evidence as meeting the Daubert standard.

Eli Somer has been interviewed repeatedly on national television, radio programs, and printed press about this case. The 105 trauma expert signatories upheld the Supreme Court's decision to admit the recalled abuse memories into evidence, arguing that such memories are no more but no less reliable than other forms of memory retrieval, and should be relied upon in reaching decisions in court using the same evaluative tools employed to assess other forms of eyewitness testimony. The experts recalled that in the early 1990's, a debate erupted about whether recovered memory evidence should be permitted in the courtroom. One extreme group argued that recovered trauma memories should never be questioned while another extreme group believed that no recovered memories were reliable. A moderate and large group including most trauma and cognitive researchers, as well as many therapists, believed that false memories as well as recovered memories could occur. The controversy died among all but the most extreme groups after a NATO sponsored conference in 1996. Both extremes were condemned and faded away except for a few people who remained steadfast in their extremism despite the evidence that indicated forgotten traumatic memories could be accurate or not, just like any other memory. Memory is by definition a recovery of information that was not in consciousness. There is clear evidence that people can and do forget even traumatic experiences and later remember them. So

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the line between so-called 'recovered' memories and memory retrieval in general is a thin one.

The Israeli Supreme Court rejected the request of Beni Shmuel's attorneys for a special hearing based on the opinion of the 47 psychologists. The Court's detailed ruling reiterates the admissibility of recovered memories into evidence. Beni Shmuel was ordered to report to the prison authorities on December 31, 2014. Deputy Chief Justice Miriam Naor wrote in her ruling that: 1) the admissibility of recovered memories has already been accepted by the Israeli courts before; therefore, 2) there was no legal innovation or precedence in the Beni Shmuel Supreme Court ruling that justifies an additional special hearing; and 3) the defense has not challenged the admissibility of recovered memories during the trial. Thus, the submission of a post-trial "opinion" signed by "various professionals" is unacceptable legal practice.

The pro-survivors' perspective has been kept alive by numerous letters to the editor and countless posts and articles published in leading Israeli psychology and feminist websites. This case is recognized as a victory of the Courts recognizing the scientific evidence about traumatic memory. The Israeli Supreme Court made a wise decision that respects the fact that it is painful and difficult to maintain in consciousness the idea that your father is also your rapist.