Repressed Memory: Real or Fantasy?[†]

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I.
Introduction

"When I was younger, I could remember anything, whether it had happened or not."
—Mark Twain

Throughout the last two decades, courtrooms have been deluged with litigation concerning allegations of repressed memories of childhood sexual abuse, generating considerable debate about whether the concept itself (not to mention the actual memory) is real or fantasy. Often, this phenomenon of repressed memory begins when a patient with minor mental health problems meets with a therapist. During the course of treatment for the problems, the therapist asks the patient to "travel back to [his or her] childhood[] and look for what may have happened there because . . . there must be a cause."[1]

Sometimes, however, people claim to have instantly remembered a traumatic event from their past without the aid of therapeutic techniques. Books appearing in large quantities, such as The Courage to Heal and Secret Survivors, publish checklists whereby one can

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[1] Elizabeth Loftus & Katherine Ketcham, The Myth of Repressed Memory, False Memories and Allegations of Sexual Abuse (1996).

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determine whether he or she fits the profile of an incest survivor.[2] These checklists describe conduct and symptomology that are fairly common, however. For example, symptoms indicative of childhood incest survival include fear of the dark and a dislike of being alone. Although published studies both support and disavow the existence of repressed memories, researchers uniformly suggest that there is no way to discern a real memory from a false memory without additional corroborating evidence.[3]

The lack of empirical evidence concerning allegedly repressed memories creates a rather interesting legal dilemma for defense attorneys who must confront these allegations. These attorneys must defend against memories that surface only long after the alleged occurrence has passed and that cannot be proven true or false. The situation is further complicated because therapists themselves do not question the truth of any information that patients convey. Therapists even admit that seeking the validity of these recovered memories is not

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[2] Ellen Bass & Laura Davis, The Courage to Heal (1988); E. Sue Blume, Secret Survivors (1990).

[3] Elizabeth Loftus, *Memory Faults and Fixes*, 18 Issues in Sci. and Tech. 41 (2002).

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part of a patient's rehabilitation.[4] The goals of a therapist who treats a patient are similarly different from the parties' goals in the litigation itself. Do these repressed memories have any place in the legal arena if memories themselves suffer questions of accuracy and there is no way to prove their validity? Should the "phenomenon" of repressed memory be treated any differently than normal "forgetfulness" for the purpose of circumventing the statutes of limitation, since there is no scientific evidence suggesting that these repressed memories are in fact a unique phenomenon? In her article, *Memory Faults*, Dr. Elizabeth Loftus suggests that "[w]e might start by recognizing that a reconstructed memory that is partly fact and partly fiction might be good enough for many facets of life, but inadequate for legal purposes where very precise memory often matters."[5]

II.
HOW ACCURATE IS A "NORMAL" MEMORY?

"Happiness is nothing more than good health and a bad memory."
—Albert Schwietzer

Before discussing the concept of repressed memories, the accuracy of the human memory should itself be addressed. Although often held with conviction, memories are equally often inaccurate. By the year 2002, the 100th person was freed from prison after DNA testing disproved relevant eyewitness accounts.[6] Larry Mayes had been convicted of

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[4] THE MYTH OF REPRESSED MEMORY, *supra* note 1, at 21.

[5] Loftus, *supra* note 3, at 47.

[6] *Id.* at 41.

raping a gas station cashier and served twenty-one years in prison. Though the victim twice failed to pick Mayes out of a line-up, she subsequently identified Mayes as her assailant. DNA evidence later excluded Mayes, demonstrating the fallacy of the plaintiff's recollection. The fallacy of memory is seriously demonstrated in the many investigations conducted by the "Innocence Project." The Innocence Project defines itself as a national litigation and public policy organization dedicated to exonerating those who are wrongfully convicted by utilizing DNA testing to rebut less reliable evidence of guilt.[7] It is comprised of attorneys, journalists and institutions. Eyewitness identification, in particular, is a source of concern since it places approximately 200 people per day in jail.[8] The high rate of error regarding eyewitness identification has prompted law enforcement officials across the country to enact guidelines requiring that interviewers pose only open-ended questions to witnesses because their memories are vulnerable to leading questions[9] – another indicator that human memory is highly malleable.

In this regard, Dr. Loftus has demonstrated that the human memory is extremely susceptible to "post-event information."[10] She has conducted a number of studies on memory and is considered a leader in the field. She notes that people integrate what they have observed and experienced with anything they are later told about the event and then create one "seamless" memory from both sources of information.[11] In one of her studies, Loftus showed people footage of an automobile accident. Half of these people then were asked how fast they thought the cars were traveling when they "hit" each other. The other half were asked the same question using the word "smashed" rather than "hit."[12] The substitution of this single word led the latter group to estimate higher speeds and to claim sightings of broken glass, even though there was no broken glass at all. Such influences can occur every day in media broadcasts as well as through suggestive or leading interrogation techniques.

Dr. Loftus, who has been studying memory for over thirty years, describes it as "utterly malleable, selective, and changing."[13] Based on her studies, Loftus posits that memory is more likely to be altered by "misinformation," particularly if it has had a chance to "fade."[14] Since memory generally is ever-changing and subject to constant influence by a person's

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7 *See* The Innocence Project, http://www.innocenceproject.org.

8 *Id.* at 2.

9 Loftus, *supra* note 3, at 47.

10 *Id.* at 43.

11 *Id.*

12 *Id.*

13 Loftus & Ketcham, *supra* note 1, at 1.

14 *Id.* at 2.

surroundings, Loftus questions whether repressed memories are somehow immune to these characteristics. The case of Bobby Fijnje presents a pointed real-world example.[15]

Fijnje was a teenager who spent considerable time volunteering with young children at his church. His personal nightmare began in 1989 when a care-worker expressed concern that a three-year old seemed afraid of him. Following this revelation, a psychologist intervened who believed that the child's fear was motivated by abuse. Though the matter was investigated by a social worker who found no evidence to warrant further inquiry, the child was subjected to additional therapy sessions with the psychologist. During those sessions, the child accused Fijnje of molesting her. Soon thereafter, other children from the church came forward with similar accusations. Some of the children who accused Fijnje were diagnosed as exhibiting physical signs of sexual abuse. Fijnje eventually was arrested and, after hours of questioning, he confessed. Though only fourteen years old at the time, he was charged as an adult with capital sexual battery, which carried a mandatory life sentence in maximum security with no possibility of parole. By this time, twenty-one children claimed that Fijnje had molested them. The claims by these children, however, grew increasingly unrealistic and ranged from cannibalism to levitation. Despite the outrageous nature of some of the claims, prosecutors continued to proceed against Fijnje, who refused to accept the state's plea negotiation. At trial, Fijnje's defense counsel presented the results of memory experiments with children demonstrating how inaccurate and malleable those could be. Additionally, the defense called a gynecological specialist to the stand who refuted the alleged signs of physical abuse, testifying that such findings actually could be normal genital variations. The defense also focused on the absence of a taped or written confession. Though Fijnje acknowledged a verbal confession, he argued that it was involuntary since he was diabetic and had not taken his insulin the day of the confession, nor had he eaten in several hours. Fijnje ultimately was acquitted on all counts, and although investigators continued to follow up on the allegations, no further charges were ever brought.

The case of Bobby Fijnje is but one of many examples where memory proves inaccurate, even when not repressed. The jurors in the Fijnje case later wrote a letter to Attorney General Janet Reno, explaining their verdict:

> It is our hope that this case will lay the foundation upon which a set of policies and guidelines are built so that when cases of abuse, especially child abuse, are alleged, the programs in place will allow for appropriate questioning and investigation by the police, physicians and child psychologists so as to drastically reduce the chances of conflicting testimony and charges of contamination that can and will raise reasonable doubt.[16]

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[15] FrontLine, *The Child Terror: State of Florida vs. Bobby Fijnje*, http:/www. pbs.org/wgbh/pages/frontline/shows/terror/cases/finjesummary.html.

[16] *Id.*

III.
The Concept of "Repressed Memory"

"The past is malleable and flexible, changing as our recollection interprets and re-explains what has happened."
—Peter Berger

The concept of repressed memory has evolved over time. Its earliest mention dates back to Freud.[17] The Freudian concept of repressed memory viewed repression of memory as a defense mechanism.[18] Freud believed that traumatic events could be withheld from a person's conscious awareness. He also believed that this could be accomplished either consciously or unconsciously to avoid painful memories that would damage an individual's ego.

Today, however, repressed memory is considered a process performed completely unconsciously; the process also differs from that identified as "normal forgetting."[19] The individual supposedly does not realize that an event has been forgotten or is missing from his or her memory, but then years later the memory may re-surface unexpectedly, causing psychiatric problems for the subject. This "modern" notion that repressed memory is completely unconscious also contends that, when later recovered, these memories can be "exhumed in their pristine or veridical form."[20]

Some psychiatrists also believe that if a person "repressed" painful memories, that person will experience other manifestations of unhappiness and discontent later in his or her mental health. These therapists believe that memories must be "recovered" or "re-experienced" in order for the patient to heal.[21] They seek to "recover" these memories through a number of techniques: hypnosis, journaling, and guided imageries. If and when a patient "recovers" a memory, however, these therapists do not seek to verify whether these memories are true or accurate because they do not believe that to be the goal of the therapy. Rather, these therapists often interpret any change in a patient's symptoms as supporting their theory that the patient is accepting the repressed memory in order to recover. For example, if the patient improves, the therapist believes that accepting the memory is working to heal the patient; if the patient worsens, the therapist suggests that the patient is "working through this new information." And if the patient does not change at all, these therapists would suggest that the patient is being "resistant" or is "in denial."[22]

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[17] Jay Ziskin, Coping with Psychiatric and Psychological Testimony 1101 (1995).

[18] Stephen J. Ceci & Maggie Bruck, Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony 194 (1995).

[19] Ziskin, *supra* note 17.

[20] Ceci & Bruck, *supra* note 18.

[21] Ziskin, *supra* note 17, at 1102.

[22] *Id.*

Subscribers to the theory of repressed memory contend that the process is entirely different from merely forgetting an event or choosing not to think about it. Nevertheless, distinguished memory researcher Alan Baddeley concluded from his studies that, "the extent to which the patient is totally unable to access the stressful memories, and to what extent he/she chooses not to is very hard to ascertain."[23]

IV.
Dissociative Amnesia

As the debate over repressed memories continues, its supporters are steadfast in their belief that repressed memories are real. The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) includes the term, "Dissociative Amnesia," which is described as "an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness."[24]

Although supporters of these recovered memories claim that they are similar to "dissociative amnesia," other experts argue that these recovered memories are not the "dissociative amnesia" anticipated in the DSM-IV. Instead, "dissociative amnesia" is more suitable, they argue, for war-time memories and such. Even though a majority of clinicians believe in the validity of "dissociative amnesia" (what they consider a "repressed memory"), opponents of repressed memory contend that creating a diagnostic category without scientific validation is dangerous. They maintain that "each scientific claim should prevail or fall on its research validation and logic."[25] Studies have been conducted on both sides of the issue, attempting to uncover "the truth."

V.
Results of the Studies

"It doesn't matter who my father was, it matters who I remember he was."
—Anne Sexton

While the debate regarding repressed memory tears through therapy offices and courtrooms alike, the very nature of repressed memory makes it impossible to conclusively and scientifically confirm or deny its existence. Supporters of repressed memory syndrome rely

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[23] Loftus & Ketcham, *supra* note 1, at 50.

[24] Michael Kowalski, *Applying the "Two Schools of Thought" Doctrine to the Repressed Memory Controversy*, 19 J. Legal Med. 503, 524 (1998).

[25] *Id.* at 525 (citing Pope, *Memory, Abuse, and Science: Questioning Claims About the False Memory Syndrome Epidemic*, 51 Am. Psychol. 957, 971 (1996)).

on clinical observations and case studies as "proof" of its existence.[26] In one such study conducted by Linda Meyer Williams, Williams interviewed young girls who were admitted for medical treatment of abuse.[27] Many years later, Williams again interviewed the abused girls and found that over one-third of the girls no longer disclosed their childhood abuse. Williams signals that this result implies that the women had repressed the memory of their sexual abuse. The study, however, has been criticized by those opposing the theory of repressed memory. The opponents claim that Williams should have conducted follow-up interviews with these women to determine why they did not disclose the abuse at the later interview, theorizing that these women might simply have been embarrassed or uncomfortable discussing the topic. Alternatively, the subject women might simply have forgotten the incident in the normal sense or might have been reluctant to discuss their abuse.

Another study on repressed memory was conducted by Dr. Judith Lewis Herman.[28] The study involved women who had been sexually abused as children. The women were asked if they had suffered any memory loss relating to the abuse. Approximately two-thirds of the women studied claimed to have some level of memory loss with regard to the specific incidents. While Herman views these studies as implied proof that repressed memory exists, critics point out that there is no way to know whether this memory loss is the subconscious, involuntary process that repressed memory claims to be.

The researchers who deny the existence of repressed memory have conducted their own studies to help clarify this issue. Since there really is no way to scientifically disprove the alleged subconscious phenomenon of repressed memory, Dr. Elizabeth Loftus decided to attack the issue from another angle by proving how easily a false memory could be implanted and allegedly "remembered" by people.[29] Loftus's study therefore not only attempted to see if people remembered things inaccurately, but also attempted to discover if people remembered things that never occurred at all. The study attempted to convince a group of adults that, as children, they had been lost in a shopping mall and were found and returned to their parents by an elderly couple. This study, nicknamed the "lost-in-the-mall" study, simply asked these people if they remembered this event, telling them that their relatives had assured the researchers that the event took place.[30] Nearly one-quarter of the study subjects "remembered" that they had, in fact, actually been lost in a mall.

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[26] Ziskin, *supra* note 17, at 1102.

[27] Camille Fletcher, *Repressed Memories: Do Triggering Methods Contribute to Witness Testimony Reliability?*, 13 Wash. U. J.L. & Pol'y 335, 341 (2003).

[28] *Id.* at 342.

[29] *Id.*

[30] *Id.*

Studies similar to the "lost-in-the-mall" study were later conducted using "memories" of more traumatic events, such as a near-drowning and subsequent rescue by a lifeguard. In the near-drowning study, about 37% of the group "remembered" the event which never happened.[31] One subject even elaborated on the near-drowning incident with meticulous details surrounding the occurrence.

The very nature of the alleged repressed memory phenomenon makes it impossible to reach a universally accepted conclusion. There remain only clinical observations that identify people who allegedly recovered repressed memories after "forgetting" traumatic events. On the other hand, there is a balance of studies demonstrating that memory is inaccurate, and that false memories can be implanted and then "remembered." None of the studies is able to scientifically or conclusively prove that repressed memory exists as a subconscious defense mechanism, but neither can its existence be disproved. Unfortunately, this uncertainty as to the existence and validity of repressed memories creates new issues for defense attorneys who handle such cases.

VI.
Defending against Alleged Repressed Memories of Childhood Sexual Abuse: the Most Common Issue

"The difference between false memories and true ones is the same as for jewels; it is always the false ones that look the most real, the most brilliant."
—Salvador Dali

Aside from a *Daubert*-type analysis addressing the admissibility of evidence and testimony regarding repressed memories, the statute of limitations is the single most common and significant issue facing defense attorneys.[32] Statutes of limitations are enacted for several reasons, including protection from "stale" litigation and the need for contemporaneity between an event and evidence about that event. The greater the passage of time, the more difficult it will be to assess the truth (i.e., witnesses die or forget what happened; people

[31] Loftus, *supra* note 3, at 44.

[32] *Daubert* is the landmark federal court decision from 1993 which overturned seventy years of expert evidence law regarding what types of expert testimony should be allowed. *Daubert* discarded the *Frye* standard claiming that it was "neither necessary nor sufficient in admissibility decisions regarding novel scientific evidence," and also affirmed the judge's role as "gatekeeper" to ensure that evidence is both reliable and relevant. The justices decided that "evidentiary reliability will be based on scientific validity." *See* Veronica B. Dahir et al., *Judicial Application of Daubert to Psychological Syndrome and Profile Evidence*, 11 Psychol. Pub. Pol'y & L. 62 (Mar. 2005); *see also* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

have moved or cannot be found; witness recollections have dulled; and evidence can be lost or misplaced). If a person simply "forgets" that something happened, and then remembers it after a statute of limitations has run, that person's claim is barred. Sometimes, however, one can circumvent the statute of limitations by claiming that a matter is not simply "forgotten," but rather that one's memory was "repressed." And since this process of repression is allegedly subconscious, the statute of limitations should not begin to run until the person becomes aware of the actual reality. Despite this rationale, not all states agree about the treatment of repressed memories or the statute of limitations. Even the states that toll the statute of limitations seem to differ about the basis for tolling the statute.

There are two general methods for treating the statute of limitations in a repressed memory case.[33] Some states have examined the issue of repressed memory in the context of a "disability." The repressed memory is considered a type of disability (such as insanity) for purposes of avoiding the statute of limitations. The majority of states, however, focus on what has been labeled the "delayed discovery doctrine."[34] The "delayed discovery doctrine" tolls a statute of limitations until the alleged victim knows or should have known that he was injured. For example, if a medical instrument remains in the patient following surgery, the statute of limitations does not commence until the person realizes the situation. Both the disability approach and the delayed discovery doctrine are widely used in states across the country, but many states apply the concepts differently. Depending upon the jurisdiction, defense attorneys must respond by showing that the repressed memory was not "insanity" as envisioned by the state's statutes, or by showing that the discovery doctrine should not apply to toll the statute of limitations because the plaintiff should have known the situation at some point earlier in time. Either defense precludes the *Daubert* analysis on admissibility.

VII.
Jurisdictional Views on Repressed Memory and Statutes of Limitations

> "Those who cannot remember the past will spend a
> lot of time looking for their cars in mall parking lots."
> —Jay Trachman

The following chart represents state-by-state coverage of the views toward repressed memory in each of the jurisdictions represented.

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[33] Julie Schwarts Silberg, *Memory Repression: Should it Toll the Statutory Limitations Period in Child Sexual Abuse Cases?*, 39 Wayne L. Rev. 1589, 1602 (Summer 1993).

[34] *Id.*

State	Cases/Statutes Affecting Repressed Memory	Jurisdictional Stance on Repressed Memory
Alabama	*Travis v. Zitzer*, 681 So. 2d 1348 (Ala. 1996). Ala. Code § 6-2-8 (2008).	The code tolls the statute for three years when there is a termination of disability (insanity), but tolling does not apply to repressed memory, nor does the state's discovery rule permit tolling for repressed memories.
Alaska	Alaska Stat. § 09.10.065 (2007).	A claimant may bring action at any time for (1) felony sexual abuse of a minor; (2) felony sexual assault; or (3) unlawful exploitation of a minor. The statutes prescribe a three-year limitation for misdemeanor sexual abuse, assault, incest, or felony indecent exposure.
Arizona	*Doe v. Roe*, 955 P. 2d 951 (Ariz. 1998) (en banc). *Logerquist v. Danforth*, 932 P. 2d 281 (Ariz. Ct. App. 1996).	Discovery rule will allow tolling until the repressed memory is recovered. Corroborating evidence is not necessary. But whether the discovery rule applies and whether abuse actually occurred is a fact question for the jury.
Arkansas	Ark. Code Ann. § 16-56-130 (2007).	Claims to redress sexual abuse perpetrated against a minor must be brought within three years after discovering the sexual abuse. A claim may be based on the injured party's discovery of the effect of a series of acts rather than discovery of the first single act.
Colorado	*Ayon v. Gourley*, 1999 Colo. J. 4052. *Sailsbery v. Parks*, 983 P. 2d 137 (Colo. Ct. App. 1999).	If evidence shows that plaintiff knew or had reason to know of the cause of action (the abuse and the causal connection to the injury), then the statute of limitations is six years after the time the plaintiff knew or had reason to know. If claims of repressed memory are alleged and it can be shown that the plaintiff did not know or have reason to know of the problem causing the injury, then the accrual begins when the plaintiff first realizes the problem.
Connecticut	Conn. Gen. Stat. § 52-577d (2008). Conn. Gen. Stat. § 52-595 (2008).	Sexual abuse cases involving personal injury to a minor (including emotional distress) must be commenced within thirty years after that person attains the age of majority. If fraudulent concealment is demonstrated, the cause of action will accrue when the person actually discovers it.

Delaware	*Garcia v. Nekarda*, 1993 WL 54491 (Del. Super. Ct. Feb. 19, 1993) (unpublished).	The discovery rule applies when the injuries are "inherently unknown" to the plaintiff. It does not apply where plaintiff had no physical disability and/or post- traumatic stress disorder that prevents him or her from verbalizing abuse.
	Cobb v. Halko, 2001 WL 1472683 (Del. Super. Ct. Sept. 4, 2001) (unpublished).	Where plaintiff did not know or have reason to know both the fact of the injury and its cause, with the exercise of reasonable care, the discovery rule applied.
Florida	*Hearndon v. Graham*, 767 So. 2d 1179 (Fla. 2000).	Claims of repressed memory apply to accrual of action limitations. The action does not accrue until plaintiff's memory of abuse was restored. (This is the delayed discovery doctrine).
	Fla. Stat. § 95.11 (7) (2007).	For intentional torts based on abuse or incest, an action may be commenced: within seven years after reaching the age of majority; within four years after the injured person leaves the dependency of the abuser; or within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.
Georgia	*M.H.D. v. Westminster Schools*, 172 F. 3d 797 (11th Cir. 1999).	Where the plaintiff claimed to never have actually forgotten the incidents, the discovery rule did not apply under Georgia law, and the cause of action began to run when plaintiff attained the age of majority.
	Ga. Code Ann. § 9-3-33.1 (2007).	An action must be commenced within five years of the date of plaintiff's majority.
Hawaii	*Dunlea v. Dappen*, 924 P. 2d 196 (Haw. 1996).	Applying the discovery rule to the question of when a person should have or did discover the cause of the injury is a fact question for the jury.
Idaho	Idaho Code Ann. § 6-1704 (2007).	A claimant must bring the action within five years after the child reaches the age of majority, or within five years after the child discovers or reasonably should have discovered the act, abuse, or exploitation and its causal relationship to the injury, or the condition suffered by the child, whichever occurs later.

Illinois	735 Ill. Comp. Stat. Ann. 5/13-202.2 (2008).	Legislature allows for tolling of the statute of limitations for repressed memory of abuse, but when the victim recovers her memory, the statute of limitations begins to run. Note the additional requirement that no action for childhood sexual abuse can be brought after the age of thirty.
	Kuch v. Catholic Bishop of Chicago, 851 N.E. 2d 233 (Ill. App. Ct. 2006).	The court applied the statute, but since the thirteen-year lapse would put the person over age thirty, the claim was barred.
Indiana	*Doe v. Schults-Lewis Child and Family Services, Inc.*, 718 N.E. 2d 738 (Ind. 1999).	Statute of limitations would be tolled if plaintiff could: demonstrate that parents did not know of abuse or collude with the perpetrator to conceal it; prove the tortious act alleged; show that defendant wrongly prevented plaintiff from discovering the cause of action; provide expert opinion evidence supporting repressed memory claim; and show that plaintiff exercised due diligence in bringing the claim after recovery of memory.
	Fager v. Hundt, 610 N.E. 2d 246 (Ind. 1993).	Court invoked exception to Indiana Code § 34-1-2-5 that imputed discovery of a cause of action two years after the minor reached the age of majority if the defendant prevented discovery by fraudulently concealing facts from the plaintiff.
	Doe v. United Methodist Church, 673 N.E. 2d 839 (Ind. Ct. App. 1996).	Plaintiff must demonstrate ordinary diligence in discovering its cause of action or the doctrine of fraudulent concealment would not toll the statute of limitations
	Hildebrand v. Hildebrand, 736 F. Supp. 1512 (S.D. Ind. 1990).	Court applied the two-year statute of limitations and declined to apply the discovery rule in child abuse cases; repressed memory did not constitute insanity or mental incompetence as envisioned by the disability statute.
Iowa	Iowa Code § 614.8A (2007).	When filing an action for sexual abuse of a child, a plaintiff who has reached the age of majority has four years to bring suit from the date of discovering both the injury and the causal relationship between the injury and the sexual abuse.

Kansas	Kan. Stat. Ann. § 60-523 (2006).	An action must be commenced: not more than three years after claimant reaches the age of eighteen, or not more than three years after the claimant discovered or reasonably should have discovered the injury caused by the sexual abuse.
	Shirley v. Reif, 920 P. 2d 405 (Kan. 1996).	Section 60-523 of the Kansas Statutes revived claims that would have been barred under section 60-515(a) (which required suit to be brought eight years after abuse or one year after reaching age eighteen).
Kentucky	*Roman Catholic Diocese of Covington v. Sector*, 966 S.W.2d 286 (Ky. Ct. App. 1998).	Under the Kentucky discovery rule, a cause of action does not accrue until the injury is discovered or reasonably should have been discovered. In this case, the discovery rule did not apply because the claimant had no memory loss nor did he lack awareness of the abuse. The court relied instead on the Diocese's active, fraudulent concealment.
Louisiana	La. Rev. Stat. Ann. § 9:2800.9 (2008).	Ten-year limitation period exists for sexual abuse of minor, running from the day the minor reaches the age of majority; it is not retroactive. If claim is filed when a plaintiff is over twenty-one, plaintiff also must file a certificate of merit.
	Doe v. Archdiocese of New Orleans, 823 So. 2d 360 (La. Ct. App. 2002).	An action is not barred by the statute of limitations because repressed memory claim is a question of fact.
Maine	Me Rev. Stat. Ann. Tit. 14, § 752-c (2000).	There is no time limit for an action involving sexual intercourse with child, but the statute does not apply retroactively.
	Nuccio v. Nuccio, 673 A. 2d 1331 (Me. 1996).	Claim that memory of the abuse was repressed does not toll the statute of limitations. The claim accrues at the time of abuse or age of majority.
Maryland	*Doe v. Archdiocese of Washington*, 689 A. 2d 634 (Md. Ct. Spec. App. 1997).	A civil action should be filed within three years after it accrued. In this case, the sexual abuse victim's cause of action accrued on the date he reached the age of majority (regardless of whether he appreciated the wrongfulness of the alleged actions).

	Doe v. Maskell, 679 A. 2d 1087 (Md. 1996), *cert. denied* (1997).	Repressed memory does not activate the discovery rule so as to toll the limitations period. Claims are barred three years after the claimant reaches age eighteen.
Massachusetts	Mass. Ann. Laws ch. 260, § 4C (1993).	Assault and battery actions alleging the sexual abuse of a minor must be brought within three years of the acts or within three years of the discovery or when the "victim reasonably should have discovered that an emotional or psychological injury or condition was caused by said act, whichever period expires later;" this time limit is tolled until the child reaches eighteen.
	Phinney v. Morgan, 654 N.E. 2d 77, 205 (Mass. App. Ct. 1995).	The discovery rule applies to incestuous child abuse but the plaintiff must show that he or she did not and could not have known of the harm within the statutory period. Factors limiting the discovery rule include: (1) unawareness that defendants committed a wrongful act at time of commission; (2) plaintiff's trust in defendant; (3) defendant's control over facts giving rise to plaintiff's cause of action; and (4) the necessity of a triggering event which makes plaintiff aware of defendant's liability.
	Doe v. Creighton, 786 N.E. 2d 1211 (Mass. 2003).	The discovery rule did not toll the statute of limitations where the claim of knowing the abuse but not knowing the connection to the injury was deemed to be unreasonable.
	Flanagan v. Grant, 897 F. Supp. 637 (D. Mass. 1995).	The discovery rule tolls the statute until repressed memory is recovered if an actual repressed memory is alleged.
	Ross v. Garabedian, 742 N.E. 2d 1046 (Mass. 2001).	A fact question existed about whether a reasonable person in plaintiff's position would recognize the link between the abuse and the injuries. The list of factors in *Phinney* is not an exhaustive list. Suit was permitted in this case thirty years after the abuse.
Michigan	Mich. Comp. Laws § 600.5851 (1, 2) (2008); *Meiers-Post v. Shaefer*, 427 N.W.2d 606 (Mich. Ct. App. 1988).	Repressed memory may fall within the "insanity" definition under disability statutes to toll the statute of limitations but requires corroboration.
	Lemmerman v. Fealk, 534 N.W. 2d 695 (Mich. 1995).	No type of discovery rule extension of the statute of limitations exists for repressed memory.

Minnesota	Minn. Stat. Ann. §§ 541.15, 541.073 (2007).	Suit must be brought within six years if plaintiff knew or had reason to know that abuse caused the injury.
	Bertram v. Poole, 597 N.W. 2d 309 (Minn. Ct. App. 1999).	Repressed memory, however, can fall under the disability category to suspend the tolling of the statute of limitations. Repressed memory is a legal disability which tolls the statute of limitations.
	W.J.L. v. Bugge, 573 N.W. 2d 677 (Minn. 1998).	No claims of repressed memory existed; there was only a claim that plaintiff did not realize the injury caused by the abuse, which was not enough to toll or delay the statute of limitations.
Mississippi	*Tichenor v. Roman Catholic Church of the Archdiocese of New Orleans*, 869 F. Supp. 429 (E.D. Miss. 1993).	The actions alleged (i.e., similar torts or assault and battery) fall within the statute of limitations for intentional torts.
	Doe v. Roman Catholic Diocese of Jackson, 947 So. 2d 983, 987 (Miss. App. 2006).	The statute of limitations for intentional torts will not toll unless there is some latent injury (i.e., "one where the plaintiff is precluded from discovery of the harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question, or when it is unrealistic to expect a layman to perceive the injury at the time of the act."). Here, the alleged sexual abuse was deemed to have been discoverable; thus, there was no latent injury and no tolling.
Missouri	Mo. Ann. Stat. §537.046 (2007).	Childhood sexual abuse claims must be brought within ten years of turning twenty-one or three years after plaintiff discovered or reasonably should have discovered that the injury was caused by the childhood sexual abuse, whichever is later.
	Vandenheuvel v. Sowell, 886 S.W. 2d 100 (Mo. Ct. App. 1994).	Prior to enactment of section 537.046, there was no discovery rule or other extension of the statute of limitations for repressed memory.
Montana	Mont. Code Ann. § 27-2-216 (2007).	Action for alleged childhood sexual abuse should be brought within: three years of the abuse, or three years after plaintiff discovers or reasonably should have discovered that the injury was caused by the abuse.
Nebraska	None	
Nevada	*Petersen v. Bruen*, 792 P. 2d 18 (Nev. 1990).	Nevada plaintiffs can commence a civil suit at any time (no statute of limitations bar) if they can demonstrate actual abuse as a child by clear and convincing evidence.

New Hampshire	N.H. Rev. Stat. Ann. § 508:4 (2008).	Personal actions must be brought within "three years of the act or omission complained of except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within three years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its casual relationship to the act or omission complained of." § 508:4(I).
	McCollum v. D'Arcy, 638 A. 2d 797 (N.H. 1994).	Repressed memory is a basis for applying the discovery rule. Corroborative evidence is not always required to apply the discovery rule; the issue should be decided on a case-by-case analysis.
New Jersey	*Jones v. Jones*, 576 A. 2d 316 (N.J. 1990).	"[M]ental trauma resulting from a pattern of incestuous sexual abuse may constitute insanity . . . so as to toll the statute of limitations." 576 A. 2d at 321.
New Mexico	N.M. Stat. § 37-1-30 (2008).	The claimant must bring an action for childhood sexual abuse by either: twenty-four years of age, or three years from the date that the person "knew or had reason to know of the childhood sexual abuse and that the childhood sexual abuse resulted in an injury to the person, as established by competent either medical or psychological testimony" (whichever is later). § 37-1-30(A)(2).
New York	*Bassile v. Covenant House,* 594 N.Y.S.2d 192 (App. Div. 1993).	No delayed discovery rule tolls the statute of limitations for actions based on sexual abuse. The statute begins to run at the time the tortious act is committed.
North Carolina	None	
North Dakota	N.D. Cent. Code § 28-01-18 (2008).	Two-year statute of limitations exists for assault and battery actions.
	N.D. Cent. Code § 28-01-25 (2008).	If claimant is a minor when the alleged abuse occurred, statute of limitations can be extended until one year after claimant's eighteenth birthday.
	Osland v. Osland, 442 N.W. 2d 907 (N.D. 1989).	Discovery rule extended the statute of limitations when, because of the trauma, plaintiff was unable to fully understand or discover her cause of action.

	Peterson v. Huso, 552 N.W. 2d 83 (N.D. 1996).	Discovery rule tolls the statute of limitations until two years from when the repressed memory was recovered.
Ohio	*Smith v. Rudler*, 639 N.E. 2d 66 (Ohio 1994).	When a victim of childhood sexual abuse represses the memories of that abuse until a later time, the discovery rule will toll the statute of limitations.
	Ohio Rev. Code Ann. § 2305.111 (2008).	Action for assault/battery claiming childhood sexual abuse must be brought within twelve years after claim accrues; claim accrues either when victim reaches age of majority, or if fraudulent concealment occurs, when the victim discovers or reasonably should have discovered the injury.
	Scott v. Borelli, 666 N.E. 2d 322 (Ohio Ct. App. 1995).	The discovery rule applies and tolls the statute of limitations in section 2305.11 when memories of childhood sexual abuse were repressed until a later time.
Oklahoma	*Lovelace v. Keohane*, 831 P. 2d 624 (Okla. 1992).	Repressed memory is not insanity or mental incompetence as envisioned by disability statute.
Oregon	None	
Pennsylvania	42 Pa. Cons. Stat. Ann. §§ 5524, 5533 (2007); *Bailey v. Lewis*, 763 F. Supp. 802 (E.D. Pa. 1991).	Applying the Pennsylvania statute in *Bailey*, the court did not toll the statute of limitations for the period of time that the alleged memories were repressed.
	Dalrymple v. Brown, 701 A. 2d 164 (Pa. 1997).	No discovery rule or other extension of the statute of limitations exists for claims of repressed memories.
	Pearce v. Salvation Army, 674 A. 2d 1123 (Pa. Super. Ct. 1996).	The discovery rule did not toll the statute of limitations, even when the victim claimed those memories had been repressed and were revived only later through therapy.
Rhode Island	R.I. Gen. Laws § 9-1-51 (2007).	Claims for childhood sexual abuse should be brought "within seven years of the act alleged to have caused the injury" or "seven years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever occurs later." § 9-1-51(a).
	Kelly v. Marcantonio, 678 A. 2d 873 (R.I. 1996).	Repressed memories may qualify as a "disability" if the judge determines that the evidence establishes the existence of these recovered recollections and they are sufficiently reliable to qualify as "unsound mind."

South Carolina	*Moriarty v. Garden Sanctuary Church of God*, 534 S.E. 2d 672 (S.C. 2000).	If there is objectively verifiable evidence of repressed memory (expert testimony required), then the statute of limitations period can be tolled.
South Dakota	S.D. Codified Laws. § 26-10-25 (2007).	For childhood sexual abuse, the action must be commenced: three years from the abuse, or three years from the discovery of the abuse or when the abuse should have been reasonably discovered, whichever occurs later.
Tennessee	*Hunter v. Brown*, 955 S.W. 2d 49 (Tenn. 1997).	Memory here was not actually repressed because the victim had an abortion; the statute of limitations would not be tolled.
Texas	*Doe XV v. Roman Catholic Diocese of Dallas*, 2001 WL 856963 (Tex. Ct. App. Jul. 31, 2001).	The discovery rule only applies in cases of fraud and fraudulent concealment and in other cases in which the nature of the injury is inherently undiscoverable and the evidence of injury is objectively verifiable.
Utah	*Burkholz v. Joyce*, 972 P. 2d 1235 (Utah 1998).	Repressed memory does not activate the discovery rule or any other type of extension for the statute of limitations.
Vermont	Vt. Stat. Ann. tit. 12 § 522 (2007).	A cause of action for childhood sexual abuse must be brought within six years of the act, or six years from date of discovery.
Virginia	*Ackerman v. Ackerman*, 1997 WL 1070559 (Va. Cir. Ct. Apr. 3, 1997). Va. Code Ann.§ 8.01-249 (6) (2007).	Before 1991, the statute of limitations for childhood sexual abuse was two years. In 1995, the legislature enacted Section 8.01.249 (6). A cause of action for sexual abuse that occurred when the plaintiff was a minor or incompetent accrues when the fact of the injury and the causal connection to the abuse is first communicated by a licensed physician, psychiatrist, or clinical psychologist. The statute of limitations is ten years from the latest of: the last act by the same perpetrator in a series of acts, or removal of the disability of infancy or incompetency. But if plaintiff knows of the facts and the causal connection of the abuse to the injury, choosing instead not to act, the statute does not revive the plaintiff's claim.

Washington	Wash. Rev. Code Ann. § 4.16.340 (2008).	The statute codifies the delayed discovery rule. Claim must be brought: within three years after the alleged act; within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act; or within three years after the victim discovered that the act caused the injury for which the claim is brought.
	Cloud v. Summers, 991 P. 2d 1169 (Wash. Ct. App. 1999).	A victim of sexual abuse might know s/he was abused but may be unable to make a connection between the abuse and the emotional harm until many years later. The victim also may discover more serious injuries later.
	Hollmann v. Corcoran, 949 P. 2d 386 (Wash. Ct. App. 1997).	Applying section 4.16.340, the time for action is tolled until the victim has actual knowledge in repressed memory cases.
West Virginia	*Albright v. White*, 503 S.E. 2d 860 (W.Va. 1998).	The discovery rule does not apply to repressed memory if the time exceeds a twenty-year tolling provision cap from accrual of the cause of action. The discovery rule cannot further toll the limitations period, however. The discovery rule only applies where there is a strong showing that plaintiff was prevented from knowing of the claim at the time of the injury.
	Miller v. Monongalia County Board of Education, 556 S.E. 2d 427 (W.Va. 2001).	The discovery rule can be further extended if plaintiff can show that the defendant took affirmative steps to conceal the material facts of the action.
Wisconsin	Wis. Stat. Ann. § 893.587 (2007).	Action must be commenced before the injured party reaches the age of thirty-five.
	Doe v. Archdiocese of Milwaukee, 565 N.W. 2d 94 (Wis. 1997).	The court rejected reliance on a discovery rule; the statute of limitation is only tolled for repression of memory in incest cases.
Wyoming	*McCreary v. Weast*, 971 P. 2d 974 (Wyo. 1999).	The statute of limitations for psychic trauma attributable to assault (when civil action is based on the sexual assault of a minor) does not start until discovery of those damages, even through the discovery of the physical damages occurred at an earlier date.

VII.
Conclusion

It is likely that the debate concerning validity of repressed memory will continue both in scientific studies and in the courtroom. Defense counsel who confront the issue will best serve their client's interests by recognizing the arguments both for and against acceptance within the scientific community, as well as the venue state's willingness to create an exception for allowing a claim that is often stale.