



Psychiatry & Behavioral Science — 2019

I42 Repressed Memory Syndrome Goes to Court: The Lopez Hearing

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Learning Overview: After attending this presentation, attendees will be familiar with: (1) repressed memory syndrome, (2) its legal implications, (3) how it might come up in a civil setting, and (4) the concept of the *Lopez* rule (referring to a hearing to determine whether or not the statute of limitations can be extended to a time when a victim actually learns about damages).¹ The interplay between repressed memory and damages has been a legal minefield in many landmark cases and now this study introduces the concept of a statute of limitations to further complicate the scenario and explore and understand how these factors all interact, utilizing a recent New Jersey case.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by introducing previously unconsidered issues: (1) repressed memory, (2) damages to the victim, (3) the statute of limitations, and (4) understanding how appropriate forensic psychiatric evaluation and testimony can assist the legal system in making judicially appropriate decisions.

Repressed Memory Syndrome is defined as a situation in which an individual suddenly remembers an event, typically traumatic, that occurred years earlier. The literature has been divided on repressed memory, although conventional wisdom tells us that everyone has had memories that have been forgotten and then remembered. It is only when these memories arise and then become used in a legal arena that they become contentious.

A Statute of Limitations is a legal time limit beyond which legal action can no longer be taken in a court of law. For example, there is no Statute of Limitations on murder in the United States. Different crimes and different torts (civil wrongs) have different time limits. In New Jersey, child sexual abuse has a Statute of Limitations until age 23, two years after turning 21, the full age of majority, to file criminal charges.

In addition to criminal charges, individuals also have the right to file civil charges for damages, at least in the United States. In the case explored in this presentation, a 46-year-old man, JP, saw a photo on Facebook® on Thanksgiving Day 2014 of his cousin with “Uncle Jimmy” and after a moment of confusion, suddenly recalled, in vivid detail, two occasions on which his biological father sexually assaulted him.

This presentation will investigate the history of this case, the evidence JP presented to the civil court, his own psychiatric and personal history, and the testimony of the two opposing experts (with no identifying details). This author was brought in by the court as a tiebreaker, not to decide whether JP was actually molested, but on a matter of law: Was there sufficient evidence provided that the court should permit a *Lopez* hearing to extend the statute of limitations by an additional 21 years?

This presentation will review similar case law throughout the country and the world in case attendees find themselves in a similar situation one day and will refresh our repressed memories as to how to request and review a psychiatric-legal question from the attorney who hires you!

The story of this case is fascinating for many reasons and brings up the not trivial matter of how two extremely experienced and well-regarded experts could obfuscate to the point that the court needed to bring in an additional expert to explain all the jargon and help the court understand whether the Statute of Limitations should be extended.

To decide whether this case merited a *Lopez* hearing, the entire case was reviewed, and JP was evaluated. This method and the outcome will make an interesting group discussion for the attendees.

The surprise ending will be revealed to anyone who stays until the end!

Reference(s):

¹. *Lopez v. Swyer*, 62 N.J. 267 (1973).

Repressed Memory, Statute of Limitations, Sexual Abuse