

**THE DIFFICULT DECISION FOR VICTIMS OF SEXUAL ABUSE
FROM CLERGY IN NEW JERSEY: COMPARATIVE ANALYSIS OF
NEW STATE LEGISLATION EXPANDING STATUTE OF
LIMITATIONS FOR SEXUAL ABUSE VICTIMS THE SAME YEAR
THE NJ DIOCESE VICTIM COMPENSATION FUND IS
ESTABLISHED**
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I. Introduction

In May of 2019, the New Jersey Legislature passed an amendment to the statute governing civil remedies for victims of sexual abuse as minors by increasing the statute of limitations for the victim to bring suit. The statute increased the statute of limitations from three years after the age of majority (21) to 37 years after the age of majority (55). The statute gives victims a two-year grace period after 2019 to take advantage of the new statute of limitation, in the case that they were not able to bring suit under the previous law.

In June of 2019, the Catholic Diocese of New Jersey in Trenton created the New Jersey Independent Victims Compensation Program (IVCP). The program was first announced in February of 2019, and is a program meant to give financial compensation to victims of sexual abuse from clergy. In order to receive financial compensation from the fund the victim must waive their right to sue the diocese or the clergy.

This note analyzes the implications of the two different retribution options from which victims must choose. The path of filing a civil action against the clergy and diocese is a longer process that may cost attorney fees, take years until completion, and may result in the victim receiving nothing. Yet a civil action may bring the victim a sense of justice being done, award them with monetary damages, and give them peace of mind. The path of taking money from the diocese compensation fund is a quick way to receive monetary damages for the years of emotional distress caused by the sexual abuse. However, the amount received is likely much less than the damages a victim would win in a successful civil suit. This keeps the church safe from bad press and prevents the victim from seeking any other remedies in the future. To illustrate this point, I

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will review how other states have similarly handled this issue with statute of limitations. I will also contrast the issue with Truth and Reconciliation Commissions that were made to address the similar issue of a class of people seeking retribution for violence committed against them.

This Note does not intend to criticize either the statute or the New Jersey Dioceses' compensation fund. There should be no doubt that the dioceses are acting generously in the creation of this compensation fund as a way to acknowledge the history of sexual abuse by clergy and are trying to make amends for the harm their organization has caused. This note will analyze the pros and cons of both the statute and the compensation fund for a victim of sexual abuse seeking either monetary compensation and/or justice for their injury. While this note may argue that the Church is using the compensation fund to try to avoid responsibility for allowing sexual abuse by their clergy, but the compensation fund is at least some sort of remedy the church is providing to these victims.

II. The Recent New Jersey Legislation

The act increasing the statute of limitations for sexual abuse victims was introduced in January of 2018 by Senator John Vitale.¹ The bill passed May 13, 2019 and was signed by the governor the same day.² It amends the previous sexual abuse statute governing civil suits for cases involving sexual abuse of minors.³ The previous statute set the statute of limitations for civil actions against "certain sexual crimes against a minor" at three years past age 18.⁴ New Jersey is the eleventh state to pass a bill greatly increasing the age where the statute of limitations runs out for victims of sexual abuse as a minor.⁵

There was some opposition to the bill, as some politicians and lobbyists were concerned that the bill would open the floodgates to a massive amount of litigation against religious groups,

¹ *New Jersey Senate Bill 477 (Prior Session Legislation)*, LEGISCAN (May 13, 2019), <https://legiscan.com/NJ/text/S477/id/1683150>.

² *Id.*

³ N.J. STAT. ANN. § 2A:14-2 ("Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult").

⁴ *Id.* § 2A:14-2A

⁵ Deena Yelin, *NJ Extends Statute of Limitations, Allows Sex Abuse Victims Much More Time to Sue*, N. JERSEY REC. (May 13, 2019), www.northjersey.com/story/news/new-jersey/2019/05/13/nj-extends-statute-limitations-child-abuse-cases.

nonprofits, and schools.⁶ Despite the opposition, the bill passed nearly unanimously in State Assembly and the Senate.⁷ Despite this, Governor Murphy signed the bill reasoning that the need for victim relief outweighed the need for protection by nonprofit organizations against mass litigation costs. The governor stated: “I cannot deny victims the ability to seek redress in court for sexual abuse that often leaves trauma lasting a lifetime. I am confident that our judicial system is the right forum to assess these claims fairly and impartially.”⁸

Interestingly, Governor Murphy called civil lawsuits the “right forum to assess these claims fairly and impartially.”⁹ There is no part of the statute’s legislative history that mentions the Victim Compensation Fund being created by the New Jersey Dioceses the same year as the statute. The creation of the Compensation Fund counters the Governor’s reasoning for signing the bill, as it creates a forum for assessing victims claims. If the governor was aware or considered the possibility of a church compensation fund, then he decided the judicial forum to be the more fair and impartial of the two, but there is no evidence that the governor considered or knew of the compensation fund.

The past statute included senate judiciary comments expressing concern for sexual abuse victims not discovering their option to receive remedy in court for their injuries, which explained the two year extension after age of majority (although two years seems like a weak compromise).¹⁰ People between the age 18 and

⁶ Gov. Philip D. Murphy, *Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477*, N.J. LEGIS. (May 13, 2019), https://www.njleg.state.nj.us/2018/Bills/S0500/477_G1.HTM (Governor Murphy recognized the opposing arguments concerning “exposing religious and nonprofit organizations to potentially massive financial liabilities, the bill may have the unintended effect of inhibiting these organizations from providing the services that many vulnerable New Jerseyans rely on.”).

⁷ *New Jersey Senate Bill 477 (Prior Session Legislation)*, LEGISCAN (May 13, 2019), <https://legiscan.com/NJ/bill/S477/2018> (showing the Voting Record of NJ S.B. 477 by Assembly (71-0) and Senate (32-1)).

⁸ Gov. Murphy, *supra* note 6.

⁹ *Id.*

¹⁰ *J.L. v. J.F.*, 722 A.2d 558 (N.J. Super. App. Div. 1999) (“because of the unique nature of sexual abuse, which may only be discovered by an adult victim after years of repression, this statute provides that a civil suit for sexual abuse shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action must be brought within two years after reasonable discovery”) (Citing *Senate Judiciary Committee Statement* on N.J. STAT. ANN. § 2A:61B-1 (1992)).

20, suffering from mental illnesses derived from the sexual abuse, are highly unlikely to realize the opportunity to sue and understand the means to sue.

The dioceses of New Jersey lobbied against the bill for many years, believing that the bill will create a floodgate of litigation against religious entities for crimes that occurred decades ago.¹¹ Others criticize the legislation for expanding the type of groups that are now vicariously liable for sexual abuse done by their employees, these groups being protected by charitable immunity in the previous law.¹²

III. The Independent Victim's Compensation Program

It was announced in February 2019 that the Diocese of Trenton, New Jersey would be creating an Independent Victims Compensation Program (IVCP) that would provide compensation to victims of sexual abuse from clergy in New Jersey.¹³ The program officially opened on June 15th and began accepting claims.¹⁴ The fund is administered by two compensation experts who have "complete autonomy to determine the eligibility of a claim with the guidelines of established protocol."¹⁵ The program is available to anyone that was sexually abused by clergy or deacon of the diocese while they were a minor, and there is no age limit for when someone can file.¹⁶ The dioceses released many press releases, and often

¹¹ Yelin, *supra* note 5 ("While we disagreed on specific elements of this legislation, the Catholic community, the Legislature and the governor sincerely agree on one key position — the need to restore justice for the victims of sexual abuse in New Jersey," the Archdiocese of Newark said in a statement Monday").

¹² Karen Bitar & Lisa Savadjian, *New Jersey Legislation Extends Statute of Limitations to Bring Child Sex Abuse Claims*, JDSUPRA (June 13, 2019), <https://www.jdsupra.com/legalnews/new-jersey-legislation-extends-statute-60817/> ("While many wrongdoers have gone to their graves without proper punishment, their employers will be left to answer for their wrongdoing, accused of turning a blind eye to these victims when in their care, and negligently supervising or retaining the wrongdoer").

¹³ *New Jersey Independent Victims Compensation Program Opens June 15*, DIOCESES OF TRENTON (June 11, 2019), www.dioceseoftrenton.org/news/new-jersey-independent-victims-compensation-program-opens-june-15-1.

¹⁴ *Id.*

¹⁵ *Id.* ("The IVCP is independently administered by experienced victim compensation experts Kenneth Feinberg and Camille Biros. Mr. Feinberg was the plan administrator for the federal 9/11 victim compensation program, as well as the Boston Marathon bombing compensation program.")

¹⁶ *Id.*

mentioned the program in any news article about the statue extending the statute of limitations.¹⁷

Victims that have reported the sexual abuse to a district attorney can enter the program, and any victim that has not reported it must do so.¹⁸ Once the victim has submitted the required application and filed a complaint with the district attorney, instructions are given by the diocese and the administrations will make determinations on eligibility.¹⁹ Once the claim is processed and an investigation by the district attorney and the dioceses is completed, then the victim will receive a check within two weeks.²⁰ Victims are not eligible if they have already filed a civil action against the diocese, or if the alleged sexual abuse was by a member of the parish, or any other lay employees of the church.²¹ Victims that have previously filed a lawsuit and are willing to dismiss that suit will be given first compensation:

“The IVCP will first give a priority to claimants who previously complained to Church officials about the sexual abuse. Phase II of the Program will permit

¹⁷ Yelin, *supra* note 5 (“The Catholic community is confident that the Independent Victims Compensation Program established by the five dioceses in New Jersey is a significant step towards restoring justice for those who, as minors, were abused by ministers of the Church. Further, we are committed to the comprehensive healing of those harmed and we will continue our policies aimed at protecting children from abuse”).

¹⁸ *Independent Victim Compensation Program (“IVCP”) for The Archdiocese of Newark and the Dioceses of Camden, Metuchen, Trenton and Paterson*, NJ DIOCESES IVCP, www.njdiocesessivcp.com (“Individuals who previously submitted a complaint of sexual abuse to the NJ Dioceses will have an opportunity to seek compensation from this Program. Individuals who have not previously filed a complaint with the NJ Dioceses may register to participate in the Program through this website on or before October 2019. To register, potentially eligible Claimants need to provide their name, contact information, and a summary description of the nature of the claim, including the dates and location of the abuse and name of the perpetrator. New complaints of abuse received through this Program must be reported to the local office of the District Attorney by both the Registrant and the NJ Dioceses for review”) [hereinafter *IVCP*].

¹⁹ *Id.* (“By agreement, the NJ Dioceses cannot reject the Administrators’ final determinations as to eligibility and amount of compensation.”).

²⁰ *Id.* (“Eligible claims will be paid within approximately two weeks from the time that a submitted claim is deemed eligible, fully reviewed and compensation is determined and a signed Release is received by the Administrators.”).

²¹ *Id.* (“Individuals who previously settled their sexual abuse claims with the NJ Dioceses will not be permitted to participate in the Program. Individuals who allege sexual abuse as a minor by a member of a religious order or lay teachers and employees of the NJ Dioceses are not eligible to participate in the Program.”).

new claimants – who did not previously file a complaint with the Diocese – to register for consideration for eligibility to participate in the Program. Their claims will similarly be reviewed and subsequently processed by the two independent Administrators.”²²

The dioceses states that the money will be from their own private funds not from public funds.²³

The victim has to be approved for eligibility by the District Attorney, diocese, and administration of the two compensation fund administrators.²⁴ Once approved, the victim must sign a release form waiving their right to pursue further litigation.²⁵ The protocol for the program does not show a copy of the release form a victim would sign, but explains the process includes them sitting with an attorney to review the agreement.²⁶ The release form will waive the claimants right to sue the dioceses or any party involved regarding “allegations of sexual abuse, to file an individual legal action relating to such allegations, or to participate in any legal action associated with such allegations.”²⁷ The Release form does not

²² *Two Renowned Administrators Announce State-wide New Jersey Compensation Program for Victims of Church Sexual Abuse of Minors*, NJ DIOCESES IVCP (Feb. 11, 2019), https://www.njdiocesesivcp.com/ords/m_453841_0001/prod/r/221/files/static/v75/press-release-english.pdf.

²³ *Id.* (noting all payments authorized by the Administrators will come from Diocese funds; no public money will be used to compensate victims).

²⁴ Press Release, Feb. 11, 2019.

²⁵ *Id.* (“Only if the individual victim accepts the amount offered by the Administrators will a signed Release be required, in which the victim agrees not to engage in any further litigation against the particular Diocese.”).

²⁶ *Draft Protocol Details Policies, Procedures for Victim Compensation Program*, ARCHDIOCESE OF NEWARK (Mar. 21, 2019), <https://www.rcan.org/draft-protocol-details-policies-procedures-victim-compensation-program> (“Before signing such a Release, the individual claimant will be required to consult with an attorney selected by the claimant, or the Administrators shall provide an attorney to provide free pro bono legal counseling to the claimant for the sole purpose of advising the claimant concerning the language and binding nature of the Release”).

²⁷ *Archdiocese of Newark and the Dioceses of Camden, Metuchen, Trenton and Paterson Independent Victim Compensation Program Addressing Claims of Clergy Sexual Abuse of Minors Protocol for Compensation of Certain Individual Claims of Clergy Sexual Abuse of Minors Previously Reported or Submitted*, NJ DIOCESES IVCP (June 15, 2019), https://www.njdiocesesivcp.com/ords/m_453841_0001/prod/r/210/files/static/v5/protocol.pdf (“The Release will waive any rights the claimant or his/her heirs,

prevent the victim from reporting or discussing the abuse with police or with counseling.²⁸

It is unclear the range of amounts a victim would receive from the compensation fund, hopefully the administrators or the diocese will give the victim an amount before they are required to sign the release form. The administrators will determine the amount of compensation to be provided based on three factors: “(1) The nature, extent and frequency of the sexual abuse alleged by the individual claimant. (2) Whether or not the individual claimant alleges aggravating circumstances e.g., age of the claimant, severity of abuse, location of abuse, threats of physical harm and/or retaliation, significant, verifiable and life-altering psychological damage, etc. (3) The credibility of the claimant is based upon all of the facts and circumstances.”²⁹ The process of filing for a claim does not have any costs for the claimant.³⁰

New Jersey senator Vitale, who proposed and sponsored the bill increasing the statute of limitations, has criticized the compensation fund for being a ploy by the Catholic church to convince victims that a quick settlement is the easiest route for victims to get justice. Senator Vitale told reporters, “Nobody should be told, ‘This is your only avenue.’ With a compensation fund, there’s no discovery. You are offered a sum of money for your injury and therapy. But the public doesn’t know what happened or who the pedophiles are, and that’s critical to know so we can protect children. We can’t trust institutions to be honest.”³¹ Public interest

descendants, legatees and beneficiaries may have against the respective NJ Dioceses, or any potentially responsible party to assert any claims”) [hereinafter *Archdiocese Protocol*]; *Archdiocese of Newark and the Dioceses of Camden, Metuchen, Trenton and Paterson Independent Victim Compensation Program Addressing Claims of Clergy Sexual Abuse of Minors Protocol for Compensation of Certain Individual Claims of Clergy Sexual Abuse of Minors Previously Reported or Submitted Frequently Asked Questions*, NJ DIOCESES IVCP (June 15, 2019), https://www.camdendiocese.org/wp-content/uploads/2019/06/Independent-Victim-Compensation-Program_FAQS.pdf (FAQ # 22 denoting “Any claimant who chooses to accept the offered reparations pursuant to the Program must surrender any right to go to court to sue any party relating to the alleged sexual abuse”) [hereinafter *FAQs*].

²⁸ *FAQs*, *supra* note 27 (“Nothing in the Release will limit or preclude the victim from reporting and discussing their claim with law enforcement or anyone else”).

²⁹ *Archdiocese Protocol*, *supra* note 27.

³⁰ *FAQs*, *supra* note 27, at #4 (“Will filing claim cost money? No. There is no fee associated with filing a claim with the Program. You may, however, incur fees from professionals such as lawyers, should you choose to engage their services”).

³¹ Yelin, *supra* note 5.

organizations fighting against sexual abuse by clergy also spoke out against the compensation fund as a legal means to silence victims.³²

As of January 2, 2020, one of the administrators for the compensation fund announced that the deadline to apply has been extended to February 15, 2020.³³ The administrator also reported that they have received 424 claims for compensation from the fund and have already granted around nine million dollars to 76 different victims with successful claims.³⁴ Four claims have been denied due to claimants being non-residents of New Jersey or the alleged priest not being a member of the dioceses.³⁵

IV. Benefits and Downsides of Each Remedy

There are two common remedies that victims seek: compensation and justice. They will find justice through criminal charges against their abuser, and hopefully the criminal laws provide victims this relief that they do not have to fear their abuser approaching them in their daily life. However, they may also seek justice by seeing that the people that allowed or encouraged their abuse to happen are punished in some way so that abuse is not allowed or encouraged onto others in the future. The compensation fund lacks in this regard because it does nothing to prevent the situation from happening again. The whole process is private, so the victim does not get to exploit the dioceses for their wrongdoing. The dioceses also have great discretion in determining how much compensation they have to pay to the victim. However, the victim can get a sense of justice by knowing that the dioceses accepts their wrongdoing and is paying for their contribution to the victim's injury.

To file a legal claim against the dioceses is a gamble for the victim in receiving any remedy at all. While the new statute of limitations eliminates a major road-block to a successful lawsuit, there are still other legal elements and issues that could cause a lawsuit to fail. A diocese could argue they are protected by the first amendment which is often a successful defense.³⁶ Furthermore, a

³² *Id.* (noting Survivors Network of those Abused by Priests).

³³ Mike Catalini, *New Jersey Dioceses Extend Deadline for Victims Fund*, WASH POST (Jan. 2, 2020), https://www.washingtonpost.com/national/new-jersey-dioceses-extend-deadline-for-victims-fund/2020/01/02/e10c69ce-2da2-11ea-bffe-020c88b3f120_story.html.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *F.G. v. MacDonell*, 696 A.2d 697 (N.J. 1997).

lawsuit will cost a victim exceptionally more in attorney fees and court fees than the process of the compensation fund, as well as saving an exceptional amount of time. The victim may receive an exceptionally large amount of monetary damages than what they would receive from the compensation fund. In sexual abuse cases, some victims believe that the good of the Church means that the victim should remain silent, and refrain from making any public accusations.

As of the end of December 2019, the New Jersey Attorney General's Office has received over 568 phone calls to their New Jersey Clergy Abuse Hotline to report that they were abused as children.³⁷

V. Statute of Limitations Overview

The general New Jersey statute of limitations statute sets the time at six years for any action that does not have an expressed time limit in the relevant statute the action's claims are based on.³⁸ The New Jersey court rules lay out the ground rules for computing the deadline for a statute of limitations issue:

“Computation of time for computing any period of time fixed by rule or court order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time of less than 7 days, Saturday, Sunday and legal holidays shall be excluded.”³⁹

A statute of limitations generally begins to run once the series of events that are the basis for the claim end, so in the case of abuse it is the last act of abuse done unto the victim. The “continuing violation” doctrine is an equitable exception to the

³⁷ Blake Nelson, *Calls To Clergy Abuse Hotline Spike After N.J. Expands Statute Of Limitations*, NJ.COM (Dec. 28, 2019), <https://www.nj.com/crime/2019/12/calls-to-clergy-abuse-hotline-spike-after-nj-expands-statute-of-limitations.html>.

³⁸ N.J. STAT. ANN. § 2A:14-1.

³⁹ N.J. Ct. R. 1:3-1.

statute of limitations.⁴⁰ Under this doctrine, “when an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases.”⁴¹

Whether a statute of limitations applies is ordinarily a question of law for the court to decide.⁴² In determining whether a matter should be time-barred, the courts recognize that statutes of limitations are designed to penalize dilatory conduct and serve as a measure of repose.⁴³ Consequently, when a plaintiff knows or should know he has a cause of action against an identifiable defendant and voluntarily allows the applicable limitations period to expire without acting, then the considerations of individual justice and the broader considerations of repose coincide to bar the action. Conversely where the requisite knowledge is absent, then those considerations of individual justice and repose conflict warranting the court to look at other factors in determining whether to bar an action as untimely.⁴⁴

The statute of limitations is an affirmative defense that defendants must plead separately, or it will be waived.⁴⁵ The defense is not waived, however, where compliance with the statute of limitations is asserted on the face of the complaint, and the defendant can raise the defense by a motion for failure to state a claim upon which relief can be granted.⁴⁶ Affirmative defenses must be supported by specific facts.⁴⁷ A plaintiff may move to strike an answer on the ground that it presents “no question of fact or law which should be heard by a plenary trial.”⁴⁸

The discovery rule provides that, under specified circumstances, the statute of limitations does not begin to run until

⁴⁰ *Shepherd v. Hunterdon Developmental Ctr.*, 803 A.2d 611 (N.J. 2002) (citing *Wilson v. Wal-Mart Stores*, 729 A.2d 1006 (N.J. 1999), where employee could show continuing pattern of harassment violations, the statute of limitations did not start to run until harassment ceased).

⁴¹ *Green v. Jersey City Bd. of Educ.*, 828 A.2d 883 (N.J. 2003) (the Conscientious Employee Protection Act one-year statute of limitations began to run from final act of retaliation when there is continued course of retaliatory conduct by employer).

⁴² *Lopez v. Swyer*, 300 A.2d 563 (N.J. 1973).

⁴³ *Baez v. Paulo*, 182 A.3d 403 (N.J. Super. App. Div. 2018).

⁴⁴ *Id.* at 417.

⁴⁵ N.J. Ct. R. 4:5-4.

⁴⁶ N.J. Ct. R. 4:6-2(e).

⁴⁷ N.J. Ct. R. 4:5-4.

⁴⁸ N.J. Ct. R. 4:6-5; *Old Republic Ins. Co. v. Currie*, 665 A.2d 1153 (N.J. Super. Ch. Div. 1995).

a victim discovers or should have discovered that a wrong has been inflicted.⁴⁹ The test is generally “whether the facts presented would alert a reasonable person exercising ordinary diligence that he or she was injured due to the fault of another. The standard is basically an objective one—whether plaintiff ‘knew or should have known’ of sufficient facts to start the statute of limitations running.”⁵⁰ In other words, the statute of limitations begins to run once the plaintiff should have reasonably made the connection between their suffering and the abuse by the defendant.

The principle behind the discovery rule supports a larger statute of limitations for people who were abused as minors, because as a minor one has a more difficult time understanding the situation and knowing that they are able to seek legal action against their abuser. Furthermore, victims of sexual abuse often have to overcome immense fear to bring legal action against their abuser, because their abuser has most likely either threatened them if they would tell anyone about the abuse, or the abuser is a character that the abuser has been told to trust like a parent or a priest. This exact issue was examined by the New Jersey supreme court in *J.L. v. J.F.*, 317 N.J. Super. 418 (App. Div. 1999). Where again the court determined that victims of sexual abuse are entitled to a plenary hearing to determine when it was reasonable for them to know that they had a valid legal claim against their abuser.

“New Jersey recognizes the discovery rule, which provides that in an appropriate case a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered, that he may have a basis for an actionable claim. Ordinarily, the determination is after a plenary hearing since demeanor may be an important factor where credibility is significant. Although an injured party may be aware he suffered an injury, the injured party may not know it is attributable to the fault or neglect of another. Judges should consider the equitable

⁴⁹ *Greczyn v. Colgate-Palmolive*, 869 A.2d 866 (N.J. 2005) (even statute of repose need not be construed rigidly).

⁵⁰ *Szczuvelak v. Harborside Healthcare Woods Edge*, 865 A.2d 636 (N.J. 2005) (case remanded to trial court to make findings as to when reasonable person in estate administrator’s position should have been aware of hospital’s alleged role in patient’s death).

claims of the parties, as it may be unjust to compel a person to defend a lawsuit long after the alleged injury has occurred, when memories have faded, witnesses have died and evidence has been lost.”⁵¹

A large number of states still have statute of limitations like that of New Jersey’s old statute where the statute of limitations begins to toll two to three years after the age of majority.⁵²

There are, of course, good reasons for a statute of limitations to exist, even for heinous acts such as sexual abuse. Much evidence is lost as time goes on, and a lack of available evidence may prejudice the defendant from defending against the claim: “Allowing such a claim to be brought so much later may very well prejudice defendant’s ability to prepare and defend the claim because of loss of evidence, dead witnesses and faded memories. Once memories fade witnesses become unavailable, and evidence is lost, courts no longer possess the capacity to distinguish valid claims from those which are frivolous or vexatious.”⁵³ However, some New Jersey

⁵¹ *Id.*

⁵² Frank M. Coffin, *Lecture On Law And Public Service: Representing The Powerless: Lawyers Can Make A Difference*; Alvin J. Bronstein, *Case Note: Nuccio V. Nuccio: The Doctrine Of Equitable Estoppel Will Not Bar The Statute Of Limitations Defense In A Child Sexual Abuse Case Involving Repressed Memory*, 49 ME. L. REV. 235, n.84 (“Many states have adopted legislation tolling the statute of limitations for civil suits alleging childhood sexual abuse including, but not limited to: Alaska (three years after discovery), ALASKA STAT. § 09.10.140(b)(1)-(2) (Michie 1996); Arkansas (three years after discovery), ARK. CODE ANN. § 16-56-130(a)-(b)(1) (Michie Supp. 1995); California (three years after discovery), CAL. CIV. PROC. CODE § 340.1 (West Supp. 1997); Colorado (six years after discovery), COLO. REV. STAT. ANN. § 13-80103.7 (Bradford Supp. 1996); Florida (four years after discovery), FLA. STAT. ANN. § 95.11(7) (West Supp. 1997); Iowa (four years after discovery), IOWA CODE ANN. § 614.8A (West Supp. 1996); Kansas (three years after discovery), KAN. STAT. ANN. § 60-523 (1994); Maine (six years after discovery), ME. REV. STAT. ANN. tit. 14, § 752-C (West Supp. 1996-1997); Missouri (three years after discovery), MO. ANN. STAT. § 537.046 (West Supp. 1997); Montana (three years after discovery), MONT. CODE ANN. § 27-2-216(1)(b) (1995); New Hampshire (three year discovery rule for *all* civil actions), N.H. REV. STAT. ANN. § 508:4 (Supp. 1996); Nevada (ten years after discovery), NEV. REV. STAT. ANN. § 11.215 (Michie Supp. 1993); New Mexico (three years after discovery), N.M. STAT. ANN. § 37-1-30 (Michie Supp. 1996); Oregon (three years after discovery), OR. REV. STAT. § 12.117 (1995); Rhode Island (seven years after discovery), R.I. GEN. LAWS § 9-1-51 (Supp. 1996); South Dakota (three years after discovery), S.D. CODIFIED LAWS § 26-10-25 (Michie 1992); Vermont (six years after discovery), VT. STAT. ANN. tit. 12, § 522 (Supp. 1996).”).

⁵³ *Lopez*, 300 A.2d at 563; *Galligan v. Westfield Ctr. Serv., Inc.*, 412 A.2d 122 (N.J. 1980)

courts have found that principles of equity require the court to toll the statute of limitations when the claim is for “horrific allegations, it might not be equitable to permit defendant to benefit from a strict adherence to the statute of limitations in the event the aftermath of his acts did in fact cause plaintiffs’ delay in bringing their action.”⁵⁴ Especially in the case of a child victim, they were at a disadvantage of not being able to understand the legal course of action they could have taken after the abuse, and so the court must balance the disadvantage of both parties: “While the delay may disadvantage defendant, that possibility must be weighed against the disadvantage suffered by plaintiffs as children against a more powerful and adept adult.”⁵⁵

VI. Issues with the Previous Statute of Limitations for Victims of Sexual Abuse as Minors

Baselice v. Franciscan Friars Assumption BVM Province, 879 A.2d 270 (PA 2005) is a prime example of how a state’s statute of limitations makes it impossible for a victim of sexual abuse as a minor to bring litigation once they have reached the age of majority and now understand their right to bring suit against their abuser and the dioceses that employed him. The trial court granted summary judgment for the defendants on the grounds that the statute of limitations had passed.⁵⁶ The plaintiff argues that the statute of limitations began to run when he discovered that he would be able to bring suit against the church and priest for the injury he suffered as a minor, “Appellant’s discovery rule exception claim is that he did not know he was injured by appellees at the time of the abuse and that because of appellees’ conduct, he could not have known that appellees injured him or caused his injury at the time of the abuse.”⁵⁷ The Pennsylvania court rejected the plaintiff’s argument, declaring that “lack of knowledge, mistake or misunderstanding do not toll the running of the statute of limitations.”⁵⁸ The court found that the child abuse was the moment that the injury occurred and the statute of limitations began to run,

⁵⁴ *J.L.*, 722 A.2d at 567.

⁵⁵ *Id.*

⁵⁶ *Baselice v. Franciscan Friars Assumption BVM Province*, 879 A.2d 270, 273 (Pa. Super. 2005).

⁵⁷ *Id.* at 275.

⁵⁸ *Id.* at 276 (Citing *Pocono Int’l Raceway, Inc. v. Pocono Produce, Inc.*, 468 A.2d 468, 471 (Pa. 1983). A similar rationale is found in *New Jersey common law Reilly v. Brice*, 538 A.2d 362 (N.J. 1988).

the alleged cover up by the dioceses and church was not the injury that began the statute of limitations, “The underlying child abuse is the injury in this matter, not the alleged cover-up by the Archdiocese... appellant’s injuries, here, were known when the abuse occurred.”⁵⁹ The Court suggests that the Plaintiff had a duty to investigate, while he was a teenager, whether the church was encouraging his injuries and whether there was a legal action he could take, “had the appellant (sometime after the abuse but before the running of the statute of limitations) questioned the Archdiocese about his abuse, and had the Archdioceses affirmatively and independently acted in response to appellant’s inquires so as to mislead appellant into forgoing his suit” then the Plaintiff’s argument would be acceptable.”⁶⁰

Baselice exemplifies the injustice that occurs when a state has a short statute of limitations for sexual abuse claims, especially for sexual abuse of a minor claims. The victim had two years from the first instance of sexual abuse to file a complaint against the priest and the church.⁶¹ The victim was sexually abused and introduced to drugs and alcohol at the age of 14, and was exposed to this treatment throughout his time at high school up until his 18th birthday.⁶² It is unjust for the court to believe that someone that young can consider the legal action they must take if they are abused in that way. Minors who are sexually abused often believe that the abuse is an act of love by their abuser, and they grow to trust their abuser, which was shown here where the victim trusted the priest to try the drugs and alcohol given to him.⁶³ Then when a victim does learn about the potential legal action they can take, they discover after filing a complaint that they are barred by a statute of limitations they had no idea existed. Furthermore, since the statute of limitations is not discovered until after the victim files, they lose the ability to make a settlement with the dioceses since dioceses would have no reason to provide settlement and the compensation fund does not allow victims who have filed suits.

The New Jersey Appellate court first criticized the statute of limitations for sexual abuse of minors in *J.L. v. J.F.*, 722 A.2d 558

⁵⁹ *Id.* at 277 (Citing *Meehan v. Archdiocese of Phila.*, 870 A.2d 912 (Pa. Super. 2005)).

⁶⁰ *Id.* at 279.

⁶¹ *Id.* at 276. (Citing Pa. C.S.A. S 5524).

⁶² *Baselice*, 879 A.2d at 273-74.

⁶³ Shirley Jülrich, *Stockholm Syndrome and Child Sexual Abuse*, 14 J. OF CHILD SEXUAL ABUSE 107 (2005).

(App. Div. 1999) when they held that trial courts must determine when plaintiffs should have reasonably known of the abuse and when they should have reasonably come forward rather than the first instance of sexual abuse.⁶⁴ At the time, the statute allowed victims to bring a lawsuit two years after their 18th birthday, and provided an exception if the plaintiff suffered from insanity.⁶⁵ The Plaintiff brought suit twenty years after the statute of limitations had passed once he reached 20 years of age.⁶⁶

The plaintiff in *J.L.* argued that they suffered from extreme post-traumatic stress disorder and did not bring a claim because she had repressed the memories and feared for her life if she disclosed the abuse.⁶⁷ The trial court found that the Plaintiff's do not meet the same standard of "insanity" to meet the exception to the two-year statute of limitations. The court interpreted the plaintiffs' coping mechanism as "denial" rather than "repression."⁶⁸ The plaintiffs claimed they did not comprehend the extent of their permanent injuries from the sexual abuse, and that the abuse caused them to suppress their discovery of the extent of their injury, and at the very least a jury should be the ones to determine whether the plaintiffs denied the injury or suppressed the injury due to "insanity", "Neither plaintiff told anyone about defendant's abuse of them until the conversation between the sisters. They contend that upon those mutual revelations they were, for the first time, able to articulate and understand the relationship between defendant's conduct and the psychological and emotional harm they had experienced during their life."⁶⁹ The court determined that a plenary hearing with a factfinder must determine whether the plaintiff found the causal relationship of their injuries, "Plaintiffs may have a conscious memory of the sexual abuse, but may not have reasonably discovered that the serious psychological and mental illness injury they suffer from was caused by the sexual abuse."⁷⁰ While the trial court acted as a sort of fact finder in determining the credibility of the plaintiff's mental state based on their doctor's evaluation,

⁶⁴ *J.L.*, 722 A.2d at 558.

⁶⁵ N.J. Stat. Ann. 2A:61-B1 (2013).

⁶⁶ *J.L.*, 722 A.2d at 561.

⁶⁷ *Id.* at 560-61.

⁶⁸ *Id.* at 565 ("The plaintiffs in this matter did not suppress the memories of the defendant-uncle's alleged sexual abuse, nor were they under duress by defendant to conceal the alleged abuse.").

⁶⁹ *Id.* at 566.

⁷⁰ *Id.*

“plaintiffs are entitled to have their credibility tested and determined at a plenary hearing.”⁷¹

The New Jersey Appellate Court faced this issue again in *Smith v. Estate of Kelly*, 778 A.2d 1162 (NJ App. Div. 2001), the court examined the statute of limitations for sexual abuse of a minor in regards solely to a dioceses’ liability.⁷² Again the Appellate Court was faced with the issue of whether the statute of limitations should be tolled due to the plaintiff’s “mental duress.”⁷³ The plaintiff claimed that she did not bring suit until five years after she reached the age of majority because she suffered from extreme anxiety from duress of the employees of the dioceses that she disclosed her abuse to, “The plaintiff reported the abuse of her father to defendants on three occasions... Martelli told her it was too late to do anything, and von Hartleben fired her from her job at the rectory.”⁷⁴ The Plaintiff was examined by a psychologist and the psychologist gave testimony that the plaintiff suffered from a phenomenon known as “religious duress” defined as “a state of mind whereby a person feels internally compelled to do or not do something because of fear induced by a religious power.”⁷⁵ The Plaintiff was raised in a strict catholic family, and was taught that criticizing the church was a capital sin that would lead to damnation, so the Plaintiff argued that this was duress which tolls the statute of limitations, “Catholics are taught, according to [the psychiatrist], silence is necessary for the good of the Church. In sexual abuse cases, the good of the Church means that the victim should remain silent, and refrain from making any public accusations.”⁷⁶

Duress often makes a victim refrain from bringing a lawsuit against the church, which would lead them to forfeiting their right to sue as the statute of limitations passed. Duress does not require a threat, the creation of a repercussion of a victim pursuing legal action to remedy an injury is enough to satisfy duress.⁷⁷ The court has only tolled the statute of limitations for sexual abuse cases when the plaintiff can show that the defendant caused duress which ha “deprived the plaintiff of his or her freedom of will.”⁷⁸ To find

⁷¹ *Id.* 567

⁷² *Smith v. Est. of Kelly*, 778 A.2d 1162 (N.J. Super. App. Div. 2001).

⁷³ *Id.* at 1172.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Rubenstein v. Rubenstein*, 120 A.2d 11 (N.J. 1956).

⁷⁸ *Jones v. Jones*, 576 A.2d 316 (N.J. Super. App. Div. 1990).

duress, the court must find a subjective and objective standard of fear felt by the Plaintiff that prevented them from acting by their own will:

“Both a subjective and objective standard must be satisfied in order for the plaintiff to prevail. Specifically, the duress and coercion exerted by the prospective defendant must have been such as to have actually deprived the plaintiff of his freedom of will to institute suit in a timely fashion, and it must have risen to such a level that a person of reasonable firmness in the plaintiff’s situation would have been unable to resist.”⁷⁹

In *Smith v. Estate of Kelly*, the court found that there was no duress because nothing the defendants “said or did was for the purpose of deterring or inhibiting plaintiff from instituting a civil action against them.”⁸⁰ The defendants’ actions in question were (1) telling the plaintiff there was nothing else she could do about the previous sexual abuse (2) being fired from her employment at the church.⁸¹ It is less likely for a court to find duress when there is no physical threat made against the plaintiff, if action is done before the injury in question occurred, and when the person who did injure the plaintiff is incarcerated.⁸²

Another roadblock for victims of sexual abuse by clergy is the defense any church has that the courts cannot interfere with a religious institutions practices under the First Amendment of the United States Constitution.⁸³ The New Jersey Supreme Court addressed this issue in regard to misappropriate sexual conduct between a priest and their parishioner whom they owe a fiduciary duty to.⁸⁴ The Plaintiff went to the defendant for spiritual counseling, and while she was in a distraught state, the defendant

⁷⁹ *Id.* at 322-23.

⁸⁰ *Smith*, 778 A.2d at 1162.

⁸¹ *Id.*

⁸² *Id.* (the Church considered that the plaintiff’s uncle who sexually abused her was incarcerated and the church fired the plaintiff before she told them about the sexual abuse).

⁸³ U.S. CONST. Amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .”).

⁸⁴ *F.G.*, 696 A.2d at 697 (Plaintiff brought three claims against a priest and the church that employed him for sexual abuse, breach of fiduciary duty, and clerical malpractice).

encouraged her to have sex with him.⁸⁵ The Supreme Court has established rules for courts when faced with the issue of whether they can make a decision without violating the first amendment, the court must find that they are not “determining underlying questions of religious doctrine and practice.”⁸⁶ The New Jersey Supreme Court directs courts to look for whether the “party challenging state action as violative of free-exercise rights establishes that the action produces a coercive effect on the practice of religion; the conduct at issue must have been part of the beliefs and practices of the defendant’s religion.”⁸⁷ New Jersey courts have determined that sexual conduct is not a practice of any Christian church and therefore is not protected by the first amendment.⁸⁸ “Thus, without impinging on the First Amendment, courts can resolve a claim that a member of the clergy has committed sexually inappropriate conduct in the course of pastoral counseling.”⁸⁹

VII. Statute of Limitations Issues in Other States

A. Maine 2003 Statute

Maine’s statute of limitations for sexual crimes against minors is among the most expansive as there is unambiguously “no limitations: Actions based upon sexual acts toward minors may be commenced at any time.”⁹⁰ Sexual acts towards minors is interpreted broadly to mean both sexual assault on minors and sexual contact to minors.⁹¹

However, the major difference between the enactment of this Maine statute and New Jersey’s new statute, is that there was no retroactive effect in Maine. This lack of retroactive effect was challenged in *McAfee v. Cole*, 637 A.2d 463 (Me. 1994) where the

⁸⁵ *Id.*

⁸⁶ *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Meml. Presbyterian Church*, 393 U.S. 440, 449 (1969).

⁸⁷ *F.G.*, 696 A.2d at 697 (citing *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 223 (1963)).

⁸⁸ *Id.* at 561.

⁸⁹ *Id.*

⁹⁰ ME. REV. STAT. tit. 14, § 752-C.

⁹¹ *Id.* (Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;) citing ME. REV. STAT. tit. 17-A, § 251(C)(1); (“Sexual contact” means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact) citing ME. REV. STAT. tit. 17-A, § 251(D).

court found that the plaintiff's action against defendants alleging sexual abuse was properly dismissed since the statute of limitations barred the claim. The court reasoned that the previous statute of limitations for sexual abuse claims, Me. R. Civ. P. 12(b)(6), applied rather than the recent enactment of Me. Rev. Stat. Ann. tit. 14, § 752-C. Thus, the tolling statute began running once the alleged abuse stopped, and the time to file the claim had passed many years before the claimant filed.⁹²

The same issue took place in *Guptill v. Martin*, 228 F.R.D. 62, (D. Me. 2005) where a Boy Scout leader and two organizations were entitled to summary judgment on an individual's claims of battery, intentional infliction of emotional distress, and negligent supervision arising out of alleged sexual abuse by the leader in 1976-77. The deadline for filing the claims ran on January 12, 1987 under the statute of limitations law in place at the time of the alleged abuse, and the individual's claim fell into the category of claims that were already barred at the time later amendments to Me. Rev. Stat. Ann. tit. 14, § 752-C allowed victims to pursue their claims at any time.

B. California

California recently passed a law increasing the statute of limitations for claims of sexual abuse as a child similar to that of New Jersey's. The new law expands the statute of limitations to 22 years after the age of majority.⁹³ One additional provision to the California statute that New Jersey does not have is the ability to bring claims against potential defendants that negligently allowed the abuse to happen or assisted in covering up the abuse.⁹⁴

The discovery rule in California for victims of child abuse is surprisingly strict, and still applies if a victim wants to sue past the age of forty.⁹⁵ In *DeRose v. Carswell*, a plaintiff who brought suit against her grandfather for sexual abuse as a minor was time

⁹² *Id.*

⁹³ CAL. CIV. PROC. CODE § 340.1(a) ("In an action for recovery of damages suffered as a result of childhood sexual assault, the time for commencement of the action shall be within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later, for any of the following actions. . . .").

⁹⁴ CAL. CIV. PROC. CODE § 340.1(a)(2), (b)(1).

⁹⁵ CAL. CIV. PROC. CODE § 340.1(e).

barred by the statute of limitations.⁹⁶ The appellate court affirmed the dismissal reasoning that the discovery rule had been triggered when she was “actually aware long ago of the facts necessary to state a cause of action against Carswell based upon the sexual assaults.”⁹⁷ Therefore, in California, a plaintiff cannot claim that they were unaware of their right to legal action once they reach the age of maturity, nor that they were able to causally link their mental injuries to the abuse.⁹⁸

In 2003 when California suspended the statute of limitations for sexual abuse cases, “By the end of the year when the window had closed, the Archdiocese of Los Angeles had over 500 lawsuits they settled, a total of 570 claims of abuse against 221 priests, and teachers, and church employees spanning a period of 70 years.”⁹⁹

C. New York

New York also extended their statute of limitations for sexual abuse in August of 2019. The statute, given the name Child Victims Act, increased the age one can file after reaching the age of majority from 23 to 55, the same as that of New Jersey.¹⁰⁰ The statute allows a one-year extension for those who are older than 55 thus giving all victims the ability to benefit from the statute.¹⁰¹

One lawsuit has made headlines where a 47-year-old woman filed suit against the Brooklyn Friends Law School for negligently allowing a janitor to sexually assault her when she attended the school as a child.¹⁰² The plaintiff, Dominique Penson, stated that for the past few years she was seeking an attorney to bring this action, but she was constantly denied representation because the statute of limitations barred her claim, and no attorney was willing to

⁹⁶ DeRose v. Carswell, 242 Cal. Rptr. 368 (Cal. App. 6th Dist. 1987).

⁹⁷ *Id.* at 371-72.

⁹⁸ *Id.*

⁹⁹ John Czuba & Florina Altshiler, *What New York Child Victims Act Means for Insurers*, LEGAL TALK NETWORK (Jan. 7, 2020), <https://legaltalknetwork.com/podcasts/insurance-law-podcast-am-best/2020/01/what-new-york-child-victims-act-means-for-insurers/>.

¹⁰⁰ N.Y. C.P.L.R. § 214-g (McKINNEY 2020); Jason Grant, ‘*Stopped in My Shoes*’: NY Child Victims Act ‘*Imperative*’ to Brooklyn Friends School Plaintiff, N.Y.L.J. (Oct. 4, 2019), <https://www.law.com/newyorklawjournal/2019/10/04/stopped-in-my-shoes-ny-child-victims-act-imperative-to-brooklyn-friends-school-plaintiff/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

challenge it.¹⁰³ However, as soon as the new legislation passed expanding the statute of limitations, Mrs. Penson “went straight to her computer to find an attorney to take her case.”¹⁰⁴ The complaint accuses the school for varying claims of negligence, and describes in the preliminary statement that the private school ““Upon information and belief, [Redd’s] teachers readily permitted Flores ... to remove Plaintiff from classes with no proof to support his justifications that Plaintiff was needed elsewhere.”¹⁰⁵

One of the earliest decisions where the plaintiff has brought action against the dioceses of New York, and the defendants sought to deny pre-action discovery arguing that “that determination of the application be held in abeyance until the rules regarding the handling of actions brought pursuant to CVA have been implemented.”¹⁰⁶ The defendants cite amendments made to the judiciary law regarding the implementation of the new statute of limitations, and the New York Attorney General was already in the process of assisting the church in preparing the documents necessary for the expected wave of litigation.¹⁰⁷ The court agreed with the defendants and denied pre-action discovery motions, reasoning that although the statute allows for such motions. Although this section may be used to preserve evidence or to identify potential defendants, it “may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing.”¹⁰⁸

An interesting phenomenon in New York is the retaliation by the New York dioceses. Three dioceses sued their insurance companies to enforce their liability coverage even though they did not have liability insurance at the time of the alleged abuse.¹⁰⁹ “There, the Archdiocese of New York filed a suit in July against roughly three dozen insurance companies that provided it coverage at various times, seeking a declaration that they’re obligated to provide coverage and a defense against sex abuse claims filed under

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Doe v. Roman Catholic Archdiocese of New York*, 117 N.Y.S.3d 468 (N.Y. Sup. Ct. 2019).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (citing *Uddin v. New York City Transit Auth.*, 810 N.Y.S.2d 198 (N.Y. App. Div. 1st Dept. 2006)).

¹⁰⁹ Charles Toutant, *Age of Allegations, Balky Insurance Carriers Could Vex Lawyers Filing Sex Abuse Suits*, N.J.L.J. (Dec. 5, 2019), <https://www.law.com/njlawjournal/2019/12/05/age-of-allegations-balky-insurance-carriers-could-vex-lawyers-filing-sex-abuse-suits/>.

the new law.”¹¹⁰ The complaint alleges the insurance companies of breaching the contract of their insurance policies, “Rather than honor its contractual obligation under the insurance policies they issued, Chubb has advised the archdiocese that it will not stand behind its insurance policies and contractual obligations,”¹¹¹ The New York dioceses set up a compensation fund for victims in 2016 identical to that of the New Jersey dioceses, and it has provided compensation to around 323 victims and provided a purported \$65 million to avoid litigation from those victims.¹¹²

VIII. Debate over Statute of Limitations

Courts have been debating over the fairness of a statute of limitations in cases of child abuse since the 1990s.¹¹³ Originally, courts refused to toll the statute of limitations for equitable relief grounds such as estoppel, insanity, or fraud in child abuse cases when it clearly is present.¹¹⁴ Starting in the 1990s, courts and scholars began favoring the delayed discovery rule where “ the statute of limitations does not begin to run until the plaintiff discovers or, by the exercise of reasonable diligence, should have discovered her cause of action. Grounded in principles of fundamental fairness, the rule was formulated to avoid the unjust result that occurs when the statute of limitations period expires before the plaintiff is made aware of any basis for a cause of action.”¹¹⁵

Courts began applying this rule when plaintiffs have repressed memory of the abuse and do not discover the causality of their mental anguish until their adult life and that is when the

¹¹⁰ *Id.*

¹¹¹ Joseph DeAvila, *New York Archdiocese Sues Insurers Over Expected Abuse Cases*, WALL ST. J. (July 1, 2019), <https://www.wsj.com/articles/new-york-archdiocese-sues-insurers-over-expected-abuse-cases-11562019822>.

¹¹² *Id.*

¹¹³ Gregory G. Gordon, *Adult Survivors of Childhood Abuse and the Statute of Limitations: The Need for Consistent Application of the Delayed Discovery Rule*, 20 PEPP. L. REV. 1359 (1993).

¹¹⁴ *Id.* at 1374-75. (See, e.g., *Doe v. Doe*, 973 F.2d 237 (4th Cir. 1992); *Hildebrand v. Hildebrand*, 736 F. Supp. 1512 (S.D. Ind. 1990); *Hoult v. Hoult*, 792 F. Supp. 143 (D. Mass. 1992); *Evans v. Eckelman*, 265 Cal. Rptr. 605 (Ct. App. 1990); *Lindabury v. Lindabury*, 552 So. 2d 1117 (Fla. Dist. Ct. App. 1989); *Meiers-Post v. Shafer*, 427 N.W.2d 606 (Mich. Ct. App. 1988); *Petersen v. Bruen*, 792 P.2d 18 (Nev. 1990); *Osland v. Osland*, 442 N.W.2d 907 (N.D. 1989); *Lovelace v. Keohane*, 831 P.2d 624 (Okla. 1992).

¹¹⁵ *Id.* at 1375.

statute of limitations begins to toll.¹¹⁶ If the plaintiff can establish they suffer from a psychological disorder that caused them to lose a memory of the abuse or details of the abuse then the discovery of the harm is to begin when that memory is restored.¹¹⁷ Courts have been reluctant to apply the delayed discovery rule when the only evidence a plaintiff-victim presents is their memory of the abuse and their ignorance as to their legal remedy that was available to them, so plaintiffs had to provide some evidence that they experienced amnesia or repressed the memory of the trauma.¹¹⁸

One of the first courts to apply the discovery rule to child sexual abuse cases was in *Hammer v. Hammer* where the plaintiff brought her civil action against her abuser at the age of twenty-one, two years after the age of majority that the statute allowed.¹¹⁹ The court determined that the plaintiff could not have been aware that her psychological disorders as an adult were causally connected to the abuse she suffered as a child at the hands of her father.¹²⁰

In *Johnson v. Johnson*, the plaintiff was sexually abused by her father from ages 3 to 13, and she had repressed these memories as minor incidents until she was treated with psycho-therapy at age 32. The court found that the statute of limitations began when she discovered the repressed memories were the cause of her psychological trauma, thus granting equitable relief under the discovery rule instead of the standard statute of limitations barring after five years of the age of majority.¹²¹

Many scholars argue that the purpose of statute of limitations is still relevant today, and that victims who have not suffered abuse in ten to thirty years could show evidence to satisfy the prima facie case for sexual assault. However, some scholars believe that victims will be able to succeed even if they are in their forty or fifties. Professor Perry Dane at Rutgers Law School stated “In some cases, even if a case is very old, they’ll be able to find

¹¹⁶ *Johnson v. Johnson*, 701 F. Supp. 1363 (N.D. Ill. 1988).

¹¹⁷ *DeRose*, 264 Cal. Rptr. at 639 (“The doctrine of delayed discovery may be applied in a case where the plaintiff can establish lack of memory of tortious acts due to psychological repression which took place before plaintiff attained the age of majority, and which caused plaintiff to forget the facts of the acts of abuse until a date subsequent to which the complaint is timely filed”).

¹¹⁸ *Boswer v. Guttendorf*, 541 A.2d 377 (Pa. Super. 1988) (The court declined to apply the discovery rule in the case because the plaintiff remembered the prior acts of abuse and should have been aware of the salient facts underlying her claim).

¹¹⁹ *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. Ct. App. 1987).

¹²⁰ *Id.* at 26.

¹²¹ *Id.*

documents, or the victims will be able to testify in ways that will be credible, but there might be other cases where it's much harder to prove something that happened 20, 30, 40 years ago. That's the first line of defense."¹²² Attorney who have already began preparing cases for victims that now have the ability to sue have their strategy ready. "The challenge is not so much in proving what occurred, these guys are credible, they have therapy records, sometimes even witnesses. The challenge is legal liability against the [defendant] entity. You do need to establish notice."¹²³

However, some scholars are skeptic as to whether churches will be able to afford the wave of litigation against them on top of their compensation fund. Even bankruptcy will be difficult for victims to receive damages as religious organizations have many protections in bankruptcy preventing many assets from being liquidated: "seeking to liquidate church buildings in bankruptcy presents "a lurking religious liberty question. It would be a radical step indeed, which might itself raise religious liberty questions, whether effectively an entire religious community can be stripped of the property that is central to its religious life. The thought of a church having this sort of wholesale denuding of its material assets is problematic and I don't think it's something that is going to happen."¹²⁴

Insurance lawyers expect that even if churches have or had insurance it may be difficult to provide the proper proof that they had the correct liability coverage at the time of the alleged abuse. One lawyer explained that "the new crop of lawsuits can be expected to trigger a round of disputes between the defendants and the various insurance companies that provided coverage at the time the alleged abuse took place. First, defendants may have trouble finding a copy of their policies from the relevant period decades ago. Those parties can use ledger entries and canceled checks to show they had coverage."¹²⁵ Professor Dane, although optimistic about the new law's ability to grant recovery for victims, believes that church defendants will have an advantage in cases where it has been over a decade since the alleged abuse.¹²⁶ Another complication is if there are multiple instances that require insurance coverage then

¹²² Toutant, *supra* note 109.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

multiple policies could be in effect in some way and it may be up to courts to determine the validity towards each alleged action.¹²⁷

“Before the claims even make it to litigation in terms of whether or not there was abuse and the damages there, there’s going to be a lot of litigation to determine whether or not the policies that are implicated apply, whether or not the coverage is available for the defendant that’s alleged and if the policy does apply, the number of occurrences that are alleged versus the number of occurrences that are covered, which would affect the payout amount, obviously, if there’s more than one occurrence and if that’s deemed, under New York law, to be recoverable, then you have multiple policy payouts. If the policy limit is \$1 million but you have 20 separate occurrences, now you have a \$20 million payout for that one lawsuit.”¹²⁸

One of the law firms taking the lead on litigation against church clergy for sexual abuse of victims that again have the chance to sue is Jeff Anderson & Associates PA who have published many statistics and reports on sexual abuse by clergy in New Jersey.¹²⁹ In early 2019, Jeff Anderson and Gregory Gianforcaro published a report on all clergymen and women accused of sexual assault along with other data on sexual abuse by clergy.¹³⁰ The firm states that the purpose of the report is to “illustrate the patterns and practices of Diocesan and Religious Order officials who have enabled the abusers and covered up crimes of sexual misconduct and abuse for decades, including the orchestrating of an institutional cover-up of an enormous magnitude.”¹³¹ The report will most likely be used as evidence in many of the firms cases against the dioceses to prove

¹²⁷ John Czuba & Florina Altshiler, *What New York Child Victims Act Means for Insurers*, L. TALK NETWORK (Jan. 7, 2020), <https://legaltalknetwork.com/podcasts/insurance-law-podcast-am-best/2020/01/what-new-york-child-victims-act-means-for-insurers/>.

¹²⁸ *Id.*

¹²⁹ Diocese of Camden, JEFF ANDERSON & ASSOCS. PA, <https://www.andersonadvocates.com/new-jersey-sexual-abuse/new-jersey-dioceses/diocese-of-camden/>.

¹³⁰ *Id.*

¹³¹ *Id.* at 12.

negligent entrustment and negligent supervision. Jeff Anderson & Associates and Gianforcaro law appear to be taking the lead on civil litigation in wake of the new statute of limitations. The firm advises victims before making the decision between filing a claim against the church or filing a claim with the victim's compensation fund, to speak to an attorney over a free consultation.

The major pitfall that compensation funds have is that they conceal the truth behind serious issues and silences the stories of victims who have been suffering in silence for so long. It puts the responsibility and reputation of the Church into question. By silencing victims in return for a large check, the church is avoiding recognizing publicly that there is a substantial problem in their organization's employees, and they are unwilling to fix the problem. That is the substantial benefit of lawsuits for victims of childhood sexual abuse, so that they are able to have their story told, hold the people that allowed this to happen accountable, and receive money for compensation.

This issue reminds me of the Truth and Reconciliation Program used in South Africa in the 1990s after the removal of the Apartheid government and beginning of the democratic state. The new republic sought to give compensation to the millions of people who have suffered tragedies at the hands of the apartheid government, but they knew that the perpetrators were either unavailable or under no obligation to pay for the damages of the people they allowed to suffer.¹³² Instead, the government wanted to at least provide its people with the opportunity to make their stories heard on public record, or to confront their perpetrator.¹³³ The program allowed for victims to tell their stories and confront their prosecutors, in exchange for waiving their right to sue the official that directly caused them injury.¹³⁴

That would be an ideal program for the Church to consider alternatively to they typical compensation fund. The Church should recognize that what victim's want is for the Church to accept responsibility for what they negligently or recklessly allowed to happen to them. The Church's reputation is damaged when the public sees them constantly denying victims compensation or recognition when the Church fights back against a lawsuit.

¹³² *Truth and Reconciliation Committee (TRC)*, S. AFR. HIST. ONLINE (Nov. 23, 2018), <https://www.sahistory.org.za/article/truth-and-reconciliation-commission-trc-0>.

¹³³ *Id.*

¹³⁴ *Id.*

“Part of the tragedy is that, although some of the underlying abuse took place decades ago, efforts at comprehensive accounts, credible responses, and effective reforms on the part of both Church and state have only come in fits and starts and remain uncertain. But it is precisely the agency of all these souls, and their insistence—within the Church, in the public arena, and in the courtroom—on breaking decades-long silences and holding both individuals and institutions to account, that has set in motion the complicated confrontation of normative worlds, with its transformative potential for both sides of the encounter.”¹³⁵

Possibly, this compensation fund is nothing more than another way for the church to avoid publicity of the crisis still happening between clergy and children. “As revelations have emerged of cover-ups and of the long practice of transferring offending clerics from one unsuspecting parish to another, some church officials have argued that, however misguided their actions are in retrospect, their motive was to avoid “scandal.””¹³⁶

Professor Dane believes that terms such as employer and employee are convoluted terms when applied to the hierarchy of the church.¹³⁷ Dane concluded that when law must apply these terms to the church in a legal analysis, it should apply the terms as “opaque” especially when the law “threatens to interfere with the internal discipline and organization of religious life.”¹³⁸

¹³⁵ *Id.*

¹³⁶ Perry Dane, *Encounters on Shifting Ground*, Immanent Frame (Mar. 13, 2019), <https://tif.ssrc.org/2019/03/13/encounters-on-shifting-ground/>.

¹³⁷ Perry Dane, *‘Omalous’ Autonomy*, 2004 B.Y.U. L. REV. 1715 (2004) (“Terms such as “employer” and “employee” are constructs of secular law that might be alien to the Church’s own theological and canonical understanding of the relationship between bishops and priests.”).

¹³⁸ *Id.* (“I argued that it would violate important principles of institutional religious autonomy to superimpose those secular categories on the normative world constituted by the Church’s own religious understanding. I concluded that “Whatever ‘special relationships’ might exist, or not exist, in the internal workings of a religious community, they should just be opaque to the gaze of secular law, at least when that law threatens to interfere with the internal discipline and organization of religious life.”).

IX. What Litigation Provides but Not the Compensation Fund

Victims of sexual assault as a minor cannot heal themselves through monetary compensation, they need closure and reconciliation. Of course, victims will accept monetary compensation for their injuries, especially since the trauma they faced has most likely cost them money throughout their entire life. However, most victims have gone on to become functioning members of society, but the injury of post-traumatic stress disorder, depression, anxiety, and other mental disorders caused by sexual abuse require more than money to heal. Victims want the truth to be known, not only to get closure, but to ease their mind that it is less likely for children of today to suffer the same abuse. Litigation may be a risky option that may result in the victim not receiving monetary compensation, but it provides the victim with key remedies to their trauma: justice, recognition that the church was at fault for their trauma, revealing of the truth, and affirmance that they were injured but it was not their fault.

The Church fails to understand what victims want. The church needs to learn from programs like truth and reconciliation committees where victims of horrible abuse were given the chance to tell their story, for perpetrators to admit to their crimes against victims, for the truth to be revealed, and for tensions between parties to be reconciled. Victims abused by priests also lose their relationship with their faith, and that is the relationship that needs to be reconciled. Whether litigation will reconcile that relationship is doubtful, especially if the church denies what the victim claims. However, by the court recognizing the victim's injury, maybe they can seek further counsel in possibly reinvigorating their religious faith without the dependency on the church.

X. COMPENSATION FUNDS

The New Jersey Dioceses' Independent Victim Compensation Fund may differ from government run compensation funds that occur after national tragedies, but the purposes of these compensation funds are similar in that they seek to give financial rewards to victims of a tragedy caused by the failure of the organization or government to protect them. The best example being the 9/11 Victim's Compensation Fund created by the federal government ten days after the 9/11 terrorist attacks. The Senate created the fund for three purposes: (1) to create a sense of national

unity and compassion for victims in this tragedy that has shocked the nation, (2) to rescue the airline industry from an onslaught of litigation that would lead to financial ruin, and (3) to reduce the burden of litigation on victims who would seek to sue all available plaintiffs that were potentially liable for the 9/11 terrorist attack.¹³⁹ To do this, the fund provided almost any potential victim of the attacks monetary compensation, on the condition that they waive the right to tort litigation against any liable plaintiffs, the fund provided around \$24 billion in compensation to victims.¹⁴⁰ The New Jersey pandemic of sexual abuse of minors by priests differs to a national tragedy compensation fund because each victim has a very unique story to be told.

Every compensation fund must struggle to decide how broadly to define the term victim to determine who will be able to receive compensation. The New Jersey Dioceses' compensation fund does not expressly explain the explicit definition of sexual abuse that a person must have suffered from but does set requirements on who abused the person and where the person was abused.¹⁴¹ Qualifications tends to be one of the greatest debates when a compensation fund is established, the 9/11 fund included a debate as to whether to take a narrow approach where only families of deceased and injured persons should receive compensation, or a broad definition to compensate persons' and families that were affected by any nationally recognized terrorist attack including the Oklahoma City bombing and the WTC bombings.¹⁴² The conclusion of the debate lead to a very narrow definition: "those present at the crash scenes that suffered physical injury or the personal representative of the decedent, who had to be appointed as the personal representative or administrator of the decedent's estate by a valid will."¹⁴³ This definition was met with a lot of resistance as it deprived eligibility to almost all emergency responders that were injured while rescuing people from the towers.¹⁴⁴

¹³⁹ Mike Steenson & Joseph Michael Sayler, *The Legacy of the 9/11 Fund and the Minnesota I-35W Bridge-Collapse Fund: Creating a Template for Compensating Victims of Future Mass-Tort Catastrophes*, 35 WM. MITCHELL L. REV. 524, 526 (2009).

¹⁴⁰ *Id.*

¹⁴¹ See *IVCP*, *supra* note 18.

¹⁴² Steenson & Sayler, *supra* note 139, at 540.

¹⁴³ *Id.* at 541

¹⁴⁴ *Id.* at 542.

Little information is known about what amount of compensation will be awarded to each individual from the IVC. A compensation fund must determine if they will provide purely for actual damages, or if there is an assessment tool to determine the value to recover for mental anguish and emotional distress. Funds also set maximums for the amount a single claim can rise to.¹⁴⁵

XI. TORT ACTIONS AGAINST THE CHURCH

Most litigation against the church from victims of sexual abuse at the hands of priests are claims of “negligent retention, negligent supervision, breach of fiduciary duty, and the like.”¹⁴⁶ An issue that tends to come up in this litigation is defining the relationship between the clergy member that abused the victim, and the church. The Catholic Church often defends against such litigation by arguing that clergy are independent contractors rather than employees, thus an agency relation does not exist and the Church had not duty to control the clergy.¹⁴⁷ At other times, Churches have argued that the relationship between church and priest is not alike an employee or an independent contractor because, “the task at hand is not to ‘translate’ religious categories into secular terms, but just to apply secular law to a set of facts.”¹⁴⁸

Furthermore, some courts have found the church not liable for priest’s misconduct because it does not have the ability to supervise clergy, and that the cause of action for clergy malpractice is undermined by a suit for negligent supervision.¹⁴⁹ Some scholars suggest that imposing liability on the church for the misconduct of individual priests is the greatest issue: “the real problem is that the state should not base a regime of responsibility or liability that potentially intrudes on internal church administration on causes of action that, by definition, seek to regulate a relationship, the nature of which is grounded in religious concepts, consideration, and norms.”¹⁵⁰ This position sees the first amendment and certain

¹⁴⁵ *Id.* at 594.

¹⁴⁶ Dane, *supra* note 137, at 1755.

¹⁴⁷ *Id.* (citing Diana Jean Schemo & David M. Herszenhorn, *Egan Is Leaving ‘Unfinished Work’ on Abuse, Victims Say.*, N.Y. TIMES (June 16, 2000), <https://www.nytimes.com/2000/06/16/nyregion/egan-is-leaving-unfinished-work-on-abuse-victims-say.html>).

¹⁴⁸ *Id.* at 1757.

¹⁴⁹ *Schmidt v. Bishop*, 779 F. Supp. 321, 326 (S.D.N.Y. 1991); *Swanson v. Roman Cath. Bishop of Portland*, 692 A.2d 441 (Me. 1997).

¹⁵⁰ Dane, *supra* note 137, at 1758.

supreme court decisions as granting an autonomy to churches that must be respected by the law. The law does recognize a distinct separation between priests and the church, including tax law where “clergy persons are granted the same right to deduct the value of their housing, regardless of whether such housing would be treated under general principles of tax law as lodging.”¹⁵¹

Victims find most success in finding the church liable for the actions of their priests that there is a special relationship despite an employee-employer relationship because the dioceses is the “opportunity to protect others from harm.”¹⁵² This rule has been expanded to find a duty creating relationship when “the activities of two persons come so in conjunction that the failure by one to exercise that care is likely to cause injury to the other.”¹⁵³

XII. Truth and Reconciliation Committees

Typically, Truth and Reconciliation Committees are formed by a government seeking to make amends after a civil conflict that polarized the population between victims and perpetrators.¹⁵⁴ “Truth Commissions are official, temporary bodies used to investigate human rights violations and to provide a mechanism for countries and communities to come to terms with a past marked by prolonged conflict, civil strife, and violence.”¹⁵⁵ Although truth and reconciliation commissions are not courts, they are often granted “quasi-judicial powers” such as granting amnesty, subpoenaing witnesses, conducting discovery, and making recommendations to government offices.¹⁵⁶ Most truth and reconciliation commissions will make victim testimonies public.¹⁵⁷ Truth and reconciliation commissions will then publish a final report after a two to five year period, reporting all testimonies, investigation findings, and recommendations on how government should change their policy or prosecute certain bad actors.¹⁵⁸

To better explain why litigation is the better alternative for victims of sexual abuse than a compensation fund, Truth and

¹⁵¹ *Id.* at 1759.

¹⁵² *Tarasoff v. Regents of the Univ. of Cal.*, 551 P.2d 334 (Cal. 1976).

¹⁵³ *Neal v. Shields, Inc.*, 347 A.2d 102, 107-08 (Conn. 1974).

¹⁵⁴ Heather Parker, *Truth and Reconciliation Commissions: A Needed Force In Alaska?*, 34 ALASKA L. REV. 27 (2017).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 31.

¹⁵⁷ *Id.* at 32.

¹⁵⁸ *Id.*

Reconciliation programs will illustrate what victims look for in a program meant to reconcile the trauma they suffer and possibly the relationship between them and those that harmed them. Comparatively, litigation also seeks to amend the victim by proving that their pain is justified, they are not the ones liable for that pain, and the abusers are forced to recognize their liability for the victim's suffering. We will see these same elements in successful Truth and Reconciliation programs as opposed to those that were unsuccessful which focused more so on punishing the abuser in order to give victims justice which is more easily contrasted with the compensation fund.

Four truth and reconciliation commissions are worth noting and examining to see how challenging it is to provide victims with the remedies they are seeking to help heal their trauma: the South African Truth and Reconciliation Commission, Commission on the Truth for El Salvador, Canada Truth and Reconciliation Commission, and the Greensboro Truth and Reconciliation Commission. One example that will not be analyzed is the Chilean National Commission on Truth and Reconciliation, because it is cited as an example of a complete fiasco. This commission was created to reprimand politicians accused of rape and sexual assault but provided no remedy to the victims. Because this commission was a solely perpetrator-centered approach, "the urgency of gaining forensic information about state-ordered murders trumped other considerations."¹⁵⁹

The South Africa Truth and Reconciliation Commission has become the most popular in the world because of its success and its longevity as it has become a branch of the South Africa government meant to hold the government accountable.¹⁶⁰ This commission was organized in 1995 as a means to heal the country from the torture that occurred during apartheid.¹⁶¹ All proceedings done by the commission were broadcasted on television, radio, and reported by the press.¹⁶² The main goal of the commission was for victims to tell their stories, "as opposed to denying or repressing the pain and suffering of all people affected by the apartheid."¹⁶³ The commission

¹⁵⁹ See Matt James, *A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission*, 6 INT'L J. OF TRANSITIONAL JUST. 182-204 (2012).

¹⁶⁰ *Id.* at 42.

¹⁶¹ Parker, *supra* note 154, at 42.

¹⁶² *Id.* at 43.

¹⁶³ Albie Sachs, *Truth and Reconciliation*, 52 SMU L. REV. 1563, 1569 (1999).

also subpoenaed apartheid officials who were accused of violence crimes against citizens, and would recommend prosecution to the government if the official was found to not be acting “under political command.”¹⁶⁴ The South Africa Truth and Reconciliation Commission is considered a success in providing victims with closure, but it’s biggest criticism was the failure to pay reparations to certain victims that lost property due to hate crimes and the failure to prosecute many of the perpetrators.¹⁶⁵

One of the more unsuccessful Truth and Reconciliation committees was the Commission on the Truth for El Salvador was created by the United Nations after the civil war in El Salvador.¹⁶⁶ The commission conducted investigations and released reports on the certain atrocities committed by both sides of the civil war.¹⁶⁷ However, individuals’ stories were not made public in any reports, it was all generalized into statistics and recommendations.¹⁶⁸ This program is considered one of the weaker truth commissions as it failed to provide anything for the victims. However, it is accredited for reconciling the relations between the El Salvador government and its people once again.¹⁶⁹

The Canada Truth and Reconciliation Commission was created after a class action settlement against the government for the mistreatment of the Native American children who were removed from their tribes and placed in border schools.¹⁷⁰ The goal of the commission was to reveal the truth and give the victims “the voices and truths of former residential school students, the Commission enacts a form of ongoing symbolic reversal of the power relations and colonial knowledge assumptions that were embodied in the schools and that continue to be woven into Canadian institutions and society today.” The Canadian Truth and Reconciliation Commission took a more victim-centered approach to reconciling the native population and the government, rather than other commissions that incorporated more requirements for the oppressor to take part in the process as well.¹⁷¹ “Victim-centered

¹⁶⁴ *Id.*

¹⁶⁵ Parker, *supra* note 154, at 45.

¹⁶⁶ *Id.* at 46.

¹⁶⁷ *Id.* at 47.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 49 (“The report told the truth in a country that was not accustomed to hearing it.”).

¹⁷⁰ James, *supra* note 159.

¹⁷¹ *Id.*

commissions are analytically distinguishable from those that take a primarily perpetrator-centered approach to gathering and conveying truth. In the latter approach, the commission in question tends to focus less on the voices, needs and experiences of victims and more on their witness testimony to ascertain the deeds, conduct and levels of responsibility of perpetrators.¹⁷² The Canadian Commission is praised for putting “victims of injustice in charge” and providing a voice to an entire generation of indigenous children who were kept silent by the Canadian government.¹⁷³ This was particularly important to the indigenous Canadians who were forced by the Canadian border schools to abandon their native languages, be taught that their culture was barbaric, and that their native identity be eradicated.¹⁷⁴ Furthermore, the commission was highly successful because of the court order mandating the government to comply with the results of the commission’s findings.

There have been many proposed truth and reconciliation commissions in the United States, but many have either not been approved by the local government or the commission was not funded enough to perform its duties.¹⁷⁵ The most successful was the Greensboro Truth and Reconciliation Commission which was organized in 2004 to investigate a hate crime committed by the Ku Klux Klan in 1979 against a crowd of African American protestors.¹⁷⁶ The commission was denied funding by the city and state government.¹⁷⁷ The lack of government support made it difficult for this commission to enforce its recommendations at the end of its investigations.¹⁷⁸ The investigation included analyzing the records from trials, newspapers, victim testimony, and public hearings.¹⁷⁹ The final report the commission published requested prosecution of specific perpetrators that were never prosecuted, that the government recognize that the tragedy occurred because of the negligence of the city to protect the public, and provide community forums and healing workshops to those affected by the tragedy.¹⁸⁰ Although none of these requests were accepted by the government,

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 29-30.

¹⁷⁶ James, *supra* note 159, at 58.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 59.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

the commission's work brought media attention to the event and has encouraged more grassroots groups to provide support to victims of racial violence.¹⁸¹

Truth and reconciliation commissions are often criticized of being ineffective in their goals to quell victims' anguish.¹⁸² Many victims complain that making their stories known did not actually help them, but simply re-traumatized them without receiving any meaningful change to their lives.¹⁸³ Critics also note that most recommendations made by truth and reconciliation commissions are never considered by the government or are procrastinated until they are meaningless.¹⁸⁴ Some people believe that victims gain nothing by their story simply being told, "I have never met anyone that wants to be reconciled with the government. One forgives people, not institutions."¹⁸⁵

I have spent time analyzing the use of truth and reconciliation commissions, because they illustrate what is important to a class of victims that have been oppressed by an organized oppressor. Just like the examples I have described, there is a class of victims in New Jersey, and every state, of people who were sexually abused by priests when they were young and were never able to seek justice because of the statute of limitations which gave them so little time to realize the opportunity to seek litigation against the church and their abuser. By analyzing the truth and reconciliation commissions, we find that victims seem to approve of the commission more so when the process is more victim-oriented and spends more resources on unveiling the truth as well as providing some sort of remedy, rather than just receiving compensation for the victim's story to never be told. This supports the conclusion that litigation is a more favorable choice for victims of sexual abuse rather than a compensation fund that forces the victims to remain silent.

¹⁸¹ *Id.*

¹⁸² James, *supra* note 159, at 33.

¹⁸³ *Id.* (citing Suzanne Daley, *In Apartheid Inquiry, Agony is Relived but not Put to Rest*, N.Y. TIMES (July 17, 1997), <https://www.nytimes.com/1997/07/17/world/in-apartheid-inquiry-agony-is-relived-but-not-put-to-rest.html>).

¹⁸⁴ *Id.*

¹⁸⁵ Reuel S. Amdur, *Reconciliation but not With Government*, CANADIAN CHARGER (Oct. 27 2010), <http://www.thecanadiancharger.com/page.php?id=5&a=648>.

XIII. Conclusion

While no one can dispute that there is an important purpose for a statute of limitations to ensure there will be sufficient evidence, witnesses are available, and the cause of action is not so far in the past that the parties cannot reasonably remember the facts of the incident. The discovery rule determines when the statute of limitations begins to run is when the plaintiff discovers the causal relationship between the defendant's conduct and the plaintiff's injuries. Despite this, most states have a statute of limitations for sexual abuse of minors to start running once the victim turns 18 years old. These statutes go against the discovery rule, which is why the new trend to replace the statute of limitations with a much longer range of time for victims to bring a case against their abuser. Victims of sexual abuse as minors will often repress their trauma in order to cope which causes them to not make the causal connection between their mental suffering and the abuse, or the victims will feel as though they can trust their abuser thus not feeling as though the abuser can be held liable for their mental anguish.

Victims of sexual abuse as children at the hands of priests deserve not only monetary compensation, but recognition that validates their emotions, trauma, and story. That is the greatest failure of the New Jersey Dioceses' Independent Victim Compensation Fund, it seeks to provide monetary compensation in order to silence the victims. While the dioceses states that one of the goals of the compensation fund is to take responsibility for the misconduct, and to recognize the history of sexual abuse in the catholic church; the fact that they do not conduct an internal investigation on the issue nor allow victims to share their stories does not suggest they are focusing on reconciling the relationship between the victims and their Christian faith. Even after receiving the money, it is highly unlikely the victim will feel and reconciliation with the church, their religious faith, or themselves.

Furthermore, the Independent Victim Compensation Fund allows this cycle of abuse to continue within the Catholic Church. The Diocese seeks to protect its reputation, instead of admitting its fault and letting the stories of abuse get out into the public. The Catholic Church has a history of trying to keep sexual abuse stories secret in exchange for paying victims, but with the new law allowing more opportunity for victims to sue clearly caused concern for the church for stories to be told in court records. While there is an understandable concern for a wave of litigation against

organizations like the Church and Boy Scouts of America once the statute of limitations is expanded on, plaintiffs still have a large hurdle to overcome by proving that they did not discover the causal connection between their trauma and the abuse. The new statute does have a grace period of two years for any person to bring suit against an organization for sexual abuse as a minor claim, but after that the discovery rule comes back into effect and thus a claim is barred if it can be shown that the plaintiff discovered the causal link over two years before they brought the claim.

Thankfully, the increasing of the statute of limitations for sexual abuse has become a trend among the states. As was discussed Maine, California, New York, and New Jersey are leading the way to resolve the issue of victims of sexual abuse as minors. As a child gets older, they may repress the abuse from a trusted figure in order to cope with the trauma of the event. Thus, expanding the statute of limitations gives victims the time they need to recognize the source of their injury and to bring a lawsuit against their abuser. While some will argue that this extension creates an impartial proceeding against the alleged abuser due to the diminishing of evidence between the time of the abuse and the present. There is usually little evidence in abuse cases to begin with.

Victims deserve the right to seek justice, have their stories heard, and to punish their abuser. These same three remedies brought by litigation were also brought by the Truth and Reconciliation Committees discussed previously, proving that it does matter to victims to have their stories told and to give justice. The successful Truth and Reconciliation programs were victim-oriented giving the victim the voice and power they have never had. The less successful Truth and Reconciliation programs focused more on punishing the abusers or giving compensation to the victims. This is clearly analogous to the comparison being made between the new opportunity for litigation for sexual abuse as minors against the Independent Victim Compensation Program created by the New Jersey Catholic Dioceses. Litigation will give the victim a voice and the power to hold their abuser accountable for the trauma they caused. The compensation fund pays the victims at the expense of the church, thus punishing the church financially in order to provide to the victims financially, but the victims are silenced and prevented from taking any action against their abuser.

Hopefully, victims will take advantage of the new opportunity to sue so that they can not only receive compensation for the torture they experienced but be able to tell their story so that

the public can hold the Church more accountable for allowing this cycle of abuse to continue. Victims should also take advantage of this new opportunity to encourage other states to increase their statute of limitations beyond a few years after the age of maturity, as the majority of states still bar litigation of sexual abusers only a couple years after the victim reaches the age of majority.