

The Delayed Discovery Rule and *Roe v. Archdiocese*

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A Case Comment

Mary Roe (hereinafter "Roe") began counseling sessions with the respondent priest, Father Piche, in February 1982.¹ In June 1982, Roe moved into the convent house adjacent to Father Piche's church.² On July 31, 1982, shortly after turning eighteen, Roe's relationship with Father Piche became sexual in nature.³ Subsequently, Roe moved out of the convent house, but the sexual relationship continued.⁴ Roe moved back into the convent house in May 1984.⁵ Soon thereafter, Roe observed that Father Piche was spending considerable time with another woman, whom Piche eventually married.⁶ The counseling relationship between Piche and Roe ended in August 1984, and the sexual relationship ended late in 1984.⁷

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1. *Mary Roe v. Archdiocese of St. Paul and Minneapolis*, 518 N.W.2d 629 (Minn. Ct. App. 1994), *rev. denied* (Aug. 24, 1994).

2. Roe was seventeen years old at the time she moved into the Church of St. Timothy convent house. *Id.* at 630. Roe lived at the convent house until August 1982, and again from May 1984 to February 1985. *Id.*

3. *Id.*

4. *Id.*

5. *Roe*, 518 N.W.2d at 630.

6. *Id.*

7. Roe stated that she felt "used and abused" by Piche at this point, and that during this period she lost interest in Piche and just knew that the relationship was wrong. *Id.* It was also during this time that Roe began losing faith in the Church. *Id.* at 630-31.

In February 1985, Roe attempted suicide with a razor blade.⁸ A few months later Roe moved to Arizona.⁹ While in Arizona, she met and married John Roe.¹⁰ Prior to the marriage, Mary Roe did not disclose her relationship with Father Piche to John Roe.¹¹ Roe did not think or talk about her relationship with Piche during the three years she lived in Arizona.¹²

Roe and her husband moved back to Minnesota in August 1988.¹³ In October 1988, memories of the relationship with Father Piche began to resurface.¹⁴ As the memories returned, Roe began to suffer psychological problems, including suicidal ideation and self-mutilation.¹⁵ In July 1992, Roe watched a news program addressing sexual abuse by members of the clergy.¹⁶ After seeing the program, Roe sought psychological counseling from psychologist Ellen Luepker.¹⁷ According to Luepker, while in Arizona, Roe had suppressed all memory of her relationship with Piche, and only upon viewing the television program was Roe able to link her psychological injuries to her relationship with Piche.¹⁸ Subsequently, Roe filed a complaint against Piche on July 31, 1992.¹⁹

The *Roe* court applied the statutory delayed discovery rule,²⁰ which states that "an action for damages based on personal injury

8. *Id.* At this time, Roe was also involved in a relationship with R.M., who immediately broke off the relationship when Roe disclosed her relationship with Father Piche. Roe stated that R.M. had "every reason to abandon her" because she believed that her relationship with Piche had been wrong. *Id.* at 631.

9. Roe stated that she left Minnesota to get away from Piche. *Roe*, 518 N.W.2d at 631.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Roe*, 518 N.W.2d at 631.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Roe*, 518 N.W.2d at 631.

19. *Id.* In the complaint, Roe alleged assault, breach of fiduciary duty, and negligent counseling. Roe also included the Archdiocese as a defendant, alleging it was liable by means of the doctrine *respondeat superior* and negligent placement or supervision. *Id.* In addition, John Roe alleged loss of consortium as against all of the respondents. *Id.*

20. MINN. STAT. ANN. § 541.073 subd. 2(a) (West 1992). The pertinent part of Minnesota's delayed discovery statute reads:

Actions for damages due to sexual abuse; special provisions

Subd. 2. Limitations period.

(a) An action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.

(b) The plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury. (c)

caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse."²¹ The court found that there existed no issue of material fact as to whether Roe had reason to know, prior to 1985, that she had been sexually abused because the evidence overwhelmingly indicated that a reasonable person in Roe's position should have had such knowledge.²² In addition, the court held that the delayed discovery rule does not provide that the limitations period be tolled if an adult victim-survivor represses memories of the abuse after she has linked her injuries to the abuse.²³ The court concluded that under the delayed discovery statute, Roe's claims were barred by the statute of limitations and, therefore, the granting of summary judgment in favor of respondents was proper.²⁴

Part I of this article sets forth the injuries commonly suffered by sexual abuse victim-survivors as well as the history and application of delayed discovery rules. Part II discusses the *Roe* court's holding and reasoning. Part III analyzes the rule set forth by the *Roe* court. Under the *Roe* court's analysis, the Minnesota delayed discovery rule precludes the tolling of the statute of limitations during the time period that memories of the abuse are repressed by a victim-survivor, if prior to the repression the victim-survivor had reason to know that her injuries were caused by sexual abuse. This Comment then contends by so holding that the *Roe* court has created a troubling interpretation of the delayed discovery statute which could potentially deny a class of plaintiffs access to a civil remedy for personal injuries caused by childhood sexual abuse. More importantly, this Comment asserts that the *Roe* court misinterpreted the standard set forth in the Minnesota delayed discovery statute. The court examined whether the plaintiff was aware of the abuse and the *wrongfulness* of the abuse, rather than examining whether Roe knew or should have known that her *injuries were a result of the abuse*. In addition, this Comment asserts that the reasonable person standard adopted by the *Roe* court fails to consider

The knowledge of a parent or guardian may not be imputed to a minor

MINN. STAT. ANN. § 541.073 (West 1992).

The trial court applied the delayed discovery rule without addressing the respondent's argument that the relationship between Roe and Piche did not constitute sexual abuse as defined by Minnesota Statutes. MINN. STAT. ANN. §§ 609.342-.345 (West 1992). The appellate court thus assumed, without deciding, that Piche's relationship with Roe constituted sexual abuse. *Roe*, 518 N.W.2d at 631.

21. *Id.*

22. *Id.* at 632.

23. *Id.*

24. *Id.* at 633.

the effects of sexual abuse on the victim-survivor's ability to causally connect her injuries to the abuse.

Delayed Discovery Rule and Sexual Abuse: A Brief Historical Perspective

A. Injuries Suffered by Victims of Sexual Abuse

The effects of sexual abuse²⁵ are severe and varied. Victims of sexual abuse are harmed by "invisible wounds" which damage the victim-survivor's sense of self and his or her relationships with others.²⁶ The manifestation of injuries caused by sexual abuse may begin during or immediately after the initial abuse.²⁷ Injuries suffered by victim-survivors during the period in which the abuse is occurring include feelings of shame, anxiety, guilt, low self-esteem and depression.²⁸ In addition to the immediate injuries, many survivors of sexual abuse begin to develop symptoms much later, often years after the abuse has ended.²⁹ Symptoms which sometimes appear after the abuse has ended include sexual dysfunction,³⁰ alcohol and drug abuse,³¹ depression and suicidal tendencies.³² Furthermore, due to the often continuing nature of the abuse, many

25. Sexual abuse is defined in MINN. STAT. ANN. §§ 609.342-.345 (West 1992).

26. Rebecca L. Thomas, Note, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action*, 26 WAKE FOREST L. REV. 1245, 1251-52 (1991).

27. See, e.g., Ann Marie Hagen, Note, *Tolling the Statute of Limitations for Adult Survivors of Childhood Sexual Abuse*, 76 IOWA L. REV. 355, 359 (1991); see also Julie Schwartz Silberg, Comment, *Memory Repression: Should it Toll the Statutory Limitations Period in Child Sexual Abuse Cases?*, 39 WAYNE L. REV. 1589, 1593 (1993).

28. Hagen, *supra* note 27, at 359.

29. See, e.g., Silberg, *supra* note 27, at 1593; Lisa Bickel, Note, *Tolling the Statute of Limitations in Actions Brought by Adult Survivors of Childhood Sexual Abuse*, 33 ARIZ. L. REV. 427, 429 (1991). Generally, a survivor of childhood sexual abuse seeks counseling for "chronic depression accompanied by guilt, poor self-esteem, and feelings of powerlessness." Thomas, *supra* note 26, at 1255 n.85 (citing Denise J. Gelinas, *The Persisting Negative Effects of Incest*, 46 PSYCHIATRY 312, 319 (1983)).

30. See, e.g., Bickel, *supra* note 29, at 429. According to a number of studies, victim-survivors of childhood sexual abuse may, as adults, become sexually promiscuous. See Hagen, *supra* note 27, at 360. Conversely, other studies indicate that victim-survivors may have difficulty in forming "meaningful relationships because of lack of sexual response." *Id.* at 360-61.

31. See, e.g., Bickel, *supra* note 29, at 429.

32. See, e.g., Gary M. Ernsdorff & Elizabeth F. Loftus, *Let Sleeping Memories Lie? Words of Caution About Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J. CRIM. L. & CRIMINOLOGY 129 (1993). Additional long-term effects of childhood sexual abuse may include an increased tendency towards prostitution or promiscuity, an inability to form intimate relationships, an increased likelihood of being predisposed to future victimization, and an increased likelihood of being predisposed to engage in abusive behavior towards one's own children. See, e.g., Thomas, *supra* note 26, at 1252-54.

survivors of childhood sexual abuse develop "psychological armor" in order to survive the ordeal.³³

Although the exact percentage is unknown, many victim-survivors repress all memories of the abuse.³⁴ According to the theory of repression, upon the occurrence of a shocking or traumatic event, the mind may react by pushing the memory of the event to the unconscious, where it may stay for an indefinite period of time.³⁵ Childhood sexual abuse is "especially conducive to repression of memory of the incident."³⁶ Repressed memories of the childhood

33. Thomas, *supra* note 26, at 1254.

34. Figures on the number of victim-survivors who repress memories of the sexual abuse range from 18% to 59%. Elizabeth F. Loftus, *The Reality of Repressed Memories*, 48 AM. PSYCHOLOGIST 518, 522 (May 1993). Repression, while it provides the victim with a short-term coping mechanism, can subsequently lead to serious long-term difficulties. See, e.g., Ernsdorff & Loftus, *supra* note 32. This delay in the onset of symptoms is often attributed to Post Traumatic Stress Disorder. See, e.g., Thomas, *supra* note 26, at 1252-54. Post Traumatic Stress Disorder occurs when the "person has experienced an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone." DIAGNOSTIC AND STAT. MANUAL OF MENTAL DISORDERS 250 (3d ed. rev. 1987).

B. The traumatic event is persistently reexperienced in at least one of the following ways:

- (1) recurrent and intrusive recollections of the event. . .
- (2) recurrent distressing dreams of the event
- (3) sudden acting or feeling as if the traumatic event were recurring . . .
- (4) intense psychological distress at exposure to events that symbolize or resemble an aspect of the traumatic event, including anniversaries of the trauma.

C. Persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness (not present before the trauma), as indicated by at least three of the following:

- (1) efforts to avoid thoughts or feelings associated with the trauma
- (2) efforts to avoid activities or situations that arouse recollections of the trauma
- (3) inability to recall an important aspect of the trauma. . .
- (4) markedly diminished interest in significant activities . . .
- (5) feeling of detachment or estrangement from others
- (6) restricted range of affect . . .
- (7) sense of a foreshortened future

Id.

35. See, e.g., Loftus, *supra* note 34, at 518. Repression has been classified as the "queen of defenses." Elizabeth F. Loftus, et al., *Memories of Childhood Sexual Abuse: Remembering and Repressing*, 18 PSYCHOL. WOMEN Q. 67, 68 (1994). "In a very general way, [repression] refers to a warding off of any conscious experience of a frightening memory, wish, or fantasy, or of unwanted emotions. When discussed in the context of child sexual abuse, the extent of banishment from consciousness assumed in some definitions of repression is virtually total." *Id.*

36. Ernsdorff & Loftus, *supra* note 32.

sexual abuse are often revived by a triggering event³⁷ or through therapy.³⁸

Another coping mechanism employed by victim-survivors as a method of surviving sexual abuse is denial.³⁹ Denial is "accomplished by withholding conscious understanding of the meaning and implications of what is perceived."⁴⁰ Because sexual abuse victims are often repeatedly subjected to the abuse, complete denial of the *occurrence* of sexual abuse is not very common.⁴¹ Rather, victim-survivors tend to deny the *importance* of the abuse.⁴² Despite conscious efforts by the victim-survivor to continue denying the importance of the abuse, the effects of the abuse usually intrude into the victim-survivor's everyday life.⁴³ Denial may continue for years after the abuse has ended, until a triggering event occurs.⁴⁴

37. See, e.g., Silberg, *supra* note 27, at 1595-97. Triggering events can include, for example, giving birth, encountering a certain scent, the death of the abuser, or hearing or reading another victim of abuse recount her victimization. *Id.* See also *infra* note 44.

38. See, e.g., Hagen, *supra* note 27, at 362-63. For examples of therapist-aided revival of repressed memories of sexual abuse, see e.g., Loftus, *supra* note 34, at 518-20. See also *infra* note 50.

39. See Thomas, *supra* note 26, at 1254-55.

40. Thomas, *supra* note 26, at 1254 n.74 (citing Horowitz, et al., *A Classification Theory of Defense*, in *REPRESSION & DISSOCIATION* 80 (J. Singer ed. 1990)).

41. Denise J. Gelinas, *The Persisting Negative Effects of Incest*, 46 *PSYCHIATRY* 312 (1983) (emphasis in original).

42. *Id.*

43. *Id.* at 316-17. The victim-survivor may experience these intrusions in a variety of ways. Sometimes the intrusion is cognitive in nature, taking the form of recurrent nightmares, hallucinations, obsessive ideas, or images of the abuser. *Id.* at 317. The intrusions may also be emotional in nature, causing the victim-survivor to experience feelings of helplessness and anxiety while in the presence of the offender. *Id.* Finally, the intrusions may take the form of behavioral reenactments, resulting in promiscuity, or even prostitution. Gelinas, *supra* note 41, at 317. In addition, if the victim-survivor does not receive therapy, secondary elaborations tend to develop. *Id.* "Typically these elaborations constitute part of the symptom picture for which patients seek treatment. The most frequent secondary elaboration is chronic depression, accompanied by guilt, poor self-esteem, and feelings of powerlessness. Learned helplessness may be evident, and suicidal ideation and attempts are not uncommon." *Id.* (emphasis in original).

44. Gelinas, *supra* note 41, at 317-18. The most common triggering event is a sexual experience, and "it is not uncommon for the onset of adult sexual behavior to trigger psychiatric symptoms." *Id.* The more similar the triggering event to the abuse, the more likely the triggering event will precipitate psychiatric symptoms. *Id.* In her article, Gelinas discussed a case in which a woman, six months after marrying, was hospitalized for severe depression with suicidal ideation. During her hospitalization, the woman began to recall being sexually abused by her father when she was 13 years old. Gelinas concluded that "[t]he introduction of marriage with its obvious expectancy of adult sexual functioning precipitated a serious depression. The negative effects of incest had lain dormant until the developmental trigger of marriage." *Id.* at 318.

Although in most cases the victim-survivor is aware of the abuse and the wrongfulness thereof,⁴⁵ many victim-survivors of sexual abuse are unable as adults to recognize the causal link between the acts of abuse and subsequent psychological injuries.⁴⁶ As a result of repression or involuntary coping mechanisms, many victims are unable to perceive the nature of their injuries.⁴⁷ These same coping mechanisms may also preclude sexual abuse survivors from causally connecting their injuries to the abuse.⁴⁸ In addition, the difficulties in perceiving the injury and in linking the injury to the abuse are compounded by the fact that such injuries continue to develop long after the abuse itself ends.⁴⁹ Many times undergoing therapy can assist the survivor in linking her injuries to the acts of abuse.⁵⁰

45. See Bickel, *supra* note 29, at 431 (stating that in most cases of sexual abuse, the survivor was "aware of the abuse at the time it occurred and knew, by the age of majority, that the conduct of the perpetrator was wrong").

46. See, e.g., *Blackowiak v. Kemp*, No. C3-94-2013, 1995 W.L. 57906 (Minn. Ct. App. Feb. 14, 1995) ("It is more difficult for a sexual abuse victim to understand the causal connection between the abuse and resulting psychological injuries than it is for the victim to know that abuse occurred."); *Hammer v. Hammer*, 418 N.W.2d 23, 25 (Wis. Ct. App. 1987) (victim alleging that due to the psychological distress caused by the abuse, as well as the coping mechanisms which resulted, she was unable to discover either the existence of the injuries or the causal link between the abuse and the injuries). The *Hammer* court stated that even if the victim "may have harbored some subjective doubts about the normalcy of [her father's incestuous] actions, because of [her father's] dominion and authority and her own guilt, depression and disassociation, [the victim] had no information to a reasonable probability of the nature of her injuries or the facts with respect to their cause." *Id.* at 26. See also, Denise M. DeRose, *Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages*, 25 SANTA CLARA L. REV. 191, 196 (1985) (even when the injuries become apparent, the causal connection between the abuse and present psychological damage often remains unknown to the victim-survivor); Bickel, *supra* note 29 (stating that while many abuse victim are aware of abuse and wrongfulness thereof, "[g]enerally the victim suffer[s] emotional problems, but [does] not link the problems to the experience of sexual abuse until much later in life"). See also *supra* notes 34-44 and accompanying text.

47. See, e.g., Hagen, *supra* note 27, at 378. These coping mechanisms can include such reactions as drug abuse, suicidal tendencies and attempts, difficulties in personal relationships, abuse of their own children, feelings of isolation, prostitution, sexual dysfunction, and psychological blocking mechanisms such as repression. *Id.* at 378.

48. See, e.g., Thomas, *supra* note 26, at 1278 (noting that "the pattern of abuse becomes so well integrated into the survivors' concept of normalcy that, as adults, they fail to connect the abuse with current psychological or emotional problems").

49. See *supra* notes 29-44 and accompanying text. See also Hagen, *supra* note 27, at 378 (stating that since the coping mechanisms which develop as a result of the abuse "continued to operate long after the incidents of sexual molestation ended, survivors were prevented from perceiving injuries and their connection to the acts of abuse").

50. See, e.g., Hagen, *supra* note 27, at 362-63. Adults generally enter therapy long after the abuse has ended. Thomas, *supra* note 26, at 1255 (stating survivors, on the average, "entered therapy 17 years after the abuse had terminated"). "Thus, by the time the average adult survivor causally connects the symptoms of childhood

B. Policy Considerations Underlying the Statute of Limitations and Exceptions Thereto

Statutes of limitations are "legislatively imposed time limits within which civil actions must be brought."⁵¹ Once the prescribed statutory period has run, "no legal action can be brought regardless of the merits of the underlying claim."⁵² There are three common rationales behind the existence of statutes of limitations.⁵³ First is the desire to prevent stale claims.⁵⁴ A second rationale is to discourage potential plaintiffs from sitting on their rights.⁵⁵ Finally, statutes of limitations state a period of time after which defendants are guaranteed repose from potential lawsuits, thus allowing them to go forward with their lives.⁵⁶

Despite the strict time bars imposed by statutes of limitations, equitable exceptions have been established and implemented by courts and legislatures for plaintiffs unable to bring suit within the statutory time limit.⁵⁷ One such exception is the delayed discovery rule.⁵⁸ "The typical delayed discovery rule provides that the cause of action accrues when the plaintiff discovers, or through use of rea-

sexual abuse to her present difficulties or otherwise regains memory of the abusive events, the [general] statute of limitations often will have barred her claim." *Id.*

51. Alan Rosenfield, *The Statute of Limitations Barrier in Childhood Sexual Abuse Cases: The Equitable Estoppel Remedy*, 12 HARV. WOMEN'S L.J. 206, 210 (1989).

52. Brian D. Gallagher, *Damages, Duress, and the Discovery Rules: The Statutory Right of Recovery For Victims of Childhood Sexual Abuse*, 17 SETON HALL LEGIS. J. 505, 525 (1993).

53. *E.g.*, Rosenfield, *supra* note 51, at 211; Melissa G. Salten, *Statutes of Limitations in Civil Incest Suits: Preserving the Victim's Remedy*, 7 HARV. WOMEN'S L.J. 189, 206 (1984).

54. *E.g.*, DeRose, *supra* note 46, at 216; Rosenfield, *supra* note 51, at 211. Stale claims are disfavored due to the possibility that over an extended period of time witnesses will die or disappear, evidence will be lost, and witnesses' memories will fade. Thus, stale claims can inhibit defendants' ability to gather evidence to defend against the claim. *See, e.g.*, Salten, *supra* note 53, at 207. *But see infra* notes 65-68.

55. *E.g.*, DeRose, *supra* note 46, at 217; Rosenfield, *supra* note 51, at 211. *But see infra* notes 65-68.

56. *E.g.*, DeRose, *supra* note 46, at 216; Rosenfield, *supra* note 51, at 211. *But see infra* notes 65-68.

57. *See, e.g.*, Carolyn B. Handler, *Civil Claims of Adults Molested as Children: Maturation of Harm and the Statute of Limitations Hurdle*, 15 FORDHAM URB. L.J. 709, 722 (1987). Such exceptions have been extended to overcome the statute of limitations in the following situations: defendant's "inequitable conduct" induces the plaintiff to refrain from bringing suit (i.e., fraud); defendant's conduct amounts to undue influence or causes duress to plaintiff, thus rendering her unable to bring a timely suit; plaintiff suffers from a mental disability which renders her incapable of bringing suit within statutory time limit; plaintiff is unable to bring suit because she has not yet discovered her injury due to its inherently undiscoverable nature (i.e., medical malpractice cases). *Id.* at 722; *see also* DeRose, *supra* note 46, at 197-216.

58. *See, e.g.*, Hagen, *supra* note 27, at 365.

sonable diligence should have discovered, both that s/he is injured and that the injury was caused by the defendant's misconduct."⁵⁹

C. Application of the Delayed Discovery Rule

Initially courts were reluctant to extend the delayed discovery rule, or any similar type of exception, to statutes of limitations in cases involving sexual abuse.⁶⁰ In effect, this practice denied a class of sexual abuse survivors the right to a cause of action.⁶¹

59. Salten, *supra* note 53, at 213. Although delayed discovery rules have been both judicially- and statutorily-created, there generally is no difference between common law and statutory delayed discovery rules. An example of application of common law discovery rule arises in *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. Ct. App. 1987). The common law delayed discovery rule, as stated by the *Hammer* court, is that a cause of action "will not accrue until the victim discovers, or in the exercise of reasonable diligence should have discovered, the fact and cause of the injury." *Id.* at 25. For additional examples of the implementation of common law delayed discovery rules, see also *Johnson v. Johnson*, 701 F. Supp. 1363 (N.D. Ill. 1988) (holding that Illinois would extend the common law delayed discovery rule to include a case in which a victim of incest had no conscious memory of the abuse until after statutory minor tolling provision has expired); *E.W. v. D.C.H.*, 754 P.2d 817 (Mont. 1988) (refusing to extend common law delayed discovery to a case involving sexual molestation).

An example of the application of a statutory delayed discovery rule can be found in *K.E. v. Hoffman*, 452 N.W.2d 509 (Minn. Ct. App. 1990) (holding that the 1989 version of Minnesota Statutes § 541.073 meets constitutional muster, that its application is appropriate in sexual abuse claim, and that it does not violate respondent's right to due process).

60. See, e.g., *Lindabury v. Lindabury*, 552 So. 2d 1117 (Fla. Dist. Ct. App. 1989) (holding that statute of limitations had run where the plaintiff repressed all memories of incestuous abuse until period shortly before filing suit). In *Lindabury*, the court did not even discuss the possibility of the applicability of the delayed discovery rule to sexual abuse cases. *Id.* at 1117. See also *Tyson v. Tyson*, 727 P.2d 226 (Wash. 1986) (holding that delayed discovery rule did not apply when a victim of sexual abuse brings action based solely on recollection of repressed memories and no means exist to independently verify the allegations, in whole or in part); *DeRose v. Carswell*, 242 Cal. Rptr. 368 (1987) (holding that delayed discovery rule did not apply where victim of sexual abuse was aware of the facts of the abuse at the time they occurred, even where victim was not immediately aware of her injuries).

61. According to one source, the number of reported sexual abuse cases involving children range anywhere from 60,000 to 100,000 in the United States per year. LEONARD KARP, DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE 154 (1989). Another estimate places the number of reported sexual abuse cases at 150,000. See Thomas, *supra* note 26, at 1246. It is also estimated that "[a]pproximately 25 percent of women in the United States are sexually assaulted before the age of 13." Evelina Giobbe, *Prostitution: Buying the Right to Rape*, in RAPE AND SEXUAL ASSAULT III: A RESEARCH HANDBOOK (Ann Wolbert Burgess ed., 1991). The number of women who have been victims of incestuous sexual abuse is estimated at one million. Margaret J. Allen, *Tort Remedies for Incestuous Abuse*, 13 GOLDEN GATE U. L. REV. 609, 609 (1983). Annually, approximately 16,000 girls are victims of incestuous sexual abuse. *Id.*

Despite increased media attention, increased public empathy, and an increased response by the criminal justice system, "reported cases of childhood sexual abuse continue to escalate." See Thomas, *supra* note 26, at 1247-48; Hagen, *supra* note 27, at 357-58. Childhood sexual abuse tends to be underreported because sexual ex-

Gradually, legislatures⁶² and courts⁶³ began allowing sexual abuse survivors to utilize delayed discovery rules. Many courts have determined that the rationales which justify strict application of limitations statutes simply do not extend to sexual abuse cases.⁶⁴ In addition, despite the application of the delayed discovery rule in sexual abuse cases, the defendant is still afforded adequate protection through other means.⁶⁵ While the defendant may have difficulty exonerating himself with stale evidence, the plaintiff will also have a difficult time assembling such evidence so that she can effectively carry her burden of proof in a stale claim.⁶⁶ The defendant is also protected by modern rules of evidence, including the exclusionary and hearsay rules which prevent evidence that is unreliable or unduly prejudicial from reaching the jury.⁶⁷ Furthermore, the delayed discovery rule is not an elimination of the statute of limitations. Rather, the delayed discovery rule simply postpones the beginning of the limitations period until such time as the plaintiff reasonably discovers the facts and cause of her injury.⁶⁸

Many jurisdictions have extended the delayed discovery rule to those sexual abuse cases in which the plaintiff repressed the ac-

ploitation of children depends on "concealment, emotional blackmail, threats, and an imbalance of power for their sustenance." Thomas, *supra* note 26, at 1249. A child often will not reveal the abuse due to fear that her report will not be believed, her emotional and financial dependency on the abuser, ignorance that the abuser's behavior is a crime, or embarrassment. *Id.*

62. For an example of a delayed discovery statute drafted specifically to govern sexual abuse claims, see *supra* note 20.

63. For examples of various judicial applications of delayed discovery rule, see *infra* notes 69-72 and accompanying text.

64. See, e.g., Evans v. Eckelman, 265 Cal. Rptr. 605, 609 (1990). In speaking of the applicability of the delayed discovery rule to sexual abuse cases, the Evans court said that "[t]he limitations period is intended to run against those who are neglectful of their rights and who fail to use reasonable and proper diligence in the enforcement thereof. It is not the policy of the law to unjustly deprive one of his[sic] remedy." *Id.* See also Hammer v. Hammer, 418 N.W.2d 23 (Wis. Ct. App. 1987). The Hammer court, in applying the delayed discovery rule to extend the statute of limitations in an incestuous abuse case, reasoned that "[t]he policy justification for applying the statute of limitations to protect defendants from the 'threat of liability for deeds in the past' is unpersuasive in incestuous abuse cases." *Id.* at 27. Furthermore, the Hammer court said that the injustice of barring a meritorious suit before the plaintiff is aware of the injury "outweighs the threat of stale or fraudulent actions." *Id.*

65. See Hagen, *supra* note 27, at 375-76.

66. *Id.* at 375. In fact, as noted by Hagen, the abuser actually has the advantage over the victim-survivor in terms of gathering evidence due to the fact that the abuser has always been aware of the harm to the plaintiff. *Id.* at 376. In contrast, "[u]nder the principles of the [delayed] discovery rule, the plaintiff has newly discovered the injury or its cause." *Id.*

67. *Id.* at 375.

68. *Id.* at 375-76.

tual fact of the abuse.⁶⁹ Other jurisdictions have adopted a modified version of the delayed discovery rule under which the limitations period for sexual abuse cases does not begin to run until such time as the plaintiff discovers both the act of abuse and the wrongfulness thereof.⁷⁰ Finally, some states, including Minnesota,⁷¹ through legislative enactment have applied the delayed discovery rule to toll the limitations period until such time as the victim-survivor knows of the abuse and has causally linked her injuries to such abuse.⁷²

69. See, e.g., *Ault v. Jasko*, 637 N.E.2d 870 (Ohio 1994). The *Ault* court held that the discovery rule applies "to toll the statute of limitations where a victim of childhood sexual abuse represses memories of that abuse until a later time." *Id.* at 873. The *Ault* court further stated that the statute of limitations "begins to run when the victim recalls or otherwise discovers that he or she was sexually abused or when, through the exercise of reasonable diligence, the victim should have discovered the sexual abuse." *Id.* at 873.

70. See e.g., *Evans v. Eckelman*, 265 Cal. Rptr. 605 (1990) (holding that civil action based on parent's sexual abuse of plaintiff as a child does not accrue until plaintiff discovers or should have discovered acts of molestation and wrongfulness thereof). The *Evans* court did not go so far as to conclude that the delayed discovery rule applied in cases in which plaintiffs were unable to link their injuries to the abuse.

71. See *supra* note 20. Prior to the enactment of the Minnesota delayed discovery statute, claims based on personal injury caused by sexual abuse were governed by the general statute of limitations under Minnesota Statutes section 541.07(1). See MINN. STAT. § 541.07(1) (1988); *K.E. v. Hoffman*, 452 N.W.2d 509, 511 (Minn. Ct. App. 1990). It was in 1989 that the Minnesota legislature enacted the delayed discovery rule, under which a claim based on personal injury caused by sexual abuse "does not arise until the victim knew or had reason to know [that the] injury was caused by abuse." See *K.E.*, 452 N.W.2d at 511; see also MINN. STAT. § 541.073 (Supp. 1989). The 1989 amendment served to "trigger the statute of limitations on the victim's discovery of the cause of the injury rather than the misconduct itself." *H.D. v. White*, 483 N.W.2d 501, 503 (Minn. Ct. App. 1992). Finally, in 1991, the Minnesota legislature amended § 541.073, the effect of which "changed the statute of limitations for an intentional tort based on sexual abuse from two to six years." *Id.* at 501.

72. The following are examples of the application of the Minnesota delayed discovery rule: *Blackowiak v. Kemp*, No. C3-94-2013, 1995 W.L. 57906 (Minn. Ct. App. Feb. 14, 1995) (finding the limitations period tolled because evidence did not conclusively establish that victim-survivor should have known that sexual abuse caused his injuries); *ABC v. Archdiocese of St. Paul*, 513 N.W.2d 482 (Minn. Ct. App. 1994) (holding the statute not tolled because plaintiff should have known that the abuse had caused her injuries); *H.D. v. White*, 483 N.W.2d 501, 503 (Minn. Ct. App. 1992) (concluding that the "effect of the 1989 amendment was to trigger the statute of limitations on the victim's discovery of the cause of the injury rather than the misconduct itself").

Other jurisdictions have also adopted the same delayed discovery rule: See e.g., *Sinclair v. Brill*, 857 F. Supp. 132 (D.N.H. 1994) (stating that a cause of action does not accrue until such time as plaintiff discovers, or, in the exercise of reasonable diligence, should have discovered the injury and its causal connection to the acts of abuse); see also *Hertel v. Sullivan*, 633 N.E.2d 36 (Ill. App. Ct. 1994) (holding the statute had run). In *Hertel*, the court stated that the statute of limitations begins to run when a person "knows or reasonably should know of his [sic] injury and also knows or reasonably should know that it was wrongfully caused." *Id.* at 40 (emphasis added). See also *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. Ct. App. 1987) (re-

A victim-survivor has much to gain if given the opportunity to bring a civil suit against her assailant.⁷³ One benefit is that the victim-survivor may receive compensation from the assailant for her injuries.⁷⁴ A civil suit also allows the victim-survivor the opportunity to face her assailant in court.⁷⁵ In addition, should the victim-survivor prevail, the assailant is publicly blamed for the abuse and his conduct is socially condemned.⁷⁶

Once a court has established that the delayed discovery rule is applicable to a sexual abuse case, the next step in the analysis is to ascertain the time at which the cause of action should have accrued. This determination is generally reserved for the finder of fact.⁷⁷ The fact finder must decide when the victim-survivor connected the sexual abuse to her injuries, thus triggering the limitations period according to the delayed discovery rule. Therefore, under the delayed discovery rule, it is improper for a trial court to dismiss a sexual abuse case based on the delayed discovery rule unless the record establishes conclusively that the victim-survivor had reason to know of the causal connection between her injuries and the abuse.⁷⁸

manding for determination of when plaintiff discovered or should have discovered her injuries and their cause).

73. See, e.g., Allen, *supra* note 61, at 617.

74. See, e.g., Allen, *supra* note 61, at 617.

75. See, e.g., Allen, *supra* note 61, at 617 (noting that facing the assailant, while it can be extremely difficult for the victim-survivor, can be very empowering for her as well).

76. See, e.g., Allen, *supra* note 61, at 617.

77. See, e.g., Johnson v. Johnson, 701 F. Supp. 1363, 1370 (N.D. Ill. 1988) ("The point at which the statute of limitations commences under the discovery rule is a question of fact."); Cosgriffe v. Cosgriffe, 864 P.2d 776, 778 (Mont. 1993) (stating that whether plaintiff knew or should have known that alleged abuse was the cause of her injuries is a question of fact to be decided by a jury); Blackowiak v. Kemp, No. C3-94-2013, 1995 W.L. 57906, at *3 (Minn. Ct. App. Feb. 14, 1995) ("When a plaintiff first knew or had reason to know that sexual abuse caused his [sic] injuries ordinarily involves a factual determination that must be resolved by a trial on the merits."); Pritzlaff v. Archdiocese of Milwaukee, No. 93-1846, 1994 W.L. 449315 (Wis. Ct. App. Aug. 23, 1994) (addressing question of whether plaintiff knew or should have known that her injuries were caused by the abuse is a question of fact inappropriate for determination on a motion to dismiss); see also K.E. v. Hoffman, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990).

78. As long as a plaintiff claiming an inability to perceive the connection between her injuries and the abuse "offers to prove that a psychological disability prevented knowledge of the causal relationship, a court should not summarily reject an attempt to do so through the guise of a statute of limitation prohibition." Hagen, *supra* note 27, at 379.

Courts rejecting a claim by a plaintiff who asserts that, although she had always known of the abuse, she was unable to make a connection between the injuries and the abuse, are "in essence imputing knowledge of the causal relationship between the plaintiff's current adult injuries and prior childhood sexual abuse." *Id.* at 378.

See also Osland v. Osland, 442 N.W.2d 907, 909 (N.D. 1989) (stating that "concern about the availability of objective evidence should not preclude application of

II. The *Roe v. Archdiocese* Case

In *Roe*,⁷⁹ the court examined the applicability of the delayed discovery rule.⁸⁰ The *Roe* court noted that in *ABC*,⁸¹ a previous case addressing the applicability of the delayed discovery rule to a sexual abuse case,⁸² the court had applied an objective standard to determine whether a reasonable person placed in the victim's situation should have known that she was a victim of sexual abuse.⁸³ Using this standard, the *Roe* court concluded that there existed no issue of material fact as to whether *Roe* had reason to know, prior to April 1985,⁸⁴ that her injuries were caused by the abuse.⁸⁵

the [delayed] discovery rule."); *Blackowiak v. Kemp*, No. C3-94-2013, 1995 W.L. 57906 (Minn. Ct. App. Feb. 14, 1995) ("When reviewing a summary judgment based solely on the running of time under section 541.073, this court assumes that the accused committed sexual abuse, unless the district court has ruled otherwise.").

79. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629 (Minn. Ct. App. 1994).

80. See *supra* text accompanying notes 20-24.

81. *ABC v. Archdiocese of St. Paul*, 513 N.W.2d 482 (Minn. Ct. App. 1994).

82. *Id.* The facts of *ABC* are as follows: the appellant *ABC* alleged that she and Father Kolar engaged in sexual intercourse before appellant's eighteenth birthday. *Id.* at 483-84. Prior to this, *ABC* had been engaged in a counseling relationship with Father Kolar. *Id.* at 483. *ABC* then discovered she was pregnant with Father Kolar's child, a fact which she hid. *Id.* at 484. *ABC* suffered a miscarriage. *ABC*, 513 N.W. 2d at 484. Approximately one year later, Father Kolar told *ABC* that he had decided to continue in his ministry with the church and terminate his relationship with her. *Id.* Following the miscarriage and the breakup with Father Kolar, *ABC* began attending counseling sessions. *Id.* *ABC* met *XYZ* that same year. *Id.* Two years later they were married by Father Kolar. *Id.* Approximately six years later, *ABC* "learned that Father Kolar had been accused of taking advantage of other vulnerable young women." *Id.* *ABC* sought further counseling due to the psychological problems she began suffering after learning of Father Kolar's other exploits. *Id.* at 485. Subsequently, *ABC* brought an action against Father Kolar. *ABC*, 513 N.W. 2d at 485.

83. *Id.* at 486.

84. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994). According to the court's findings, *Roe* knew of the abuse prior to moving to Arizona. *Id.* at 630-31. Therefore, *Roe* knew of the link between the abuse and her injuries prior to the time during which *Roe* repressed memory of the abuse. This determination is important because even if *Roe* repressed memories of the abuse after moving to Arizona in April 1985, the statute of limitations would continue to run during the repression because *Roe* had previously linked her injury to the abuse. Had the court found that *Roe* had not linked her injury to the abuse prior to her move to Arizona, the statute of limitations would not have begun to run until *Roe* moved back to Minnesota, whereupon the memories of the abuse resurfaced. The court's finding that *Roe* should have linked her injuries to the abuse prior to 1985 indicates that, according to the court, the suit should have been brought within six years of 1985, i.e., by 1991. *Roe* initiated this suit in July of 1992.

85. In so holding, the *Roe* court relied in part on the similarities between the facts in *Roe* and those in *ABC v. Archdiocese of St. Paul*. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994); see *ABC v. Archdiocese of St. Paul*, 513 N.W.2d 482 (Minn. Ct. App. 1994). The *ABC* court found that evidence indicated that *ABC* should have known that her injuries were caused by the sexual abuse. Such evidence included, *inter alia*, the following: *ABC* knew that priests were to remain celibate; *ABC* frequently cried after sexual relations with the defendant be-

Appellant Roe contended that *ABC*⁸⁶ was inapplicable because, unlike Roe, the victim-survivor in *ABC* did not suffer from repressed memory of the abuse.⁸⁷ The *Roe* court disagreed, stating that *ABC*⁸⁸ was applicable to Roe's situation because the plain language of the delayed discovery statute does not allow for suspension of the statute of limitations once it begins to run.⁸⁹ The court determined that Roe had, or should have, causally connected her injuries to the sexual abuse prior to her move to Arizona. Therefore, the statute of limitations was triggered and would not thereafter be suspended, even though Roe subsequently suppressed memories of the abuse.⁹⁰

Roe also argued that the court disregarded legislative intent by considering evidence that Roe was aware of the sexual abuse during the course of the relationship.⁹¹ The *Roe* court again re-

cause she was struggling with the situation; ABC discussed the relationship with others, including another clergy member and a person whom she was dating; ABC admitted to feelings of sadness; ABC lost faith in her religion, and suffered depression and anxiety as a result of the relationship. *Roe*, 518 N.W. 2d at 631-32.

The *Roe* court held that the facts in *Roe* were sufficiently similar to *ABC* to support a finding that Roe should have known that her injuries were caused by the abuse. *Id.* at 632. Roe admitted that she felt uncomfortable about her sexual relationship with Piche, supported, according to the court, by the following facts: Roe knew that Piche was to remain celibate; Roe sent a letter to Piche which stated that their relationship was a "dead-end street"; Roe expressed her concern over the relationship to Piche several times in confession; Roe disclosed the nature of the relationship to a close friend; Roe and her friend directly confronted Piche about the relationship, and Roe interpreted Piche's response as an admission by Piche that the relationship was wrong; Roe disclosed the relationship to another clergy member. *Id.* at 630. Additionally, the *Roe* court found that both Roe's attempted suicide and the fact that Roe moved to Arizona to get away from Piche further demonstrated that Roe knew or should have known that her injuries were caused by the sexual abuse. *Id.* at 632.

86. *ABC*, 513 N.W.2d 482.

87. *Roe*, 518 N.W.2d at 632.

88. *ABC*, 513 N.W.2d 482.

89. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994). The *Roe* court held that the plain meaning of Minnesota Statute section 541.073 merely "delays the beginning of the limitations period until a person 'knew or had reason to know that the injury was caused by the sexual abuse.'" *Id.* Thus, the *Roe* court concluded that the statutory language does not support a rule which would allow the limitations period to toll when an adult victim, after connecting her injuries to the abuse, subsequently represses memories of the abuse. *Id.* The *Roe* court further held that had the legislature intended to draft such a tolling statute, it could have done so. *Id.*

90. *Id.*

91. *Roe*, 518 N.W.2d at 632. The limitations period should not begin to run until the last abusive incident has occurred. See MINN. STAT. § 541.073 subd. 2(b) (West 1992) ("The plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury."). Therefore, the limitations period should not begin to run until the abuse has ended. See also *id.* at 633 (Amundson, J., concurring) (stating "if the victim was aware of the fact of the abuse and its wrongfulness after the last abusive incident, then the statute of limitations begins to run").

jected Roe's argument, stating that the court need not make findings regarding legislative intent because evidence indicated that Roe knew of her injury *after* the relationship ended in late 1984.⁹² Thus, the *Roe* court determined that there existed no genuine issue of material fact as to whether Roe should have known, no later than April 1985, that her injuries had been caused by the sexual abuse. The *Roe* court granted summary judgment in favor of respondent priest, ruling that Roe's sexual abuse claim was barred by the statute of limitations.⁹³

III. The Delayed Discovery Rule and the Potential to Provide a Remedy: A Missed Opportunity?

The purpose of the delayed discovery rule, as interpreted by the Minnesota Court of Appeals, is to provide victim-survivors of childhood sexual abuse a civil remedy,⁹⁴ thus allowing these victims an equal right to seek compensation for injuries.⁹⁵ The delayed discovery rule "plainly reflects awareness of the difficulty sexual abuse victims have in identifying and recognizing their injuries immediately."⁹⁶ The *Roe* court's findings may effectively amount to a contravention of these purposes.

A. *Dangers of Not Allowing the Limitations Period to Toll When Victim Subsequently Represses Memories of the Abuse*

By holding that the delayed discovery statute does not provide for the subsequent suspension of the statute of limitations once it begins to run,⁹⁷ the *Roe* court has created a statutory interpreta-

92. *Roe*, 518 N.W.2d at 632. The *Roe* court said that the evidence showing that Roe attempted suicide and moved to Arizona to get away from Piche *after the relationship ended*, demonstrated that no genuine issue of material fact existed as to whether Roe should have known that her injuries had been caused by the sexual abuse. *Id.*

93. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 633 (Minn. Ct. App. 1994).

94. See, e.g., *K.E. v. Hoffman*, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990).

95. See *id.* The *K.E.* court held that since sexual abuse victims are more likely to repress memories of abuse, these differences reasonably justify the legislature's decision to entitle sexual abuse victims a specific statute of limitations. *Id.* The court further stated that sexual abuse victims benefit from the delayed discovery rule because memories of the abuse may be repressed, which could result in their claims being barred under the general statute of limitations. *Id.*

96. *Id.* at 513-14. The legislative purpose of the delayed discovery rule is to limit the possibility that sexual abuse claims will be barred under the general statute of limitations, thus holding the assailant liable for his conduct. *K.E.*, 452 N.W.2d at 514. This purpose stems from an acknowledgment by the legislature that sexual abuse survivors may repress memory of the abuse or have difficulty discovering the actual source of their problems for many years. *Id.* See also *supra* notes 29-50.

97. See *supra* notes 89-90 and accompanying text.

tion with potentially devastating results for victim-survivors of sexual abuse. In the concurring opinion, Judge Amundson recognized and addressed one such potential danger of the delayed discovery statute as interpreted and applied by the majority.⁹⁸ Judge Amundson expressed concern that in many sexual abuse cases, the delayed discovery rule will be difficult to apply, or simply will not apply at all.⁹⁹ Judge Amundson offered an illustration of a situation in which a victim-survivor of sexual abuse may be precluded from relying on the delayed discovery statute in bringing a suit against her abuser.¹⁰⁰ Judge Amundson described a hypothetical situation in which a child is abused by a parent from age sixteen to age twenty. As a result of the abuse, the victim experiences feelings of guilt and helplessness. Thereafter, the victim represses all memory of the abuse until age twenty-eight. Judge Amundson then concluded that because the victim was aware of both the abuse and its wrongfulness,¹⁰¹ the statute of limitations would begin to run when the victim was twenty years old, the time at which the abuse ended. Since the delayed discovery statute, as currently interpreted under *Roe*, does not allow for suspension of the statute of limitations once it begins to run, the victim would be barred from bringing a claim once she subsequently recalled the abuse.¹⁰² The victim-survivor in such a situation would have a choice between two unreasonable alternatives: either bringing the action immediately following the abuse; or bringing the action during the time she repressed the memory.¹⁰³

The result of the *Roe* court's holding is that the statute of limitations will begin to run at the time the victim-survivor initially links her injuries to the sexual abuse, even if the victim-survivor thereafter represses the memories. The limitations period will not begin to run, however, until the victim-survivor reaches age eighteen.¹⁰⁴ Therefore, under the *Roe* court's rule, once the victim-survi-

98. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 633 (Minn. Ct. App. 1994) (Amundson, J., concurring).

99. *Id.* Judge Amundson attributed this difficulty to the plain language of the delayed discovery statute, rather than to the court's interpretation of the statute. *See id.*

100. *Id.*

101. Note, however, that feelings such as guilt and helplessness only support a finding that *Roe* knew Piche's conduct was wrong, not that *Roe* was aware that her injuries were caused by Piche's conduct. *See infra* note 137 and accompanying text.

102. *Roe*, 518 N.W.2d at 633 (Amundson, J., concurring).

103. *Id.*

104. MINN. STAT. § 541.15(a)(1) (1988) states:

(a) . . . any of the following grounds of disability existing at the time when a cause of action accrued or arising anytime during the period of limitation, shall suspend the running of the period of limitation until the same is removed; provided that such period, except in the case of

vor has linked the abuse to the injury, the limitations period will begin to run the moment the victim-survivor turns eighteen.

The *Roe* court attempted to limit the holding to adult survivors who subsequently repress memories of abuse.¹⁰⁵ Under this interpretation, if a child linked her injuries to the abuse as evidenced by feelings of guilt, shame, and depression,¹⁰⁶ and thereafter repressed all memory of the abuse before reaching the age of eighteen, the limitations period would not trigger automatically at the time the victim-survivor reached the age of eighteen, unless the victim-survivor upon reaching eighteen recalled the abuse and linked the injury to the abuse again. However, a distinction between adults and children is not supported by the plain meaning of the delayed discovery statute.¹⁰⁷ In fact, the plain language of the Minnesota delayed discovery statute makes no distinction between children and adults.¹⁰⁸ Therefore, the hypothetical set forth in the concurring opinion could very well hold true.

The *Roe* court has withdrawn the benefit of the delayed discovery rule from the sexual abuse survivor who was able to link her injuries to the abuse either during or a short time after the abuse occurred and who then repressed the memory of the abuse. This interpretation of the Minnesota Court of Appeals is inconsistent with the purpose of the delayed discovery rule.¹⁰⁹ The plain language of the statute does not set forth a requirement that the victim-survivor repress memory of the abuse within a specific time period after the abuse occurred in order to receive the benefit of the delayed discovery rule. As stated by appellant *Roe*, it only makes sense that the repression would occur after the abuse ended.¹¹⁰

In summary, the goal in interpreting the delayed discovery statute should be to advance the purpose of the delayed discovery

infancy, shall not be extended for more than five years, nor in any case for more than one year after the disability ceases: (1) that the plaintiff is within the age of 18 years

MINN. STAT. § 541.15(a)(1) (1988).

105. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994). ("The statute does not provide that the limitations period is tolled if an *adult* victim subsequently suppresses memories of sexual abuse.") (emphasis added).

106. For a discussion concerning the court's determination that feelings of shame, guilt, or depression warrant a finding that a victim-survivor knew that her injuries were caused by the sexual abuse, see *infra* note 137 and accompanying text.

107. For text of the Minnesota delayed discovery rule, see *supra* note 20 and accompanying text.

108. See *supra* note 20.

109. See *supra* notes 94-96. "If a statute is ambiguous, we determine the probable legislative intent and give the statute a construction consistent with that intent." *Tuma v. Commissioner of Economic Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

110. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 633 (Minn. Ct. App. 1994) (Amundson, J., concurring).

rule, which is to provide a remedy to victims of sexual abuse, who often have difficulty in "identifying and recognizing their injuries."¹¹¹ Allowing for suspension of the limitations period during the victim-survivor's repression of the abuse, even though at one time she may have linked her injuries to the abuse, furthers the goals of the delayed discovery statute. In contrast, the *Roe* court's interpretation could have devastating repercussions for adult victim-survivors of childhood sexual abuse which were not intended by the legislature. The legislative purpose of the delayed discovery statute is to provide a remedy to sexual abuse survivors. The *Roe* court's interpretation controverts this purpose.

B. *The Overlooked Prong of the Delayed Discovery Test*

Even if the statute does not allow for the tolling of the statute of limitations upon subsequent repression of the memories of abuse, the *Roe* court did not apply the correct standard for determining whether *Roe*'s claim had accrued. The Minnesota delayed discovery rule provides that the victim-survivor of sexual abuse must bring an action within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.¹¹² The effect of the delayed discovery rule is to "trigger the statute of limitations on the victim's discovery of the cause of injury rather than the misconduct itself."¹¹³ Thus, even if a survivor was aware of the abuse while it was occurring, did not subsequently repress memory of the abuse, and was aware that the abuse was wrong, under the plain meaning of the Minnesota delayed discovery rule, the action does not accrue until the survivor causally connects the abusive acts to her current injuries.¹¹⁴

The victim's discovery of the *cause* of her injuries is distinguishable from the victim's knowledge of the *wrongfulness* of the defendant's conduct.¹¹⁵ In most cases of sexual abuse, the survivor both becomes aware of the abuse during the time the abuse is occur-

111. *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990). See also *supra* notes 94-96.

112. See *supra* notes 20-21 and accompanying text.

113. *H.D. v. White*, 483 N.W.2d 501, 503 (Minn. Ct. App. 1992).

114. See *supra* notes 20-21; see also *supra* notes 69-72 and accompanying text. The standards used, while having some similarities, are distinguishable. Compare *Ault v. Jasko*, 637 N.E.2d 870 (1994) (stating the statute of limitations begins to run when the victim-survivor discovers, or reasonably should have discovered, the sexual abuse) and *Evans v. Eckelman*, 265 Cal. Rptr. 605 (1990) (stating the claim does not accrue until plaintiff discovers or should discover acts of molestation and wrongfulness thereof) with MINN. STAT. ANN. § 541.073 subd. 2(a) (West 1992) (stating the claim does not accrue until plaintiff knew or had reason to know that the injury was caused by the sexual abuse).

115. See *supra* notes 45-50 and accompanying text.

ring and realizes the wrongfulness of the perpetrator's act by the age of majority, yet remains unable to link the abuse to the psychological injuries suffered.¹¹⁶ At the time of the abuse or shortly thereafter, a sexual abuse victim often feels that the defendant's acts are wrong.¹¹⁷ However, because a victim feels her assailant's acts are wrong does not logically require that the victim also be aware that her injuries are caused by the defendant's wrongful acts.¹¹⁸ Many of the injuries experienced as a result of sexual abuse, such as depression, suicidal tendencies, alcohol and drug abuse,¹¹⁹ do not become manifest until years after the initial abuse.¹²⁰ Therefore, the victim's realization of the wrongfulness of the defendant's acts can develop long before many of her injuries even begin to surface.¹²¹ Moreover, another symptom of sexual abuse is the inability to recognize the causal link between the injuries and the abuse.¹²² This inability to recognize the nexus between the abuse and the injury can result from repression,¹²³

116. See Bickel, *supra* note 29, at 431. See also *supra* notes 45-50 and accompanying text.

117. See *supra* note 45-50. That the survivor had knowledge that the defendant's conduct was wrong can also be imputed from the victim's feelings of guilt, depression, and shame. See *supra* note 28-29 and accompanying text.

118. See *Hammer v. Hammer*, 418 N.W.2d 23, 26 (Wis. Ct. App. 1987). In *Hammer*, the court noted that even if the plaintiff, a sexual abuse survivor, had "harbored some subjective doubts about the normalcy of [her father's incestuous] actions," she had no information with respect to the cause of her injuries. *Id.* at 26. Thus, the Wisconsin Court of Appeals distinguishes between an awareness of the wrongfulness of the assailant's conduct and a knowledge of the causal connection between injuries and abuse. See also *supra* notes 45-50; *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1110 (1988) ("Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by the wrongdoing"); *Evans v. Eckelman*, 265 Cal. Rptr. 605 (1990) (stating that knowledge by the survivor of the act of abuse and injury is insufficient in itself to start the limitations period under the delayed discovery rule).

119. See *supra* notes 29-33 and accompanying text.

120. See *supra* notes 29-33 and accompanying text.

121. See, e.g., *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. Ct. App. 1987). In *Hammer*, Laura brought a claim at the age of 21, alleging that she had been sexually abused by her father from the time she was five years old until she was 15-years old. During the abuse, Laura developed "various coping mechanisms and symptoms of psychological distress, including great shame, embarrassment, guilt, self-blame, denial, depression, and dissociation from her experiences." *Id.* at 24. These feelings of shame, guilt, etc., evidence that Laura was aware that her father's conduct was wrong. In addition, when Laura was 15, she reported her father's sexual abuse to her mother. *Id.* This provides further evidence that Laura knew her father's conduct was wrong. These psychological coping mechanisms "continued to operate on her long after the incidents of sexual molestation had ended. . . ." *Id.* at 25. Thus, Laura was aware of her father's wrongful conduct before all of her injuries had surfaced.

122. See *supra* notes 45-50 and accompanying text.

123. See *supra* notes 34-38 and accompanying text.

denial,¹²⁴ or other coping mechanisms,¹²⁵ which the survivor developed as a result of the abuse. Due to these coping mechanisms, which were involuntarily triggered as a result of the abuse, a victim may know that the defendant's conduct is wrong, yet be unable to make a connection between the abuse and her injuries.¹²⁶ All of this supports the conclusion that there is a distinction between the plaintiff's knowledge of the wrongfulness of the defendant's conduct and the recognition by the victim that the abuse caused the injuries suffered.

Discovery of the nexus between the abuse and the resultant injuries triggers the beginning of the limitations period under the Minnesota delayed discovery statute.¹²⁷ The plain meaning of the statutory language of the delayed discovery rule clearly supports the conclusion that the Minnesota legislature chose to adopt the causal connection standard. The statute specifically states that an action must be commenced "within six years of the time the plaintiff knew or had reason to know that the injury was caused by the abuse."¹²⁸ The statutory language makes no mention of knowledge by the victim of the "wrongfulness" of the defendant's conduct. Earlier judicial interpretations of the delayed discovery statute recognized that the Minnesota legislature chose to embrace the causal connection standard. The Minnesota Court of Appeals stated that "[u]nder the new law, known as the delayed discovery rule, the statute of limitations begins to run when a plaintiff knew or had reason to know that the injury was caused by sexual abuse, rather than when the abuse actually occurred."¹²⁹ Thus, it is evident that in enacting the delayed discovery statute, the Minnesota legislature intended to adopt the causal connection standard rather than the "wrongfulness" standard.

124. See *supra* notes 39-44 and accompanying text.

125. See *supra* notes 48-50 and accompanying text.

126. See *Hammer v. Hammer*, 418 N.W. 2d 23, 24 (Wis. Ct. App. 1987); see *supra* note 121 (describing the facts of the case). In *Hammer*, the survivor, Laura, had experienced psychological feelings of distress such as guilt, shame, embarrassment, depression, and self-blame during the time the abuse was occurring, indicating that Laura knew that her father's conduct was wrong. *Id.* at 24. The court found that despite Laura's feelings, due to the psychological distress and the resultant coping mechanisms, she was unable to perceive her injuries and their connection to her father's abusive acts. *Id.* at 25. The *Hammer* court concluded that Laura had "no information to a reasonable probability of the nature of her injuries or the facts with respect to their cause." *Id.* at 26. See also *supra* notes 45-50.

127. MINN. STAT. ANN. § 541.073 subd. 2(a) (West 1992).

128. *Id.*

129. *H.D. v. White*, 483 N.W.2d 501, 502 (Minn. Ct. App. 1992). The court in *K.E. v. Hoffmann* stated that the statute "plainly reflects an awareness of the difficulty sexual abuse victims have in identifying and recognizing their injuries immediately." *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990).

Despite the distinction between knowledge of the wrongfulness of the assailant's conduct and knowledge of the causal nexus between the abuse and the resultant injuries, the *Roe* court applied the discovery rule in a way that triggered the statute of limitations upon the plaintiff's knowledge that the defendant's conduct was wrongful, rather than upon plaintiff's discovery of the causal connection.¹³⁰ The *Roe* court determined that Roe knew or should have known that her injuries were caused by Father Piche's conduct due to the following facts: Roe admitted to feeling uncomfortable about her relationship with Father Piche; Roe knew that priests were to remain celibate; Roe attempted to commit suicide; and Roe moved to Arizona in order to distance herself from Father Piche.¹³¹ However, these findings tend only to support a subjective knowledge by Roe that Father Piche's conduct was wrongful.¹³² In *Hammer v. Hammer*,¹³³ the Wisconsin Court of Appeals' finding that the victim-survivor experienced psychological feelings of distress such as shame, guilt, depression, and self-blame during the period in which she was being abused indicated only that the survivor knew that the defendant's conduct was wrong.¹³⁴ That the victim-survivor experienced such feelings did not, according to the *Hammer* court, warrant a finding that the victim-survivor had perceived the causal connection between the abuse and her injuries.¹³⁵ In fact, such psychological symptoms of distress may actually prevent a reasonable victim-survivor from perceiving the causal connection.¹³⁶ The *Roe* court's findings that Roe frequently cried after sexual relations with Father Piche, that she felt sadness, lost faith in her religion, suffered from depression and anxiety, felt used and abused by Piche, and attempted to commit suicide tend to add support to Roe's contention that she suffered injuries as a result of Father Piche's conduct.¹³⁷ Sexual abuse survivors often experience feelings of guilt, depression, anxiety, low-self esteem, and

130. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 633 (Minn. Ct. App. 1994) (Amundson, J., concurring). Judge Amundson, in the concurring opinion, expressly states that "if the victim was aware of the fact of the abuse and its wrongfulness after the last abusive incident, then the statute of limitations begins to run." *Id.* at 633 (emphasis added).

131. *Id.* at 632. See *supra* note 85 and accompanying text.

132. See *supra* notes 28-29, 43, 115-126 and accompanying text.

133. 418 N.W.2d 23 (Wis. Ct. App. 1987).

134. *Hammer v. Hammer*, 418 N.W.2d 23, 24 (Wis. Ct. App. 1987). See *supra* text accompanying notes 122-126.

135. See *supra* notes 115-26 and accompanying text.

136. See *supra* notes 45-50 and accompanying text.

137. *Roe v. Archdiocese of St. Paul*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994). See *supra* notes 28-33, 43 and accompanying text.

shame.¹³⁸ However, such feelings are recognized symptoms of sexual abuse and do not indicate a knowledge of the nexus between the injury and the abuse.¹³⁹

Given the factual findings made by the *Roe* court, there exists an issue of material fact as to whether *Roe* knew or should have known of the causal connection between the abuse and the resultant injuries.¹⁴⁰ Even if the facts established that *Roe* was aware of the sexual relationship and aware that the relationship was wrong, she was still entitled to the benefit of the delayed discovery rule.¹⁴¹ The evidence did not support the court's ruling that, as a matter of law, *Roe* knew of the causal link between Father Piche's conduct and her injuries.¹⁴²

138. See *supra* notes 26-33 and accompanying text.

139. See, e.g., *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. Ct. App. 1987).

140. See *supra* notes 77-78 and accompanying text.

141. See *supra* notes 77-78 and accompanying text.

142. See, e.g., *Pritzlaff v. Archdiocese of Milwaukee*, No. 93-1846, 1994 W.L. 449315, *1 (Wis. Ct. App. Aug. 23, 1994). In *Pritzlaff*, a case very similar to *Roe v. Archdiocese*, the plaintiff alleged that Father Donovan used his "position as a priest to force and coerce [her] to have a sexual relationship with him without her consent." *Id.* at *1. The relationship between *Pritzlaff* and Donovan continued for six years, ending in 1965. *Id.* *Pritzlaff* initiated the claim against Donovan 27 years later, in 1992, claiming that due to her coping mechanisms, which developed as a result of the abuse, she was unable to perceive the cause of her psychological injuries until 1992. *Id.* at *1-3. The *Pritzlaff* court held that "[t]he factual impasse between [the victim's] knowledge of the events and her professed inability to relate them to her injuries presents a factual issue inappropriate for determination on a motion to dismiss."). *Id.* at *3. See also *supra* notes 77-78. Compare *Blackowiak v. Kemp*, No. C3-94-2013, 1995 W.L. 57906 (Minn. Ct. App. 1995) (holding that evidence did not establish that victim-survivor knew or had reason to know that the sexual abuse caused his injuries) with *Roe v. Archdiocese*, 518 N.W.2d 629 (Minn. Ct. App. 1994).

In *Blackowiak*, the victim-survivor filed his complaint in 1992, seeking recovery for injuries resulting from sexual abuse that occurred in 1970 by Kemp, *Blackowiak's* former junior-high counselor. In holding that *Blackowiak's* claim was not barred by the statute of limitations, the court attempted to distinguish *Roe*. First, the court stated that *Blackowiak* suffered "less tangible injuries of alcoholism, lack of self-worth, and an inability to maintain relationships." *Blackowiak*, 1995 W.L. 57906 at *5. These injuries, according to the *Blackowiak* court, are less easily traced than are those injuries suffered by *Roe*. *Id.* The court listed as *Roe's* injuries attempted suicide and self-mutilation. *Id.* While it may appear that a suicide attempt is more easily traceable than are other symptoms of sexual abuse, attempted suicide merely "constitutes part of the symptom picture for which patients seek treatment." *Gelinas, supra* note 41, at 317. This indicates that even though a victim-survivor has reacted to the abuse in an extreme manner, such as attempted suicide, absent therapy, it is still very common for her to experience difficulties in linking her reaction to the abuse. See *supra* notes 43-44, 47. It was only after *Roe* began counseling that she was able to causally connect her injuries to the abuse. See *supra* notes 16-18. The *Blackowiak* court went on to state that *Roe* experienced her injuries during the abusive relationship, whereas *Blackowiak's* problems developed gradually after his association with Kemp had ended. *Blackowiak*, 1995 W.L. 57906 at *5. This statement is simply not true. Although *Roe* experienced some problems immediately after the relationship with Piche ended, many of *Roe's* most serious injuries, such as

C. The "Reasonable Person in the Victim-Survivor's Situation" Standard

As a result of sexual abuse, the victim-survivor may involuntarily develop coping mechanisms which render her unable to perceive the connection between the sexual abuse and psychological injuries.¹⁴³ The pattern of sexual abuse becomes so well ingrained within the victim-survivor's concept of normalcy that it becomes difficult for the victim-survivor to see the causal nexus between her injury and the abuse.¹⁴⁴ These coping mechanisms continue to operate long after the abuse has ended.¹⁴⁵ Therefore, by its very nature, sexual abuse renders its victim-survivors unable to perceive the nexus between abuse and injuries. The inability to make this connection is in itself an injury caused by sexual abuse.¹⁴⁶ A court, in determining the reasonableness of the period of time that it took for the victim-survivor to discover the connection between her injuries and the abuse must recognize that the inability to make such a connection is, in fact, a reasonable reaction to the sexual abuse.¹⁴⁷ The Wisconsin Court of Appeals, in *Pritzlaff v. Archdiocese of Milwaukee*,¹⁴⁸ seemed to recognize this. In *Pritzlaff*, the court held that "the factual impasse between [the victim-survivor's] knowledge of the events and her professed inability to relate them to her injuries represents a factual issue inappropriate for determination on a motion to dismiss."¹⁴⁹

The *Roe* court held that a reasonable person in *Roe*'s situation would have known that the injuries were caused by the sexual abuse.¹⁵⁰ In applying the reasonable person standard, the *Roe* court did not consider the effects of sexual abuse on a victim-survivor's ability to link the abuse to her injuries.¹⁵¹ In finding that *Roe* did not act with due diligence in discovering her cause of action, the *Roe* court first noted that since *Roe* experienced symptoms such as

suicidal ideation and self-mutilation, developed years after the relationship had ended. See *supra* notes 7-19 and accompanying text.

143. See *supra* notes 45-50 and accompanying text.

144. See Thomas, *supra* note 26, at 1278. "It is unreasonable to expect at any predetermined point in time that the adult survivor could readily target the parent or authority figure as the source of such problems or instantaneously recall the abusive events." *Id.* at 1287.

145. See *supra* note 49 and accompanying text.

146. See, e.g., Thomas, *supra* note 26, at 1286.

147. See, e.g., Thomas, *supra* note 26, at 1287.

148. No. 93-1846, 1994 W.L. 449315 (Wis. Ct. App. 1994). The facts of *Pritzlaff* are set forth *supra* note 142.

149. *Id.* at *3.

150. See *supra* notes 84-85 and accompanying text.

151. See *supra* notes 25-50 and accompanying text.

feelings of guilt, shame, depression, and suicidal tendencies,¹⁵² Roe should have known that her injuries were caused by the abuse.¹⁵³ The *Roe* court acknowledged that Roe may have subsequently repressed her memories of the abuse, but held that Roe should have discovered her cause of action before the repression even occurred,¹⁵⁴ and that the statute of limitations was not thereafter tolled during the period in which she repressed her memories of the abuse.¹⁵⁵ However, the *Roe* court failed to consider whether Roe's inability to link the abuse to her injuries before she repressed her memories may have been a result of coping mechanisms, other than repression, which victim-survivors often develop as a direct result of sexual abuse.¹⁵⁶ Such coping mechanisms include, for example, denial¹⁵⁷ and Post Traumatic Stress Disorder,¹⁵⁸ as well as suicidal ideations.¹⁵⁹ Considering only the effects of repression on the ability of Roe to causally connect her injuries to the abuse was error. Had the court considered coping mechanisms other than repression, the court may have found that summary judgment based on the statute of limitations was improper.

In addition, the *Roe* court did not consider the fact that many of Roe's injuries developed long after her relationship with Father Piche had ended,¹⁶⁰ and long after the time the court held that Roe should have connected her injuries to the abuse.¹⁶¹ In fact, the re-

152. *Roe v. Archdiocese*, 518 N.W.2d 629, 632 (Minn. Ct. App. 1994).

153. *Id.* See *supra* notes 84-85 and accompanying text.

154. *Roe*, 518 N.W.2d at 632. See *supra* notes 86-90 and accompanying text.

155. See *supra* note 90 and accompanying text.

156. See, e.g., *supra* notes 39-50 and accompanying text.

157. See *supra* notes 39-44 and accompanying text. If a victim-survivor develops denial as a coping mechanism in dealing with sexual abuse, the result can be that the victim denies the connection between the abuse and her injuries. Despite this denial, if the victim-survivor does not receive treatment, symptoms can begin to manifest. See *supra* note 43. The victim-survivor can begin to develop "secondary elaborations," which become part of the symptom picture for which victim-survivors most often seek treatment. *Id.* Such symptoms include feelings of guilt, depression, poor self-esteem, and suicidal ideations and attempts. *Id.* Note that these symptoms are virtually identical to those experienced by Roe.

158. See *supra* note 34. If a victim-survivor develops Post Traumatic Stress Disorder as a result of sexual abuse, she may avoid any stimuli, including thoughts and feelings, associated with the abuse, which may result in an inability to make a connection between the abuse and her injuries.

159. See Thomas, *supra* note 26, at 1278. See also Gelinis, *supra* note 41, at 317 (stating that suicidal ideations and suicide attempts are not uncommon).

160. See *supra* note 15 and accompanying text. In fact, the Minnesota Court of Appeals stated that Roe "experienced [her] injuries *during* the abusive relationship." *Roe v. Archdiocese*, 518 N.W.2d 629 (Minn. Ct. App. 1994) (emphasis added). Compare *Blackowiak v. Kemp*, No. C3-94-2013, 1995 W.L. 57906, at *4 (Minn. Ct. App. Feb. 14, 1995) (finding that the victim did not experience her injuries during the abusive relationship).

161. See *supra* notes 84-85 and accompanying text.

pression itself should be included as an injury caused by the abuse.¹⁶² It was the development of these subsequent injuries which compelled Roe to seek counseling.¹⁶³ It was only upon the triggering event¹⁶⁴ and subsequent counseling sessions that Roe was able to make the connection between the abuse and her injuries.¹⁶⁵ One of the purposes of the delayed discovery rule is to allow the victim-survivor reasonable time to discover that she was injured.¹⁶⁶ By failing to consider Roe's contention that many of her injuries developed immediately prior to the filing of her claim, the *Roe* court is controverting this purpose. The courts should not punish a victim-survivor for lack of diligence "when her inability to initiate the legal action is a direct result of childhood sexual abuse."¹⁶⁷

Sexual abuse cases should not be dismissed under the guise of the delayed discovery rule simply because the court foresees evidentiary problems with the victim-survivor's case.¹⁶⁸ The focus in determining whether to apply the delayed discovery rule to a sexual abuse case should be whether notions of fundamental fairness warrant the application of the delayed discovery rule in the case at hand.¹⁶⁹ In making such a determination, a court should balance the "harm to a defendant of being sued on a stale claim with harm to a plaintiff of being denied a remedy."¹⁷⁰ Decisions based on the merits or issues of credibility are issues to be determined by a trier of facts, not an appellate court.¹⁷¹

Because Roe was over the age of majority when the alleged sexual abuse occurred,¹⁷² the court may have harbored doubts whether the relationship between Roe and Father Piche constituted sexual abuse. However, the question of whether Father Piche's conduct fell under the statutory definition of sexual abuse¹⁷³ is a question requiring a decision regarding the credibility of the parties and as such is suitable for a decision on the merits, with any issues of

162. See *supra* notes 34-38 and accompanying text.

163. See *supra* note 17 and accompanying text; see also *supra* notes 29, 38, and accompanying text.

164. See *supra* notes 16-18 and accompanying text; see also *supra* notes 37, 44 and accompanying text.

165. See *supra* note 18 and accompanying text.

166. See *supra* notes 94-96 and accompanying text.

167. See Rosenfield, *supra* note 51, at 212.

168. See *Tyson v. Tyson*, 727 P.2d 226, 231-32 (Wash. 1986) (Pearson, J., dissenting).

169. *Id.* at 231.

170. *Id.* at 235.

171. *Id.* at 231.

172. See *supra* text accompanying note 3.

173. See *supra* note 25.

credibility submitted to the trier of facts.¹⁷⁴ Such substantive issues of fact are distinguishable from the question of whether the statute of limitations has tolled. By dismissing *Roe*'s claims based on a statute of limitations defense, the *Roe* court has set a dangerous precedent for future victim-survivors of sexual abuse.

Conclusion

The numerous injuries caused by sexual abuse are severe and devastating, both to the victims and to society. In addition to coping with these injuries, sexual abuse survivors are confronted with a number of barriers when attempting to bring a suit against their abusers, including repression, denial, an inability to link the abuse to the injuries, and the development of injuries years after the abuse has ended and the statute of limitations has run. The special difficulties sexual abuse victim-survivors encounter in attempting to bring an action justify applying a delayed discovery statute of limitations in sexual abuse cases. The Minnesota delayed discovery rule tolls the statute of limitations until such time as the victim-survivor discovers or reasonably should have discovered the causal connection between the sexual abuse and the resultant injuries suffered. The task is then left to the courts to ensure that the purpose of the delayed discovery statute is effectuated and that victim-survivors of sexual abuse have access to the courts to initiate civil suits against their assailants. The *Roe* court found that the limitations period will not be suspended in circumstances in which a victim-survivor links her injuries to the sexual abuse and thereafter represses memories of the abuse. The repercussions of the *Roe* court's rule are potentially devastating for victim-survivors of sexual abuse, and could effectively deny a class of plaintiffs the right to a cause of action for injuries caused by sexual abuse. Moreover, by examining whether *Roe* knew or should have known of the wrongfulness of the assailant's actions rather than examining whether *Roe* knew or should have known that her injuries were caused by the abuse, the *Roe* court misapplied the standard set forth by the Minnesota legislature in the delayed discovery statute. Furthermore, the reasonable person standard as applied by the *Roe* court did not incorporate the documented effects that coping mechanisms, other than repression, have on a victim-survivor's ability to causally connect her injuries to the abuse. The *Roe* court has succeeded in creating additional obstacles which the future plaintiff-

174. See *supra* notes 77-78 and accompanying text.

survivor must overcome in order to successfully bring a claim against her abuser.

In determining whether the statute of limitations has run in cases based on injuries caused by sexual abuse, the court should focus on whether notions of fundamental justice warrant the application of the delayed discovery rule. Sexual abuse claims should not be dismissed under the guise of the delayed discovery rule simply because the court foresees evidentiary problems with the victim-survivor's case. Questions concerning issues of credibility or the merits are to be decided by the fact finder. The precedent set by the *Roe* court could prove to be an insurmountable barrier to fair judicial consideration of sexual abuse claims on the merits.

