

New York County Supreme Court Refuses to Apply Discovery Rule to Case Brought by Victim of Childhood Sexual Abuse After Expiration of Statute of Limitations

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York State Senate is currently considering a bill that proposes a capped recovery for grief arising from the loss of a decedent's consortium.⁴² It is regrettable, however, that until legislative action is taken, the New York courts will continue to apply outdated precedent blindly and to award less than the full value of human life in wrongful death cases.

Richard F. Hans, Jr.

New York County Supreme Court refuses to apply discovery rule to case brought by victim of childhood sexual abuse after expiration of statute of limitations

In New York, the statute of limitations¹ for a cause of action commences when the claim "accrues."² In the absence of a statutory definition, the New York Court of Appeals has interpreted the term "accrues" as the date upon which the wrongful act occurred, "even though the injured party may be ignorant of the existence of the wrong or injury."³ The harshness of this "strict accrual rule"⁴

recovery for . . . loss of society, affection, conjugal fellowship and consortium.") (citation omitted). No specific mention is made in *Gonzalez* of the need for statutory change.

⁴² See *supra* note 15; see also *supra* notes 38-40 and accompanying text (discussing proposed statutory alterations).

¹ See BLACK'S LAW DICTIONARY 927 (6th ed. 1990). A statute of limitations sets "maximum time periods during which certain actions can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought regardless of whether any cause of action ever existed." *Id.* The underlying purpose of a limitations period is to force a plaintiff to institute suit within a reasonable period of time. See Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950). A well-established policy reason in support of statutes of limitation is that a defendant's "right to be free of stale claims in time comes to prevail over the [plaintiff's] right to prosecute them." *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944). Insulating a defendant from stale claims, however, promotes justice only when the plaintiff has "slumber[ed on his rights] until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* at 349 (lack of "reckless haste" in pressing claim did not bar action); see also 1 WK&M para. 201.01 (noting concerns regarding passage of time on reliability and availability of evidence).

² See CPLR 203(a) (McKinney 1991) ("The time within which an action must be commenced . . . shall be computed from the time the cause of action accrued to the time the claim is interposed.")

³ *Schmidt v. Merchants Despatch Transp. Co.*, 270 N.Y. 287, 300, 200 N.E. 824, 827 (1936). In *Schmidt*, the Court of Appeals held that the limitations period on an asbestos exposure claim commenced when the plaintiff first inhaled the asbestos particles and not when the plaintiff was diagnosed with asbestosis. *Id.*; accord *Steinhardt v. Johns-Manville Corp.*, 54 N.Y.2d 1008, 1010-11, 430 N.E.2d 1297, 1299, 446 N.Y.S.2d 244, 246 (1981), *cert. denied*, 456 U.S. 967 (1982); *Thornton v. Roosevelt Hosp.*, 47 N.Y.2d 780, 781, 391 N.E.2d

is apparent in cases involving injuries that do not manifest themselves until years after the plaintiff has been violated.⁵ For instance, adult survivors of childhood sexual abuse ("CSA") often suffer psychological and emotional injuries that go unnoticed until many years after the sexual abuse occurs.⁶ Consequently, CSA vic-

1002, 1003, 417 N.Y.S.2d 920, 922 (1979).

⁴ See Sheila L. Birnbaum, "First Breath's" Last Gasp: The Discovery Rule in Products Liability Cases, 13 FORUM 279, 282 (1977) (noting that New York Court of Appeals first enunciated strict accrual or "first breath" rule in 1936). The strict accrual rule triggers the applicable statute of limitations "when there is a wrongful invasion of personal or property rights" even if the plaintiff is unaware of any injury. *Schmidt*, 270 N.Y. at 300, 200 N.E. at 827.

⁵ See *Rodriguez v. Manhattan Medical Group*, 77 N.Y.2d 217, 224, 567 N.E.2d 235, 239, 566 N.Y.S.2d 193, 197 (1990). In *Rodriguez*, the Court of Appeals held that the limitations period on a medical malpractice claim commenced when the defendant left the plaintiff's intrauterine device ("IUD") in place after having been retained for the specific purpose of removing it, and not when the plaintiff discovered four years later that the device was embedded in the uterus wall. *Id.* at 224, 567 N.E.2d at 239, 566 N.Y.S.2d at 197; see also *Fleishman v. Eli Lilly & Co.* 62 N.Y.2d 888, 889, 467 N.E.2d 517, 517, 478 N.Y.S.2d 853, 854 (1984), cert. denied, 469 U.S. 1192 (1985). In *Fleishman*, the court of appeals affirmed two consolidated appellate division decisions in a memorandum opinion holding that plaintiffs injured by the deleterious effects of Diethylstilbestrol ("DES") were foreclosed from bringing suit even though the injurious effects of the drug were not manifest until the statute of limitations had expired. *Id.*

⁶ See Carolyn B. Handler, Note, *Civil Claims of Adults Molested As Children: Maturation of Harm and the Statute of Limitations Hurdle*, 15 FORDHAM URB. L.J. 709, 734-35 (1987). Victims of CSA often meet the diagnostic criteria for post-traumatic stress disorder ("PTSD"), a "clinically diagnosed mental disorder in which the victim avoids situations that stimulate recall of traumatic events or experiences." CHESTER B. SCRIGNAR, POST-TRAUMATIC STRESS DISORDER: DIAGNOSIS, TREATMENT, AND LEGAL ISSUES 138 (1984). PTSD is "marked by attempts to repress psychologically unacceptable experiences until a later time in life when it might be possible to cope with them." *Id.* at 139. A practical consequence of PTSD is that many CSA victims do not acknowledge and deal with the sexual abuse they suffered as children until they are years into adulthood. See James W. Harshaw III, Note, *Not Enough Time?: The Constitutionality of Short Statutes of Limitations for Civil Child Sexual Abuse Litigation*, 50 OHIO ST. L.J. 753, 757 (1989). Although some victims of CSA recognize and acknowledge that they had been sexually abused as children, they may not understand how that conduct has damaged them or connect their current psychological and emotional problems to the sexual abuse. *Id.* This problem is further compounded by the fact that many of the injuries from sexual abuse, especially those that are sexual in nature, do not manifest themselves until adulthood. See ROBERT M. HOROWITZ & HOWARD A. DAVIDSON, LEGAL RIGHTS OF CHILDREN 329-30 (1984).

Sufferers of CSA often exhibit the following symptoms: lack of basic trust; low self-esteem; poor sense of identity, including both general identity and sexual identity; lack of sexual response; depression; suicidal tendencies; promiscuity; and alcohol abuse. See BRANDT F. STEELE & HELEN ALEXANDER, *Long-Term Effects of Sexual Abuse in Childhood*, in SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES (Patricia Beezley Mrazek & C. Henry Kempe eds., 1981); see also HOROWITZ & DAVIDSON, *supra*, at 329-30 ("Adult survivors of childhood sexual abuse may either become involved in prostitution as a lifestyle or they may be unable to have normal, healthy sex lives and interpersonal relationships.").

tims who seek redress from their abusers are often barred from recovery by the statute of limitations.⁷ In recognition of this inequity, several courts in jurisdictions outside of New York have applied some form of the discovery rule, which fixes the date of accrual at the time when the plaintiff discovers or reasonably should have discovered the injuries.⁸ The New York Court of Appeals, however, has consistently refused to recognize the discovery rule⁹

⁷ See Handler, *supra* note 6, at 734-35. In New York, CSA victims have resorted to the common law doctrines of equitable estoppel and duress as well as to the statutory tolling exception for insanity in their attempts to overcome the statute of limitations defense. *Id.* at 721-22. To date, no court has accepted these arguments. *Id.* at 735. For example, in *Burpee v. Burpee*, N.Y.L.J., Aug. 27, 1991, at 25, col. 6 (Sup. Ct. Nassau County Aug. 15, 1991), the plaintiff sought recovery for injuries resulting from sexual abuse that she experienced as a child. *Id.* Contending that her claim was not barred, the plaintiff argued that the defendant should be equitably estopped from asserting the statute of limitations as a defense and that the statutory toll for insanity rendered her claim timely. *Id.* The court acknowledged that the plaintiff's allegations, if true, warranted "the severest condemnation by all right-thinking persons of compassion," but noted that in New York it is well established that "psychological trauma and repression therefrom is insufficient to justify avoidance of the Statute of Limitations in the name of equity." *Id.* at 26, col. 1. In addition, the court reasoned that because the doctrine of equitable estoppel requires the plaintiff to show that the defendant's affirmative conduct prevented her from discovering or commencing her action, mere silence on the part of the defendant was insufficient. *Id.* at 26, col. 2. Finally, the court concluded that the statutory toll for insanity was "intended 'to extend . . . to only those individuals who are unable to protect their legal rights because of an overall inability to function in society,' not to individuals suffering from a 'mere post traumatic neurosis.'" *Id.* (quoting *McCarthy v. Volkswagen of Am. Inc.*, 55 N.Y.2d 543, 548-49, 435 N.E.2d 1072, 1075, 450 N.Y.S.2d 457, 460 (1982)).

⁸ See Steven L. White, Note, *Toward a Time-of-Discovery Rule for the Statute of Limitations in Latent Injury Cases in New York State*, 13 *FORDHAM URB. L.J.* 113, 114 (1985). Over the years, the judiciary has developed three variations on the discovery accrual rule. *Id.* The first establishes the date of accrual at the time the plaintiff discovers or reasonably should have discovered the injury. See, e.g., *Osland v. Osland*, 442 N.W.2d 907, 909 (N.D. 1989) (claim for damages resulting from alleged incestuous abuse suffered as a child accrued when plaintiff "kn[ew] or with reasonable diligence reasonably should [have] know[n] that a potential claim exist[ed]"). The second variation sets the accrual date at the time the plaintiff discovers the injury and its cause. See, e.g., *Hammer v. Hammer*, 418 N.W.2d 23, 25 (Wis. Ct. App. 1987) (claim for psychological and emotional damages resulting from alleged sexual abuse accrued when plaintiff "discover[ed], or in the exercise of reasonable diligence should have discovered, the fact and cause of the injury"). The final version of the discovery rule provides that a cause of action accrues when the plaintiff discovers the injury, the cause of the injury, and that the injury was wrongfully inflicted by another. See, e.g., *Johnson v. Johnson*, 701 F. Supp. 1363, 1370 (N.D. Ill. 1988) (cause of action brought by adult survivor of incestuous abuse accrued when " 'plaintiff [knew] or reasonably should [have] know[n] of any injury and also [knew] or reasonably should [have] know[n] that the injury was caused by the wrongful acts of another' ") (quoting *Nolan v. Johns-Manville Asbestos*, 421 N.E.2d 864, 868 (Ill. 1981)) (alterations in original).

⁹ See *Fleishman*, 62 N.Y.2d at 888, 467 N.E.2d at 518, 478 N.Y.S.2d at 854 ("Any departure from the policies underlying these well-established precedents is a matter for the Legislature and not the courts."); *Steinhardt v. Johns-Manville Corp.*, 54 N.Y.2d 1008, 1010,

except under circumstances where the Legislature has expressly provided for its application.¹⁰ Recently, in *Bassile v. Covenant House*,¹¹ the New York County Supreme Court continued on this course of abstention by refusing to apply the discovery rule to a claim brought by an adult who was sexually abused during childhood.¹²

In *Covenant House*, the plaintiff sought damages for severe psychological and emotional injuries resulting from the alleged sexual abuse that he experienced while residing at Covenant House in 1973.¹³ The defendants moved to dismiss the complaint on the ground that it was barred by the statute of limitations.¹⁴ Emphasizing the "special nature of sexual abuse and the psychological processes that it causes," the plaintiff argued that a discovery rule should apply so as to delay the accrual of the claim to the time the plaintiff discovered his injuries.¹⁵ In granting the defendant's mo-

430 N.E.2d 1297, 1299, 446 N.Y.S.2d 244, 246 (1981) ("We believe it to be inappropriate and injudicious to intrude into an area best suited for legislative scrutiny."), *cert. denied*, 456 U.S. 967 (1982); *see also* CPLR 203(a) commentary at 140-41 (McKinney 1990) (observing that New York Court of Appeals has steadfastly deferred to Legislature by refusing to adopt discovery accrual rule despite Second Circuit's support for rule).

¹⁰ *See* CPLR 214-a (McKinney 1990) (discovery rule for foreign objects in body in context of medical, dental, or podiatric malpractice); *id.* 214-b (discovery rule for persons injured by Agent Orange in Vietnam War); *id.* 214-c(2) (discovery rule for injury caused by "latent effects of exposure to any substance").

¹¹ 575 N.Y.S.2d 233 (Sup. Ct. N.Y. County 1991).

¹² *Id.* at 236.

¹³ *Id.* at 234. Covenant House is a not-for-profit corporation that was established by Father Bruce Ritter in 1968 for the purpose of providing counseling and shelter for homeless youths who are "alone and friendless on the harsh streets of [New York] City." *Id.* The plaintiff became a resident of Covenant House in the spring of 1973, at which time he was fourteen years old. *Id.* The complaint alleged that the plaintiff was repeatedly forced to engage in sexual acts with Father Ritter from March through May 1973 and that the plaintiff suffered severe psychological and emotional damage as a result of these activities. *Id.*

¹⁴ *Id.* The defendants in the action included Father Ritter, Covenant House, and the Franciscans, an order of Roman Catholic priests belonging to the Order of the Conventual Franciscan Friars of the Roman Catholic Church. *Id.*

The plaintiff asserted several causes of action against Father Ritter, including negligence, malpractice as a social worker, breach of fiduciary duty, and fraud and fraudulent concealment. *Id.* The plaintiff's claim of negligence was based upon the doctrine of *respondet superior* against both Covenant House and the Franciscans. *Id.* Except for the fraud claim, a three year statute of limitations applied to all of the plaintiff's claims. *Id.* at 235 (citing CPLR 214). The fraud claim benefitted from a discovery rule that required the suit to be commenced "within six years of the alleged misrepresentations . . . or two years after the injured party learned of the fraud, whichever is later." *Id.* (citations omitted). Thus, the trial court noted that "barring some unusual theory, the statute [of limitations] expired for all but the fraud claim in 1980, and for that claim in 1983." *Id.*

¹⁵ *Id.* at 235. The plaintiff contended that he suffered from post-traumatic stress disorder.

tion and dismissing the plaintiff's complaint, the trial court held that "there is no [delayed] discovery rule in sex abuse cases in this state."¹⁶

Writing for the court, Justice Baer noted that "New York caselaw makes clear that there is no delayed discovery rule generally available."¹⁷ Notwithstanding the harsh effect that such a ruling would have on victims of sexual abuse,¹⁸ Justice Baer reasoned that the Court of Appeals has consistently "made it plain that it regards departures from [the strict accrual] rule in particular categories of wrong to be a subject for resolution by the Legislature."¹⁹ Identifying some of the evidentiary problems that may be encountered in applying the delayed discovery rule to claims of sexual abuse,²⁰ Justice Baer, though not unsympathetic to the plaintiff's

der, as most victims of sexual abuse do, resulting in "long-delayed psychological damage." *Id.* Moreover, the plaintiff urged that "it would be unjust to allow the statute of limitations to expire before the victim of abuse could realistically be able to become aware of the wrong inflicted." *Id.* at 235-36.

¹⁶ *Id.* at 236. "A court of this state is not empowered to extend the statutory periods out of sympathy for a plaintiff or regret at a possible claim raised too late." *Id.* at 235 (citing CPLR 201).

¹⁷ *Id.* at 236. "As Judge McLaughlin puts it, 'New York has a long tradition of hostility toward holding the limitations period in abeyance pending actual discovery of the injury.'" *Id.* (citation omitted).

¹⁸ *Id.* at 235 (characterizing allegations contained in plaintiff's complaint as "truly horrifying").

¹⁹ *Id.* at 236. Justice Baer observed that prior to the Legislature's enactment of sections 214-a, 214-b, and 214-c of the CPLR, the Court of Appeals had consistently rejected the contention that "it is unjust and unfair in toxic tort and similar cases to require that the statute of limitations begin running from the time of the invasion of the plaintiff's body rather than from the later point at which the injury became known to the plaintiff." *Id.* (citing, *inter alia*, *Goldsmith v. Howmedica, Inc.*, 67 N.Y.2d 120, 491 N.E.2d 1097, 500 N.Y.S.2d 640 (1986)).

Were the Court of Appeals willing to entertain "chart[ing] a new path" to sustain the plaintiff's claim by applying a delayed discovery rule, Justice Baer concluded that a more compelling argument could be made for applying such a relaxed procedural requirement to toxic tort claims than to claims alleging sexual abuse. *Id.* Justice Baer reached this conclusion first by contrasting the type of knowledge possessed by each victim. *Id.* Specifically, toxic tort victims "have no reason to know [of the injury] until physical symptoms manifest[] themselves" while some sex abuse victims "would likely have an awareness of having undergone the acts, lacking only an appreciation of the damage caused." *Id.* Next, Justice Baer pointed out that toxic tort victims "will unquestionably be suffering from a disease," leaving open for dispute only the issue of the defendant's proximate cause. *Id.* However, in addition to the causation issue, sex abuse cases also present difficulties due to the "less objectively verifiable nature of the damage asserted." *Id.*

²⁰ *Id.* at 238. Specifically, the *Covenant House* court stated that "many complex and even conflicting considerations" are involved, including "problems of proof such lost witnesses, [and] vanish[ing] memories," as well as "expert medical and psychological evidence." *Id.* at 237-38. Because CSA cases "depend upon the recollection of incidents that occurred

plight,²¹ felt bound by the dictates of New York State's highest court and concluded that "if a judicial modification of the law is required, a trial judge is not the proper person to do it."²² Consequently, reiterating the sentiment of the court of appeals, the *Covenant House* court determined that without the Legislature's express approval, the application of the discovery rule to sex abuse claims would be "inappropriate and injudicious."²³

In 1981, the New York State Legislature amended the CPLR to provide for a statute of limitations discovery rule for Vietnam veterans seriously injured as a result of exposure to phenoxy herbicides ("Agent Orange").²⁴ Subsequently, in 1986 the CPLR was amended to provide for a statute of limitations discovery rule for victims of toxic torts injured by the latent effects of exposure to certain substances and materials.²⁵ Legislative policy pronouncements accompanying both amendments indicated that the Legislature believed an extension of the statute of limitations under such circumstances was necessary in light of the fact that toxic tort and Agent Orange victims are injured "without perceptible trauma" and are "blamelessly ignorant of the cause of the injury."²⁶ It is

in childhood," they are inherently "delicate" in that "[a] child is more likely to misunderstand events than is an adult and the more distant events are, the less clearly they will be recalled accurately." *Id.* at 237.

In addition to evidentiary problems, the *Covenant House* court indicated concern for the enormous stigma that attaches to the accused sexual abuser. *Id.* Thus, while acknowledging that the statute of limitations should be "adjusted in some way to favor plaintiffs in sex abuse cases," the court in *Covenant House* questioned whether a discovery rule is the "perfect solution." *Id.* at 238 (suggesting that some objective confirmation of injury be required or maximum time limit be imposed on any toll).

²¹ See *id.* at 238 ("I reach this conclusion without enthusiasm, aware that the plaintiff asserts that he was the victim of a most grievous wrong.").

²² *Id.*

A trial judge may well be required in particular cases to carry the law to points at which it has not yet arrived, or to fill in the interstices left by the rulings of higher courts. But where the courts of this state, especially the highest, have declared with consistency what the law is, it is not the province of the trial judge to opt for something different.

Id.

²³ *Id.* at 236 (quoting *Steinhardt v. Johns-Manville Corp.*, 54 N.Y.2d 1008, 1011, 430 N.E.2d 1297, 1299, 446 N.Y.S.2d 244, 246 (1981), *cert. denied*, 456 U.S. 967 (1982)).

²⁴ See CPLR 214-b (McKinney 1990).

²⁵ See *id.* 214-c.

²⁶ Ch. 266, § 1, [1981] N.Y. Laws 466 (McKinney). The legislative findings accompanying the statutory amendment for victims suffering from exposure to Agent Orange were as follows:

[In enacting statutes of limitation,] the legislature ha[s] been principally motivated by the desire to discourage "belated litigation." Belated litigation [does] not

submitted that, consistent with the rationale employed for extending the limitations period for Agent Orange and other toxic tort victims, the limitations period applicable to CSA claims should be extended to allow CSA victims who are "blamelessly ignorant" of the cause of their injuries to bring suit within a fixed period of time after the discovery of their injuries.

Although victims of CSA are generally cognizant of the abuse they experience at the time it occurs, the psychological repression of that experience and the consequent concealment of the abuse that commonly follows causes these victims to blamelessly ignore the wrongfulness of the abuser's actions.²⁷ Thus, the dormant nature of the psychological injuries resulting from CSA are no different from the latent physical injuries suffered by one who has inhaled a toxic substance but has failed to manifest symptoms of a disease until years after the exposure occurred.²⁸

A bill that would amend the CPLR to provide a discovery accrual rule for victims of CSA was recently introduced in the New York State Senate.²⁹ The proposed amendment provides that a victim of sexual abuse may bring a claim "within three years after such person attains the age of twenty-one or within three years after such person discovers or reasonably should have discovered that an injury was caused by an act of abuse which occurred when such person was less than eighteen years of age, whichever occurs later."³⁰ In acknowledgment of the fact that many survivors of

serve the interests of justice since protracted delays in litigating issues result[s] in the failing memory of witnesses and the disappearance of evidence that [is] relevant and germane to such issues. It was never the intent of the legislature in imposing limitations, to foreclose the citizens of this state from prosecuting legitimate claims, provided such claims are diligently and expeditiously pursued. An exception to the general period of limitation rule is required when the pathological effects of an injury occurs without perceptible trauma and the victim is blamelessly ignorant of the cause of the injury.

Id.; see also Governor's Memorandum on Approval of ch. 682, N.Y. Laws (April 20, 1976), reprinted in [1986] N.Y. Laws 3182 (McKinney) ("This Bill . . . repeals th[e] archaic [strict accrual] rule and replaces it with a fair and simple rule which permits a person to discover his or her injury before the statutory time period for suit begins to run.").

²⁷ See *supra* note 6 (discussing psychological and emotional injuries of CSA survivors).

²⁸ See Handler, *supra* note 6, at 738. The injuries to victims of both toxic torts and CSA are "slow-starting" and often go unnoticed until after the applicable statute of limitations has run. *Id.* "As with the rationale for the toxic tort victim, the [CSA] plaintiff, who could not have known of [his or] her cause of action, cannot be accused of 'slumbering' on [his or] her rights." *Id.* (citing *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944)).

²⁹ See N.Y.S. 5461, 1991-1992 Regular Sess. (1991).

³⁰ *Id.*

CSA do not discover the "emotional ramifications of such abuse until years after the abuse occurred," the proposed "legislation would remove the barrier created by the . . . [strict accrual rule] in order to enable survivors of child sexual abuse to bring civil actions against their abusers."³¹

Under current New York law, adults who were sexually abused as children are often required to bring suit against their alleged abusers years before they are aware of the extent of psychological and emotional damage from which they suffer. Although the court in *Covenant House* recognized that such victims are afforded only an elusive opportunity to seek recompense from those who have abused them, the court was nonetheless bound by precedent to hold that any modification to the strict accrual rule should be left to the Legislature. The recent proposal to amend the CPLR by providing a discovery rule to the statute of limitations for victims of CSA suggests that the Legislature is responsive not only to the cries of CSA victims, who have been locked out of New York courts, but also to the judges who are bound by existing law to throw away the key. It is now incumbent upon the Legislature to enact the proposed amendment into law in order to prevent people who abuse children from using the law as a shield against those whom they have abused.

Melanie Mandery

New York Court of Appeals holds that claimant under SEQRA must show special injury to establish standing to challenge environmental assessment performed by local agency

Environmental policy acts such as the National Environmental Policy Act ("NEPA")¹ and New York's State Environmental Quality Review Act ("SEQRA")² require federal or state agencies³

³¹ Memorandum in Support of N.Y.S. 5461 (1991).

¹ 42 U.S.C. §§ 4321-4370c(a) (1988). The purpose of NEPA is to create a national policy of preventing damage to and promoting understanding of the environment. *Id.* § 4321. The Act mandates that federal, state, and local governments use all "practicable means" to further this policy. *Id.* § 4331(a); see also WILLIAM H. RODGERS, JR., ENVIRONMENTAL LAW 697-704 (1977) (providing overview of NEPA's objectives); Neil Orloff, *SEQRA: New York's Reformation of NEPA*, 46 ALB. L. REV. 1128, 1129 (1982) (NEPA passed in response to "lack of attention by officials to environmental consequences of their decisions").

² N.Y. ENVTL. CONSERV. LAW §§ 8-0101 to 8-0117 (McKinney 1984 & Supp. 1991). Twenty-eight states have enacted environmental statutes modeled after NEPA (the so-