

Changing the rules: Selective justice for Catholic institutions

Twenty-ninth in a series; first of two parts.

By L. Martin Nussbaum

The Boston Globe began publishing on Jan. 6, 2002, a series of reports regarding sexual abuse of children by priests in the Archdiocese of Boston. In a flash, newspapers around the country began reprinting the Globe's reports and developing their own. They published 728 stories in January, 1,095 in February and 2,961 in March. By April these papers were publishing a new story every nine minutes, 160 every day, 4,791 for the month. By year end, American papers provided their readers over 21,000 stories of sexual abuse by Catholic priests.

A One-Sided Story?

The press's obsession with the scandal was remarkable in other ways as well, beyond the large number of reports. First, the stories almost never deviated from one construction of the problem. Second, they consistently overlooked the much larger problem in other institutions; and third, they created the false impression that the "Catholic problem" was ongoing.

Professor Philip Jenkins identified the construct of these stories in his 1996 book, *Priests and Pedophiles*: "The dominant construction not only suggests the locus of the problem (the Catholic Church), but also places the blame on a patriarchal clerical elite anxious to defend the virtually hopeless cause of mandatory celibacy. The central theme is one of organizational deviancy, so that if the church's policies and procedures could be reformed, the problem would be reduced or eliminated."

Jenkins could, in 1996, identify this journalistic construct of 2002 because the story line was fixed in the 1985 reporting about a perpetrator in Louisiana, the Rev. Gilbert Gauthé, and the reporting in 1992-93 about a perpetrator in Massachusetts, the Rev. James Porter. The press so adhered to its construct that it seldom reported nonconforming facts.

This is why few are aware that the largest single-victim judgment against a religious institution was not against the Diocese of Dallas. It is the \$105 million judgment against the Episcopal Church Porter Gaud School in October 2000. The construct is also why few are aware that by 2004 over 500 claims of sexual abuse of children were filed in eight Hare Krishna bankruptcy cases.

The biggest problem overlooked by the press was the sexual abuse of children in public entities — in schools, foster homes and juvenile detention facilities. The problem of sexual abuse in public entities dwarfs anything in Catholic institutions. Professor Charol Shakeshaft authored the U.S. Department of Education's study in June 2004 that found that 6.7 percent of K-12 public school students — over 3 million children — report being targeted by a school employee for sexual abuse involving physical contact.

But the press was not interested. During the first half of 2002, the 61 largest newspapers in California ran 1,744 stories about sexual abuse in Catholic institutions and only four about the same problem in public schools. During this period, California ran 436 stories of "Catholic" sexual abuse for every story of public school abuse — even though, according to Professor Shakeshaft's analysis, 422,000 of current California public school students will be victims of sexual misconduct by educators by the time they graduate — a number that easily exceeds the total of 143,000 students enrolled in Catholic schools in California.

Can the Church Reform Itself?

The most misleading impression left by the press coverage was that the Catholic Church had not addressed its problem. This impression led victims, plaintiffs' attorneys, judges, legislators and others to conclude that if Catholic institutions could not reform themselves, others would have to do so.

The truth is that most American bishops learned the simple lesson taught by the Gauthé and Porter scandals — the lesson of zero tolerance. Those who behave in a sexually inappropriate way with children do not get a second chance.

The lawyers suing Catholic institutions came to understand this by April 2002. They knew there would likely be no appreciable number of claims

against Catholic institutions based upon conduct after 1990. The John Jay College study showed that the over 300 instances of sexual abuse of children allegedly occurring in Catholic institutions every year from 1968 through 1980 dropped precipitously to under 50 per year by the mid-1990s. While even one instance is too many, 50 such instances for institutions serving 70 million Catholics is too, when compared with other institutions working with children, extraordinarily good.

A Problem and an Opportunity

Plaintiff attorneys recognized their problem and their opportunity. The problem was few new claims, and old claims barred by statutes of limitation. The opportunity arose from one-sided press coverage that had aroused public opinion encouraging legislators to enact legislation targeting Catholic institutions. With this, the plaintiffs' bar, in concert with the victims' groups, set about to retroactively change the rules governing their cases.

Two prominent attorneys who are suing Catholic institutions, Jeffrey Anderson of Minnesota and Laurence Drivon of California, led the way, with support from the Survivors Network of Those Abused by Priests. They drafted and lobbied for California Senate Bill 1779, which retroactively revoked settlement agreements already made in claims of sexual abuse of children, set aside defense verdicts based upon statutes of limitation and revived old, time-barred claims. Crafted to all but guarantee Catholic institutional liability, SB 1779 made 2003 the year when there would be no statute of limitation for such lawsuits in California. The bill passed unanimously, and over 1,000 new plaintiffs filed suit.

As a result, California dioceses and religious orders are now defending claims in which the alleged abuse occurred as long ago as 75 years. The California settlements, involving around 200 claims, have so far resulted in over \$250 million being paid to the plaintiffs, of which approximately \$100 million went to their attorneys.

The plaintiffs' bar, often with SNAP's assistance, has now introduced legislation in at least 14 other states. New York, Iowa and Mississippi killed the legislation. Connecticut, Illinois, Ohio and Kansas extended their statutes of limitation. Colorado, Massachusetts, Maryland, Michigan, New Jersey, Pennsylvania and Tennessee are presently considering legislation that would either extend or eliminate statutes of limitation, create rules that give plaintiffs almost total control over when such statutes begin to run, abolish charitable immunity, require courts to publish the names of individuals merely because they have been accused and, in general, facilitate the transfer of hundreds of millions of dollars from Catholic institutions to plaintiff attorneys and their clients. Most of these proposals are retroactive.

SNAP favors "window" legislation, cloned from California, that eliminates statutes of limitation for claims of sexual abuse of children for a two-year window. SNAP representatives were outraged when the Ohio House of Representatives rejected a one-year window by a 77-to-18 vote on March 29. In Ohio, Colorado and other states, SNAP representatives converged for legislative hearings. They gave accounts of horrific abuse, contended that only civil lawsuits can reform Catholic institutions and left legislators emotionally drained and eager to help.

Just before the hearing in Colorado, one SNAP representative told another, "We've got three dioceses so far, and there's a lot more to come." Presumably he was referring to the dioceses in bankruptcy — Portland, Tucson and Spokane.

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