

Shakedown: Ripped off in the name of justice

By Francis X. Maier

In most states—including Colorado—there's one big difference between sexual abuse in public and private institutions, with huge consequences for public school parents like my wife and me. The fact is, it's much easier—and much more lucrative—to sue the Catholic Church, or any church or private organization, than it is to sue the local public school district.

The reason is simple: Public school districts enjoy governmental immunity unless state law-makers say otherwise. And so far, the legislators in most states have kept that immunity in place. As a result, public school districts have a drastically reduced financial exposure with incidents of sexual abuse.

Under March 2006 Colorado law, and in many other states, my wife and I can recover a great deal more money, with much less effort, if our son Dan is abused by a priest at our local church than if he's raped by a teacher or coach at his school. Parents in states like ours have much less time to identify, report and legally pursue sexual abuse committed by a public school employee than if the same abuse is committed by the employee of a religious or private organization. The amount of money they can recover in damages is also sharply limited—in Colorado, \$150,000.

And yet, according to the data, children are more likely to be sexually abused in a public school setting than at their local parish. Most state lawmakers either don't seem to know this or simply don't care. The message sent to parents of public school students is clear: Sexual abuse at the hands of a public school employee is less grievous and less expensive than exactly the same abuse at the hands of a pastor or Sunday school teacher. Something is grotesquely wrong with that kind of lawmaking.

My wife and I have heard the usual cynical arguments in favor of governmental immunity. Our favorite is the excuse that opening public schools to litigation might "bankrupt" them—as if bankrupting Catholic schools, charities, and parishes were okay. We've even heard the bizarre claim that churches and other nonprofits should be held to a "higher standard" because of their tax-exempt status.

But this ignores the fact that governments grant tax exemptions precisely for the benefit of the communities they govern and to reduce their own expenses. It implies that the abuse of a minor by a priest is somehow more loathsome simply because his parish gets a tax break, and that public school districts should be held less accountable because we pay taxes to support them.

Of course, governmental immunity does ensure one thing—that superstar plaintiffs' attorneys won't care a whit about public school sexual abuse, no matter how deep the pain or how vast the pool of victims. There's just no money in it.

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The sexual abuse of minors is a grave crime and sin, no matter who commits it. Catholics are right to be outraged at any priest who abused a child and at any bishop who callously refused to deal with the evil behavior. Many Catholics are parents themselves, with a deep sympathy for abuse victims and an eagerness to help them heal.

This is a good and necessary thing. No one can listen to their suffering and remain unmoved. Unfortunately, some attorneys have built an industry on twisting the goodwill of today's Catholic community into a hammer for smashing American Catholic life.

What many Catholics don't realize is that big-league sex-abuse attorneys often sue the Catholic Church with the same money they

Part two of three; thirty-fifth in a series.

took from other Catholics. The money your grandparents poured into building the Church, lawyers now use to rip it back down. In sex-abuse settlements against Catholic dioceses, plaintiffs' attorneys often take 40 percent of the action. Aside from providing the attorney a hefty take, it also fills a firm's coffers to file claims in other dioceses.

For the past 20 years, this has been a great way for some lawyers to make a living. But plaintiffs' attorneys now face a decline of new cases. Contrary to media innuendo, most Catholic dioceses and institutions did learn the lesson of the 1980s. As a result, over the past decade, the flow of current clergy sex-abuse cases has slowed to a trickle. Most clergy sexual abuse allegations coming to light now are decades old—25, 35, even 50 years. That means that in many cases, these claims have expired. They're time-barred by statutes of limitations.

And statutes of limitations exist for good reasons; that's why law-enforcement officials almost always support them. Beyond a certain point, memories fade, people die, evidence gets lost or grows stale, and fraudulent claims increase. But these statutes put a major cramp on potential profits in the litigation industry. So what's a hungry plaintiffs' attorney to do? It's easy. Get the rules changed—retroactively.

Two different law codes govern the disposition of sexual abuse cases: criminal and civil. The Supreme Court has ruled that criminal liability cannot be applied retroactively. It's unconstitutional. But some lower courts have held that civil liability can be extended retroactively. And the threshold for proof in civil cases is much lower than in criminal cases. As a result, plaintiffs' attorneys—usually backed by victims' groups—have launched a national effort to lobby state lawmakers to change civil liability rules after the fact.

It works like this: Plaintiffs' attorneys troll a new territory for possible cases. Each new claimant then identifies other potential claimants. Victims' groups may assist in the process, or act as contacts with potentially sympathetic state lawmakers. Plaintiffs' attorneys may then provide help in drafting the proposed new legislation that they themselves hope to profit from. This happened in California, where Jeffrey Anderson helped develop the text for the state's catastrophic law SB 1779, retroactively revising the statute of limitations for sex-abuse cases in that state.

By the time the media enter the project, the plaintiffs' storyline is firmly in place, and the press almost invariably follows it without deviation. One study found that during the first six months of 2002, the 61 largest California newspapers ran more than 1,700 stories about sexual abuse incidents in the Catholic Church but only four about the same problem in public schools. And, as happened in California, once the public has been suitably barraged with shock reports, the lobbying begins to secure "justice" for those victims whose claims have expired due to statutes of limitations.

Some victims claim they were too afraid to come forward in the past. Others say they were so traumatized that they didn't remember their abuse until recently. But all of them agree that the only way they can get closure and peace is by litigating their expired cases.

Francis X. Maier, the father of four, writes from Colorado. This article from the May 2006 issue of Crisis Magazine is reprinted with permission