

Legal Article on Child Abuse

Interesting article on legal aspect of religion and abuse



Why Ensuring Accountability for Clergy Sexual Abuse of Children Has Proved So Difficult, Even Though It Remains So Crucial

By [MARCI HAMILTON](#)
hamilton02@aol.com

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When the *Boston Globe* finally spotlighted the issue of sexual abuse of children by clergy, everyone agreed something had to be done. But sadly, the solutions have so far have been neither far-reaching nor effective.

What happened? The story dropped from the headlines. And the solutions often got lost in the machinations of the legislatures and the powers that be. It takes incredible doggedness to keep political institutions focused on an issue, especially when the media's attentions have shifted elsewhere.

The record to date for legislatures and prosecutors dealing with clergy abuse is mixed, at best. As the following examples make clear, bringing the Catholic Church to account for the thousands of children who were raped and sexually molested is still going to take enormous fortitude on the part of activists and far-sighted public leaders. Despite the time that has passed since the *Globe's* revelations sparked public outrage, much remains to be done.

It has become evident, also, that addressing the Catholic Church's problem alone -- difficult as that will be -- will still not be enough. Six thousand victims of Jehovah's Witnesses clergy recently made themselves known. Meanwhile, the Lutheran Church just settled a multi-million-dollar clergy abuse lawsuit.

This is a public health, criminal, and civil law crisis of staggering proportions that few have yet if any yet fully comprehend. The actions taken now will reverberate throughout the United States in years to come. That makes it all the more important that these actions be appropriate, prompt, and effective.

But so far, they have fallen woefully short of the mark -- as I will explain in discussing a Wisconsin law passed last week, the disappointing lack of enforcement of the New Hampshire settlement agreement, and an Illinois case of alleged abuse by a priest who appears to a recidivist -- a case in which the Church refuses to comply with court ordered discovery.

Wisconsin's Statute of Limitations Debate: A Huge Disappointment

Statutes of limitations on childhood sexual abuse are far too short. In far too many states, the statute of limitations typically ran before the victims were even psychologically capable of filing charges or suing for damages. And this legal reality doubtless enabled accusers to continue with their predations.

Getting rid of the statute of limitations on child sexual abuse should be a top priority. Maine and Alaska wisely have no statute of limitations for such abuse. Other states should follow suit and abolish -- or at least dramatically lengthen -- theirs. There is no excuse for a statute that begins to run before the victim is a well into adulthood with the maturity to be able to withstand the gauntlet of prosecution and litigation.

Statutes of limitations are not mandated by the Constitution, nor are they set in stone. They are merely procedural, technical rules.

Granted, the state cannot make its criminal statute of limitations retroactive, as the Supreme Court held in *Stogner v. California*. But that particular rule--grounded in the [Ex Post Facto Clause](#) -- does not apply to civil statutes of limitation.

As the Court has held in *Landgraf v. USI Film Products* and *Chase Securities Corp. v. Donaldson*, legislatures have broad latitude to choose whatever statute of limitations serves the interest of fairness -- including having no statute of limitations at all. In the latter case, the Court explained:

"Statutes of limitations find their justification in necessity and convenience rather than logic. They represent expedients, rather than principles They are by definition arbitrary . . . [and] have come into law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate . . . [and are] good only by legislative grace, [subject] to a relatively large degree of legislative control."

Statutes of limitations have a worthy goal: to increase the likelihood that the evidence in court will be reasonably reliable. But there are other ways to serve that goal -- such as the rules of evidence, which will be applied at any child sexual abuse trial, as they will at any other trial. We can count on judges to keep unreliable evidence out of court; we need not presume, through a statute of limitations, that evidence, like milk, must have a sell-by date.

And they have one goal that makes little sense in the context of child sexual abuse: To permit potential defendants to "rest easy," at some point, in the knowledge that they will not be prosecuted.

This goal makes sense when a crime is very minor (people should not lose sleep over their past littering forever) or when it might not have been a crime at all (people should not have to worry forever about that dicey tax deduction). But it makes no sense for the sexual

abuse of children.

Indeed, when pedophiles "rest easy," we should all be afraid. Pedophiles rarely have only one victim; giving them a "bye" for past abuse, simply because the abuse occurred a certain number of years ago, only puts other victims in danger. Consider the Catholic Church's now well-publicized practice of providing pedophile priests one set of children after another to terrorize and harm.

So states have all abolished their statutes of limitations for child sexual abuse, right? Wrong.

Consider Wisconsin's example. In fall 2003, I testified before the Wisconsin state legislature. There, a bill was pending that would have extended the criminal and civil statutes of limitations for all future victims of abuse. But victims of past abuse (who filled the room and testified for hours) also implored the legislature to extend the civil statute of limitations retroactively.

As I explained (on behalf of the Survivors Network of Those Abused by Priests), such a statute would have been entirely constitutional. The Supreme Court has been clear: Criminal statutes of limitations cannot be retroactively extended; the Constitution's Ex Post Facto Clause prevents it. But it's plain that that clause does not apply to civil statutes of limitations. Moreover, Wisconsin, like other courts, had evolved from an earlier rule prohibiting retroactive civil statutes of limitations into a rule that permitted the legislature broad latitude where the circumstances warranted. The victims implored the members to add to the bill a provision that would have extended the civil statute of limitations retroactively.

Despite the clear precedent, some members pressed the incorrect argument that there was a constitutional problem with a retroactive change to the civil statute of limitations. And sadly, last week, Wisconsin's Governor Jim Doyle signed a version of the law that addresses only future, not past victims. The new law is without question a step in the right direction, but it is woefully deficient.

The current law extends the statute of limitations for childhood sexual abuse into the future, and the clergy will now be required to report known child abuse. Past victims, however, were provided no means of bringing the Church to accountability for the decades of harm it knew about and fostered.

Green Bay Bishop David Zubik could not have been more exuberant in his praise for the bill, which he said would "bring[] justice to those harmed." From a shortsighted perspective, he has reason to be happy, but the reason has nothing to do with justice. The bill protects the Church's coffers from the many victims it permitted to be abused -- and in effect, protects the Church from the heinous mistakes it made during the long era of secrecy. At the same time, it gives the Church a remarkable public relations moment.

The appearance of progress in Wisconsin masks the reality of retrenchment.

The New Hampshire Agreement's Bright Start and Murky Present

Like the Wisconsin legislature's focus on clergy sexual abuse, New Hampshire's agreement with the Bishop of Manchester seemed very hopeful.

In New Hampshire, everything seemed to go as it should: The prosecutors were aggressive, and the Church did not offer flimsy First Amendment excuses to try to avoid complying with the investigation; instead, it opened its files for the authorities. Finally, the Church entered into a settlement -- the only one of its kind -- in which the Diocese admitted criminal liability.

The New Hampshire experience, then, seemed like the first gasp of oxygen after swimming too far underwater. But such optimism turned out to be premature.

One of the many conditions of the settlement was that the Church would keep its files available to prosecutors, and that the Attorney General's Office would conduct an annual audit to ensure compliance with the terms of the agreement.

Guess what? The agreement was signed December 10, 2002, and no audit of any kind has been done.

The reason is money. The agreement did not specify whether the AG's Office or the Church would pay for the audit, and both are claiming tight budgets. As a result, victims and their families feel betrayed by both. It appears it may take a lawsuit by victims to push the Church into doing what it agreed to do almost two years ago.

The early appearance of accountability on both sides is disintegrating quickly into the reality of the previous status quo: No one is actively watching to make sure children are not being harmed.

An Illinois Example: Bishop Wilton Gregory Is Held In Contempt of Court

A third example of bad behavior by the Church with respect to addressing clergy sexual abuse, is not just deeply disappointing, but disgusting.

A priest named Raymond Kownacki in Illinois was alleged to have persuaded a family to let a teenage girl go with him to a new diocese in order to attend a better school. But there, according to the family, he repeatedly raped and beat her. When she became pregnant, the family alleges, he performed a chemical and manual abortion. But her case was dismissed on statute of limitations grounds.

Now two other victims have come forward. In one case, the plaintiff requested Kownacki's mental health records. The court ordered the Church to produce them, but it refused. The result was that the Court held the Diocese in contempt.

Sadly, this particular diocese is headed by the President of the United States Conference of Catholic Bishops -- Bishop Wilton Gregory, of Belleville, Illinois. He has repeatedly apologized to victims on behalf of the Conference, while cameras rolled. But now those apologies ring hollow, when his own diocese refuses to comply with a court order crucial to a victim's case. This is the leader who was

supposed to lead the United States bishops to a new and better policy, and now we have proof of his actual intentions: just more of the same.

These three examples are just anecdotes in the war on childhood sexual abuse in the United States. They prove that this war is far from over.