

Section VII

Recommendations of the Grand Jury

This Grand Jury's investigation and conclusions need to be considered, we believe, in light of the findings of the 2005 grand jury that also probed abuse of minors by clergy in the Philadelphia Archdiocese. The earlier grand jury documented the sexual abuse of hundreds of children by at least 63 priests in the Archdiocese. "We have no doubt," the jurors said, "that there were many more."

Yet, as terrible as all that criminal depravity was, the grand jurors were just as appalled by the cynical and callous handling of clergy abuse by the Philadelphia Archdiocese hierarchy, up to and including the Cardinal. The 2005 grand jury report described how church officials conducted non-investigations that predictably failed to establish priests' guilt; how they transferred known abusers to parishes where their reputations were not known; how they successfully avoided involvement by law enforcement; and how they used investigations and intimidation to silence victims and fend off lawsuits.

The report noted that church officials' strategies for handling child sex-abuse cases had the effect of multiplying the numbers of victims and increasing the harm they suffered. "As abuse reports grew," the jurors observed, "the Archdiocese chose to call in the lawyers rather than confront the abusers."

This context is important because it raises a fundamental question underlying our own investigation. The Philadelphia Archdiocese has clearly changed since the 2005 grand jury issued its report. The question is: Has it changed enough?

We commend the Archdiocese for improvements that it has made, for example, notifying law enforcement authorities when a victim comes forward with an allegation of abuse. Nevertheless, the evidence we have gathered – regarding, for example, the way in which Billy’s and Mark’s cases were handled, the conflicting loyalties of victim assistance coordinators, and particularly the continuation in ministry of credibly accused priests – suggests that more, and more significant, changes are needed.

Criminal charges

One important way to encourage change is to hold people accountable for their actions. When the previous grand jury issued its report, it was unable to recommend any criminal charges because the horrifying abuses that it documented had not been reported to authorities within the applicable statutes of limitations.

Here, in contrast, the sexual abuse of Billy and Mark was reported in time to support prosecution. We therefore urge the criminal prosecution of the five individuals most clearly responsible for their abuse. We recommend the following charges:

- **Prosecute Father Engelhardt, Father Avery, and Bernard Shero for the sexual offenses they committed against Billy.**

We recommend that Father Engelhardt, Father Avery, and Bernard Shero each be prosecuted for rape, involuntary deviate sexual intercourse, endangering the welfare of a

minor, aggravated indecent assault, indecent assault, and corrupting a minor. Even on its own, Billy's testimony regarding the abuse by those men, which we have found highly credible, is sufficient to establish each of those offenses under Pennsylvania law.

Moreover, we note that Billy's testimony is strongly corroborated both by his contemporaneous medical complaints and by Father Avery's established history of sexual abuse.

- **Prosecute Father Brennan for the sexual offenses he committed against Mark.**

We recommend that Father Brennan be prosecuted for the same crimes: rape, involuntary deviate sexual intercourse, endangering the welfare of a minor, aggravated indecent assault, indecent assault, and corrupting a minor. As in Billy's case, Mark's testimony, which we (and Archdiocese officials themselves) have found highly credible, is sufficient to establish all of those offenses. We also note that Mark's testimony is strongly corroborated by Father Brennan's own partial admissions of guilt, and by Father Brennan's history of inappropriate contact with Mark and other adolescents.

Because the charges against Father Brennan, like the charges against Father Avery, are logically and temporally related to Msgr. Lynn's conduct in allowing them to enjoy unsupervised access to children despite their histories of inappropriate contact with adolescents, it would be appropriate under Pennsylvania law to bring those charges in a single, consolidated case in Philadelphia. However, if for some reason charges are not brought against all of the offenders in a single case, Chester authorities should be

provided with a record of the Grand Jury proceedings so that charges may be brought against Father Brennan there.

- **Prosecute Msgr. Lynn for endangering the welfare of children.**

Our final recommendation for criminal charges is that Msgr. Lynn be prosecuted on two counts of endangering the welfare of a minor. Under Pennsylvania law at the time of the conduct in these cases, a “person supervising the welfare of a child under 18 years of age” was guilty of this crime “if he knowingly endanger[ed] the welfare of the child by violating a duty of care, protection or support.”

We do not hesitate to conclude that the Archdiocese understood itself to be responsible for “supervising the welfare” of the students and altar servers entrusted to its care. The children’s parents certainly regarded the Archdiocese that way. And it was in the exercise of this responsibility that Msgr. Lynn was assigned to investigate allegations of sexual abuse.

In that capacity, Msgr. Lynn had a duty to assure that known abusers were not recommended for assignment to positions where they would have unsupervised contact with children. Thus, while the Secretary for Clergy was not in direct contact with Billy and Mark, he was responsible for supervising their welfare with respect to abusive priests when they were in school or acting as altar servers.

Msgr. Lynn egregiously violated that duty of protection. He placed Billy, Mark, and countless other minors in great danger, by failing to conduct a reasonable investigation of the allegations against Father Avery and Father Brennan, and by

recommending that both priests be assigned to positions where they would have unsupervised contact with children despite both priests' histories of inappropriate relations with children.

Given Msgr. Lynn's lengthy history of failing to investigate allegations of sexual abuse, allowing known abusers unsupervised access to children, and recommending transfers of credibly accused priests to unsuspecting parishes, we have no doubt that he acted in Billy's and Mark's case, as in others, *knowing* the danger in which he was placing innocent children.

Over the past two decades, Msgr. Lynn has put literally thousands of children at risk of sexual abuse by placing them in the care of known child molesters. We believe that legal accountability for Msgr. Lynn's unconscionable behavior is long overdue, and that he should be prosecuted for endangering the welfare of the victims in these cases.

We would like to hold Cardinal Bevilacqua accountable as well. The Grand Jurors have no doubt that his knowing and deliberate actions during his tenure as Archbishop also endangered thousands of children in the Philadelphia Archdiocese. Msgr. Lynn was carrying out the Cardinal's policies exactly as the Cardinal directed. In most of the cases we reviewed from the previous grand jury report, Cardinal Bevilacqua knew substantially everything that Msgr. Lynn knew about the danger posed by the accused priests.

In the cases of Billy and Mark, however, we are not recommending that Cardinal Bevilacqua be charged with child endangerment. The testimony and documents in evidence in their cases do not establish that the Cardinal was aware of all of the information that Msgr. Lynn received.

In the case of Father Avery, Cardinal Bevilacqua knew that the priest had been accused of sexually assaulting James. He knew when he assigned Father Avery to St. Jerome that St. John Vianney staff had warned that the priest should not engage in ministry with adolescents. The Cardinal instructed Msgr. Lynn to set up an “aftercare” team supposedly to supervise Father Avery after he came out of the treatment facility.

Msgr. Lynn never set up a functioning aftercare team. However, there is no documentary evidence to establish that Cardinal Bevilacqua knew this. Also, while the Secretary for Clergy received repeated warnings (from Father Kerper and others) that Father Avery was not complying with restrictions on his activities that his therapists’ had recommended, the documents we reviewed do not establish that Msgr. Lynn’s failure to monitor the abusive priest was brought to the Cardinal’s attention.

Similarly in the case of Father Brennan, Msgr. Lynn received several reports and warnings about the priest’s improper relations with students at Cardinal O’Hara. Msgr. Lynn even discussed with Father Brennan “rumors” that the priest was “shacking up” with one of his students. However, we heard no evidence proving that the Secretary for Clergy conveyed this information to Cardinal Bevilacqua. Thus, while the evidence is compelling that Msgr. Lynn knew how dangerous Father Brennan was to children, proof of the Cardinal’s knowledge in this case is lacking.

Cardinal Bevilacqua’s health is also a consideration. William Sasso, his long-time lawyer, told the Grand Jury that the 87-year-old suffers from dementia. Mr. Sasso testified that Cardinal Bevilacqua requires “24/7 nursing care” and rarely leaves the seminary where he lives. He said the Cardinal has failed to recognize Mr. Sasso when he

visits. The attorney testified that he has not seen the Cardinal at a public event for nearly three years – not even at the installation of Bishop Senior in July 2010.

Mr. Sasso told us that he had recently spoken to Cardinal Bevilacqua’s doctors, A.J. DiMarino and Bradley Fenton. According to Mr. Sasso, both physicians advised him that it would be “extremely traumatic” for the Cardinal to testify before the Grand Jury, and that any testimony he gave would be unreliable. Mr. Sasso testified that Cardinal Bevilacqua had not even been informed of the Grand Jury proceedings because his doctors had advised against it.

Based on these issues relating to the evidence and the Cardinal’s health, we have reluctantly decided not to recommend charges against the former Archbishop.

Other recommendations

This Grand Jury’s responsibilities are not limited to suggesting criminal charges against those responsible for the rapes and molestations of Billy and Mark. The jurors assume, as well, the task of proposing institutional and legal reforms – to address systematic flaws exemplified by this case, and to reduce the likelihood that similar crimes will recur. In particular we recommend that the Philadelphia Archdiocese:

- **Fund a victim assistance program that is independent of the Archdiocese and its lawyers.**

Our observations of two victims’ experiences with the Archdiocese’s victims assistance program are sufficient to convince us that the program needs to be completely overhauled and removed from the control of the Archdiocese. It is impossible for church

employees to wholeheartedly serve the interests of the victims. As Mary Achilles, the consultant who tried to improve the victims assistance program, recognized, conflicts of interest are unavoidable. Victims of sexual abuse suffer today from the assistance coordinators' split loyalties.

The Archdiocese should either refer victims to the already existing Pennsylvania Victims Compensation Assistance Program, and then reimburse the program for aid that it provides to people harmed by Archdiocese employees, or it should fund an independent nonprofit that would administer assistance to the victims.

The important element would be complete separation between the people who administer the fund and the Archdiocese and its lawyers. Decisions about assistance would be based solely on the needs of the victims. Information about the victims, their mental health, and their treatment would not be shared with the Archdiocese. The fund administrator would have to develop a process to determine eligibility.

- **Revise the Review Board process so that credibly accused priests are removed from ministry.**

This recommendation is simple: The Archdiocese must revise its review process to assure that the church hierarchy credits and acts on credible allegations. The cases we reviewed reveal a process that reaches the wrong result in the vast majority of cases. Victim assistance coordinator Louise Hagner told the Grand Jury that, out of all the victims she has interviewed, there have been only two whose credibility she even questioned. Yet Bishop Senior rattled off a whole list of priests the Review Board has cleared for continued ministry by finding allegations against them unsubstantiated.

We do not know if the members of the Archdiocesan Review Board are not objective, or if someone has instructed them that the standard of proof is absolute certainty, or if they are considering factors that have nothing to do with whether or not a priest committed the offense alleged. Whatever the reason, their decisions appear devoid of common sense. The Review Board currently betrays victims who muster the courage to come forward with allegations. It approves retention in the ministry of serial child molesters. No Archdiocesan official should be accepting the board's recommendations.

We do not think the problem lies with the investigators. We read the investigation interviews, and would reach different conclusions from the Review Board based on the same evidence. The Grand Jury urges Archdiocese officials to review their process for deciding when to remove priests from ministry.

Indeed, the evidentiary standard for personnel decisions involving allegations of sexual abuse of minors cannot be the same as guilt beyond a reasonable doubt associated with convictions in a criminal court. Barring clear indication that an allegation has been fabricated, an accused priest ought to be, at the very least, provisionally separated from children. And Archdiocese officials need to act to protect minors upon receipt of evidence that a priest has acted inappropriately around children, even if the allegations do not specify genital sex.

We implore Cardinal Rigali and his staff to review *all* of the old allegations against currently active priests, and to remove from ministry all of the priests with credible allegations against them. By the Archdiocese's own account, at least 37 priests

remain in ministry despite reports that they have engaged in improper behavior with minors. That should not be acceptable to anyone.

- **Conduct the review process in a more open and transparent manner.**

If the Archdiocese wants to change the public's perception and regain the trust of parishioners, it should be more honest and open with the public. We saw situations in which the Archdiocese told the public that it cannot conduct an investigation because it did not know the identity of a victim. Yet we saw in their documents that they did.

We believe the Archdiocese should make public its files on sexual abuse allegations, including any "secret archive files." This should be done in a way to protect the privacy of the victim. At the very least, parishioners deserve to know whenever an allegation of abuse is made against their priest. If the priest is cleared following an investigation, the reasons, along with the evidence, should be shared with the parish.

- **Use independent treatment facilities to evaluate and treat priests accused of sexually abusing minors.**

The psychologists and therapists the Archdiocese have historically used to evaluate priests and victims have not performed independent assessments nor were the assessments properly documented in the priest's file. We strongly recommend that the Archdiocese engage an independent organization – such as The Joseph J. Peters Institute (JJPI) – to perform psychological evaluations of persons desiring to enter the priesthood to screen out pedophiles; to provide annual evaluations for mental fitness to serve as a

priest; and to provide therapy to priests who are credibly accused of sexual abuse or violations of appropriate boundaries.

We recommend that the Legislature:

- **Enact a two-year window to allow child sexual abuse victims to have their cases heard.**

We recommend that the Pennsylvania legislature suspend for two years the civil statute of limitations on sexual abuse claims. Such a “window of opportunity,” appropriately limited to two years, would allow adults who were victims of sexual crimes as children to have their cases heard in a court of law. The statute of limitations in force when many of these victims were abused required that any civil litigation begin within two years of the time of the abuse. Thus, a 10-year-old rape victim had until he was 12 years old to file suit against his abuser.

It is well established that most victims of childhood sexual abuse do not come forward with allegations for many years, or even decades, after they were molested or raped. For this reason, the civil statute of limitations in recent years has been extended. However, as a result of the law’s past inadequacy, sexual predators who prey on children continue to be shielded from exposure.

The vast majority of complaints received by the Philadelphia Archdiocese’s victim assistance program, in fact, have fallen beyond the statute of limitations. Without a window in which their cases can be heard, victims must depend on the Archdiocese hierarchy’s willingness to validate their allegations, acknowledge their suffering, and

compensate them for expenses incurred, such as for psychological counseling or drug treatment.

A two-year window in the statute of limitations might offer the best hope these victims have of finding justice. More than that, the possibility of civil liability would increase church officials' incentive to make meaningful reforms and institutionalize intolerance of child abuse.

- **Abolish the statute of limitation for sexual offenses against minors.**

We were able to recommend charges against Avery, Brennan, Engelhardt, Shero, and Lynn only because the Pennsylvania Legislature extended the criminal statute of limitations in 2002, and again in 2006. However, we reviewed the files of several other priests accused of sexual assaults on minors who still cannot be charged because their victims were unable to come forward until the statute had expired. We see no reason that sexual predators should benefit because they choose vulnerable young victims who are unable to come forward for many years.

- **Amend reporting law so that mandated reporters are required to report sexual abuse of a child even though the victim is over 18 at the time of the report.**

The Archdiocese, we learned, already reports to law enforcement any sexual offense committed on a child – even if the victim is an adult at the time of the report. We believe that all mandated reporters should be required to do the same thing. In addition, the amendment we are suggesting would end the Archdiocese's practice of asking victims

– of any age – if they would like to prohibit the Archdiocese from reporting their abuse to law enforcement.

- **Demand improved protection for children.**

Because of the appropriate and constitutionally mandated separation of church and state, Pennsylvania lawmakers would have limited leverage in attempting to influence religious institutions’ policies. Nevertheless, the state has an interest in the safety of students who attend parochial schools well as public schools. The Legislature should consider reduced funding to schools, public or private, that fail to create a safe environment for their children.

We understand that the Philadelphia Archdiocese has a “Safe Environment Program” in place. But the lapses we observed in the hiring and supervising of Bernard Shero indicate that better practices are necessary to protect children in parish schools.

Finally, we recommend that victims:

- **Report sexual abuse allegations directly to law enforcement authorities.**

The Grand Jury’s last recommendation is an appeal to the victims of abuse. The horrors inflicted on them by sexual predators not only wound bodies, rob innocence, and betray faith. They also violate laws. As *crime victims*, those injured by sexually compulsive priests should do what victims of criminals in any other profession should do – contact law enforcement authorities.

In cases of abuse by members of the clergy, victims may also want to report allegations to the Archdiocese and take advantage of the assistance programs that it has set up. Victims doing so, however, should know their rights. They need not provide detailed statements, sign release forms, or participate in canonical proceedings. Archdiocese witnesses told us that none of this is necessary in order to receive assistance.

Victims of sexual abuse, no matter the source or the site, should in any case contact District Attorneys, who after all share their interest in seeking justice. In cases that fall beyond the criminal statute of limitations, prosecution will not be possible. But officials still can help direct victims to rape counseling or other services. In some circumstances, introducing law enforcement into the equation might also help change the calculations both of sexual predators and those who would grant them revered positions with access to children.