

Not All the News Is Fit to Print: What the Media Missed in the Sexual-Abuse Scandal

By Patrick J. Schiltz
Commonweal
August 15, 2003

[NOTE from TheMediaReport.com: *We highly recommend* this article, and we have put passages we believe to be especially important in **bold**.]

I am often invited to present the "other side" of the clergy sexual-abuse "story." I receive these invitations because, as first a practicing attorney and then a law professor, I have advised every major Christian denomination in connection with more than five hundred clergy sexual-abuse cases in almost all fifty states. My clients have included Catholic dioceses, orders, bishops, and priests, and thus people assume that, if there is another side of this story to be told, I will be able to tell it.

There is, in fact, much about this story that has been ignored or distorted by the media. Before I elaborate, though, I must be clear about the following: Hundreds of pastors - Catholic and non-Catholic - did indeed sexually abuse thousands of children and vulnerable adults. Many bishops and other church leaders did indeed learn of abusive pastors, cover up abuse, and do little to protect children and vulnerable adults. The acts of these pastors and bishops did indeed cause incalculable harm.

All of this is true, and not one word of this article is meant to excuse any of it. I have spent hundreds of hours talking with victims of clergy sexual abuse - some who were suing my clients, some who were helping my clients to rid themselves of abusive pastors, and some who just wanted to help me to advise my clients better. **Listening to victims describe their pain can be unbearable. I cannot imagine how much worse it must be to experience that pain. I take a back seat to no one in my loathing of clergy sexual abuse.**

That said, **it also frustrates me that the media have distorted many aspects of the abuse crisis and left the public terribly misinformed.** My purpose in this article is to examine the conduct of the media as carefully as the media have examined the conduct of bishops and priests.

The most remarkable thing about the news coverage of the recent past is that **almost nothing covered has been new.** By this, I do not mean that we did not learn the names of more abusive priests or the names of more victims or the details of more horrible decisions made by bishops. Rather, I mean that every major element of the overall story - every single one - had already been reported years ago. For over a decade, we have known that several hundred priests committed abuse, that thousands of children were abused, and that some bishops learned of abuse and failed to stop it.

Remember Gilbert Gauthé? Or James Porter? These cases and many like them were the subject of unrelenting front-page coverage in the late 1980s and early 1990s. I was interviewed hundreds of times back then, and I have been interviewed hundreds of times in the last couple of years. The questions that I have been asked recently are pretty much the same as the questions that I was asked more than ten years ago. There is nothing new here.

I have challenged reporters to cite a single major element of the clergy sexual-abuse story that was not widely reported a decade ago. No reporter has been able to do so. **I have also challenged reporters to cite another instance in the history of American journalism in which the press gave front-page coverage - not for a day or two, but for months on end - to a story that had been thoroughly covered a decade earlier.** Again, no reporter has been able to do so. Plaintiffs' attorneys like to complain that the Catholic Church receives special treatment. In the case of the recent media coverage, the church's treatment has indeed been special.

The second most remarkable thing about the news coverage of the recent past is that, despite devoting hundreds of thousands of words to clergy sexual misconduct, the media have ignored the most important story of all: **Clergy sexual abuse has virtually disappeared.** Over the past decade, clergy sexual abuse has been almost completely eradicated from the Roman Catholic Church and from most other major denominations.

If you have a few hours to kill sometime, I encourage you to go online or go down to the public library and read every article about clergy sexual misconduct published in the last two years by a major newspaper - say, the New York Times or the Boston Globe. Jot down every instance of clergy sexual abuse that was reported. And then, when you are finished, look over your notes and count how many of the reported instances of abuse occurred in the last decade. The answer, you will find, is almost none.

In the 1980s and early 1990s, churches got sued a lot. In response, **they adopted tough new sexual-misconduct policies. They removed hundreds of abusive pastors from active ministry. They vastly improved seminary screening and training. They produced educational materials for parishes. They reached out to victims. They established hotlines. They trained victim advocates. They held countless training sessions for religious and lay leaders. By and large they also treated victims with care and compassion.**

Over all, churches invested hundreds of millions of dollars and hundreds of millions of person hours in combating clergy sexual misconduct. This was the ecclesiastical equivalent of mounting the D-Day invasion. And churches had stunning success. By the end of the decade, clergy sexual abuse had almost disappeared from the major American denominations. Just to give you some sense of this: Two of the epicenters of clergy sexual abuse in the United States have been the Archdiocese of Boston and the Archdiocese of Louisville. Yet the attorney general of Massachusetts could find no recent abuse in the Archdiocese of Boston, notwithstanding an extraordinarily thorough investigation that received saturation

publicity and that had the cooperation of hundreds of victims and plaintiffs' attorneys. Similarly, last fall, the Louisville Courier-Journal analyzed the 185 lawsuits that had been filed against the Archdiocese of Louisville and found that precisely one - one! - involved abuse that had occurred since 1990.

Plaintiffs' attorneys and victim advocates do not deny that reports of abuse have fallen dramatically. What they have argued - on the rare occasions when a reporter has bothered to ask them about this - is that just because reports of recent abuse are rare, it does not mean that recent abuse is rare. Rather, they say, it takes victims a long time to report abuse. The abuse occurring today, they assure us, will be reported a few years from now.

This is nonsense, for at least four reasons:

First, victims are different. Some do indeed wait for years to report their abuse, but some do not. When I practiced law, I worked on hundreds of cases in which abuse had been reported promptly. If abuse is continuing unabated, then some recent abuse should be getting reported. But almost none is.

Second, **the climate for victims is dramatically different from the climate ten or fifteen years ago.** Victims are believed today, and much support is available to them. **It is easier, not harder, for victims to come forward.** The result should be more victims reporting recent abuse than in the past. Again, almost no recent abuse is being reported.

Third, one reason why a pastor could get away with abusing dozens of children in the past is that those who had evidence of such abuse - such as congregants or victims' parents - simply could not believe that a pastor could commit such conduct. Needless to say, no one is laboring under that illusion today. Congregants and parents are, if anything, hyperalert to indications that their pastor is committing abuse.

Finally, if the explanation of the plaintiffs' bar is to be believed, none of the steps taken by churches in the past decade - for example, removing from ministry the Gilbert Gauthes and the James Porters - has made churches any safer. Such a claim is absurd.

Plaintiffs' attorneys can't have it both ways. For years, they have argued that it was negligent for churches not to take these steps because taking these steps would make churches safer. Now that churches have taken these steps, the same plaintiffs' lawyers are trying to argue that they have had no effect - that abuse has not diminished at all.

Exactly who is paying the bills for clergy sexual abuse is another major story that the media have all but ignored. Understanding this story requires knowledge of two facts:

Fact One: Churches are 501(c)(3) organizations. They are required, by law, to devote their resources "exclusively [to] religious, charitable, or educational purposes." Part of

the reason why churches receive constitutional protection, and part of the reason why they are exempt from taxation, is that, broadly speaking, churches promote the public welfare. They not only facilitate the exercise of religion in its narrowest sense - by, for example, organizing worship services - but they provide food, clothing, shelter, education, health care, and other assistance to millions of the most vulnerable people in our society.

Fact Two: A large and growing percentage of the litigation brought against churches is not covered by insurance. Much insurance coverage has been exhausted in paying for the hundreds of cases that have already been brought, and insurers have become increasingly aggressive in exploiting loopholes in policies. Also, as legislators act to lengthen statutes of limitations, the cases are getting older, and as the cases get older, insurance coverage becomes harder to find. (Could you find the homeowner's policy that insured you in 1965? If so, how much coverage do you suppose it provided?)

Churches have only two ways to pay the costs of litigation that is not covered by insurance. Churches can ask the people in the pews to donate more money, or churches can reduce the services they provide. There isn't any other place for churches to get the money.

These two groups of people - the people in the pews and the people served by churches - have several traits in common. First, they had absolutely no control over the priests who committed abuse or the bishops whose negligence allowed abuse to continue. Second, almost always, they had absolutely no knowledge of the conduct of those abusive priests and negligent bishops. Third, they were the very ones who were put at risk by the conduct of their priests and bishops. They were victims - or at least potential victims. Do you see the problem? When a plaintiff's attorney stands up in court and asks a jury to return millions of dollars in punitive damages against a Roman Catholic diocese, the people who pay those damages - the people who are punished - are not the abusive priests or the negligent bishops. The people who pay those damages are the people in the pews or the people whom the diocese serves. To my knowledge, this is the first time in history in which punitive damages are routinely being inflicted upon the victims - or at least those completely innocent - of wrongful conduct.

In one case, the United States Supreme Court held that punitive damages could not be awarded against a municipality because the damages would have to be paid by innocent taxpayers. In another case, the Court held that punitive damages could not be awarded against a labor union because the damages would have to be paid by innocent union members. Still, lower courts have held that punitive damages can be awarded against Catholic dioceses, even though those damages have to be paid by innocent Catholics - innocent Catholics who, unlike innocent taxpayers and innocent union members, do not even have the option of voting their leaders out of office.

This is not analogous to punitive damages being awarded against a corporation. The cost of such punitive damages is borne by the corporation's shareholders. Shareholders

are the same people who profit from corporate misconduct, so it is fair to make them pay for it. Further, shareholders have some control over the employees who commit the wrongful acts that lead to the punitive damages. Yet Catholics in the pew - and Catholics and non-Catholics who are served by diocesan schools, hospitals, shelters, and other ministries - do not "profit" in any way from sexual abuse, nor do they have any control over the abusive priests or the negligent bishops. To award punitive damages against Catholic dioceses under these circumstances is quite extraordinary - one might even say newsworthy - although one will search in vain for any recognition of that fact by the news media. It's a story that needs to be told.

I have been describing some of the "big picture" distortions of recent media coverage. I want to finish by describing just a few of the "small picture" distortions - that is, a few of the building blocks that have been used to construct this distorted structure.

First, over the past two years, all of us have read horror stories about bishops permitting abusive priests to remain in ministry. These stories were horrible because what the bishops did was often horrible. It should be noted, however, that something rather important was usually left out of these stories: **In most cases in which a bishop decided to permit a priest accused of abuse to remain in ministry, the bishop was relying on the advice of a psychologist. That psychologist told the bishop either that the priest likely did not commit abuse or that, although the priest did commit abuse, his problem was now under control.**

On countless occasions, psychologists gave bishops terrible advice about abusive priests - and, of course, this bad advice led to terrible consequences for victims and the broader church. Yet these psychologists have gotten off scot-free in the media.

Suppose you have a cough. You go to your doctor, and the doctor tells you that you have nothing to worry about. Later, you learn that you have throat cancer, and you should have been receiving chemotherapy all along. In this situation, we would be angry with the doctor, not with you. After all, the doctor is the expert, and you can hardly be blamed for relying on what the expert told you.

Bishops, too, often consulted experts - sometimes the most respected and experienced experts in the nation. Bishops, too, were often told that they had nothing to worry about. Bishops, too, relied on that advice to their detriment. Yet the media have consistently blamed bishops for following bad advice, rather than the experts for giving the bad advice.

Second, over the past two years, all of us have read many stories about the hardball tactics used by attorneys who defend churches. Such tactics have indeed been used, and the attorneys who have used them deserve all the criticism they have received. That said, let me draw your attention to a couple of things not mentioned in the press. First, if you were to collect all the articles about hardball tactics used by church attorneys, and if you were to read every one of those articles carefully, you would find

that, with few exceptions, they tend to describe the same dozen or so examples. Think about this for a moment. There have been thousands - perhaps tens of thousands - of clergy sexual-abuse cases filed against churches. Any time a church attorney engages in a hardball tactic, you are likely to hear about it, because it is in the interests of plaintiffs' lawyers and victim advocates to call it to the attention of the media. Yet only about a dozen or so examples of these hardball tactics have come to light.

Does this not suggest that hardball tactics are quite rare? Does this not suggest that hardball tactics are, in fact, used far less often in church cases than in nonchurch cases? Why, then, is this newsworthy? And if this is newsworthy, why are the hardball tactics used by some of the attorneys who sue the church not also newsworthy? **To my knowledge, no journalist has ever reported on a hardball tactic used against a church, even though the use of such tactics against the church is at least as common as the use of such tactics by the church.**

Here's a second point about the use of hardball tactics: **If you investigate the reports of hardball tactics used by church attorneys, you will find that, in most cases, the culpable attorney was an insurance defense attorney. Insurance defense lawyers are not selected by the church, paid by the church, or controlled by the church.** Such attorneys generally see their job not as preserving the good name of the church, but as saving the insurance company money.

I spent a good deal of time in practice trying to persuade insurance defense attorneys who were representing my clients not to engage in hardball tactics. Most attorneys cooperated with us, but a few did not, and there was nothing we could do about them. Insurance policies give the insurance company the right to control the defense and obligate the church to cooperate with the attorney selected by the insurance company. As long as the attorney is not violating any ethical rule, there is nothing that a church can do to prevent the attorney from playing hardball.

Finally, a few words about "secret settlements." Here is the story that we have all heard many times: When churches would pay settlements to victims, we are told, churches would insist on secrecy agreements, prohibiting victims from disclosing any details of their abuse, saving churches from embarrassing publicity and, in some cases, allowing pastors to go on abusing. Many media outlets have run such stories, often carrying quotations from plaintiffs' attorneys condemning this practice, and sometimes featuring victims who, after being paid to keep quiet, broke their word and essentially dared the church to try to take back its money.

In the fifteen years I have been advising churches, I have always considered these secrecy agreements to be worse than useless. As far as I can remember, I never asked for one (although my clients were on a few occasions parties to secrecy agreements that had been requested by others). That said, let me make three points about secrecy agreements.

First, in many cases - perhaps a majority of cases - it was the victim who asked for the secrecy agreement. There is a reason why victims often sue as "Jane Doe" or "John Doe" and often seek protective orders from courts. Victims are understandably concerned to protect their privacy. That concern does not go away when the case is settled.

Second, even when it was the church that asked for a secrecy agreement, in the vast majority of cases that agreement extended only to the amount of the settlement. I have been involved in hundreds of settlements, and I literally cannot recall one that required the victim not to talk about his or her abuse. Such clauses are uncommon.

Finally, even with respect to these uncommon clauses - that is, clauses insisted upon by churches that required victims to remain silent about their abuse - what happened to the other half of the story? If it was wrong for defense attorneys to buy secrecy, why was it not wrong for plaintiffs' attorneys to sell it?

After all, it was plaintiffs' lawyers who would sometimes call church attorneys and say that, unless they were paid an outrageous amount, they would file a complaint against the church and call a press conference to publicize it. It was plaintiffs' lawyers who would sometimes make two settlement demands - a lower demand that did not include a secrecy agreement and a higher demand that did. It was plaintiffs' lawyers who would happily sell secrecy and happily take their 40-percent cut of the price of that secrecy. And yet some of these same plaintiffs' lawyers now tell reporters how very, very wrong it was for churches to buy what they were selling. With just one or two exceptions, I do not know of a reporter who has paused to contemplate the obvious hypocrisy of these lawyers.

I know that I have been harsh in my criticism of the press, but I also think that the criticism is justified. All of those in positions of power have an obligation to exercise that power responsibly. Years ago, too many bishops and priests acted irresponsibly in exercising their power, and the result was thousands of victims of clergy sexual abuse. Today, far too many journalists are acting irresponsibly in exercising their power. The victim of that abuse of power is the truth.

Patrick J. Schiltz holds the Saint Thomas More Chair in Law at the University of Saint Thomas School of Law in Minneapolis. While in private practice between 1987 and 1995, he represented churches in hundreds of clergy sexual-misconduct cases. He continues to consult with church leaders about such cases.