

# What the media missed in the sexual-abuse scandal: Part II

—————*Twenty-fourth in a series; second of three parts.*—————

By Patrick J. Schiltz

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, hyper-alert 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.

*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.*

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