

## The Extrajudicial Resolution of Sexual Abuse Cases: Can the Church be a Resource for Survivors?

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*“It is generally accepted that a key ingredient for recovery from trauma such as sexual abuse is the opportunity to have at least one significant other bear witness to what occurred, and to do so in a manner that demonstrates credibility, empathy and capacity for prevention of further trauma.”<sup>1</sup>*

### I. INTRODUCTION

Sexual abuse is conduct steeped in secrecy. The abuser needs secrecy to continue perpetrating abuse and victims often desire secrecy to cover their fear and shame.<sup>2</sup> This culture of secrecy has pervaded the conduct of sexually abusive priests for decades. When adult survivors did tell, they often turned to the church instead of law enforcement or child welfare, the secular agencies charged with investigating sex crimes against children. Adult survivors did not act as willing accomplices to the culture of secrecy surrounding abuse in the Catholic Church; many turned to the Church because the statute of limitations and other legal requirements made secular forums unavailable to them.<sup>3</sup> Other survivors and parents acting on behalf of their children turned to the Church to ensure that the abuser was stopped and specifically to avoid judicial resolution of abuse allegations.<sup>4</sup> The desire of victims to stop the abuse while avoiding confrontation with the abuser in the framework of a legal challenge is not unique to the victims of priest abuse. Many victims of sex crimes remain silent about abuse or turn to extrajudicial institutions like the Church, survivor groups, or counseling rather than to the courts.<sup>5</sup> In the absence of extrajudicial

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1. Leonard T. Gries et al., *Factors Associated With Disclosure During Child Sexual Abuse Assessment*, in CHILD ABUSE, NEGLECT & THE FOSTER CARE SYSTEM 407, 421 (Practicing Law Institute ed., 1996).

2. Mary Gail Frawley-O’Dea, Address at the U.S. Conference of Catholic Bishops (June 14, 2002), available at <http://www.usccb.org/bishops/frawley.htm> (discussing secrecy accompanying sexual abuse).

3. *Infra* Part III.A.

4. *Infra* Part III.B.

5. Center for Disease Control, *Perceptions of Child Sexual Abuse as a Public Health Problem—Vermont, September 1995*, MMWR WEEKLY, Aug. 29, 1997, ¶ 11, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00049151.htm> (stating in 1989-1990 National Women’s Study that 84% of all rape victims did not report crime to police).

resources, victims would be left to come to terms with the abuse alone.

Unfortunately, the Church failed victims by choosing to support offenders rather than abused children. As the Church and legislators enact changes designed to reshape the role of the Church in processing abuse allegations, it is important to consider whether those changes will make the Church a more effective extrajudicial resource for victims. This Essay argues that the Church can have a unique spiritual role in helping survivors heal from abuse by priests, but there are limitations in the Church's ability to serve all the survivors' needs. Specifically, the Church is limited in its ability to prevent abusive priests from harming children in the future and to resolve allegations in a non-confrontational manner. The Church can be most effective in responding to the needs of survivors and their parents by offering its spiritual resources and disclosing its limited ability to effectively act against abusive priests.

## II. SEXUAL ABUSE IN THE CHURCH

The immersion of the Catholic Church in almost daily revelations about sexual abuse by priests began in 1992 and still continues today.<sup>6</sup> Almost as shocking as the revelations of abuse were the revelations that leaders of the Church knew about the allegations and failed to take effective action to stop the abusers and to deal compassionately with victims. The secrecy and inadequate record keeping of the Church have made it impossible to ascertain the exact nature and extent of abuse. A recently released survey of Church records commissioned by the United States Conference of Bishops and conducted by John Jay College of Criminal Justice (John Jay Survey or survey), however, provides the best available statistical information on the number of children abused and the response of the Church.<sup>7</sup>

The survey disclosed that the abuse in the Church was widespread,

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6. See generally Boston Globe, *Spotlight Investigation: Abuse in the Church*, at <http://www.boston.com/globe/spotlight/abuse/> (last visited Feb. 21, 2005) (reporting on sexual abuse by priests).

7. JOHN JAY COLLEGE OF CRIMINAL JUSTICE, *THE NATURE AND SCOPE OF THE PROBLEM OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 26-27 (2004)* [hereinafter JOHN JAY SURVEY]. The National Review Board for the Protection of Children and Young People, a lay board established by the United States Conference of Bishops, was given the responsibility of surveying the dioceses and eparchies about abuse allegations that the Church had received. The Review Board commissioned researchers at John Jay College of Criminal Justice to conduct the study. This survey is currently the most comprehensive examination of abuse allegations within the Church. Previous estimates of abuse within the Church have been made by government investigators, survivor groups and the media by extrapolating information from public sources. See MASSACHUSETTS ATTORNEY GENERAL OFFICE, *THE SEXUAL ABUSE OF CHILDREN IN THE ROMAN ARCHDIOCESE OF BOSTON 12 (2003)* (estimating over a thousand children abused by priests in Boston Archdiocese by reviewing number of complaints filed by with Archdiocese, media reports, records from civil suits, and other external sources); Laurie Goodstein, *Decades of Damage: Trail of Pain in Church Crisis Leads to Nearly Every Diocese*, N.Y. TIMES, Jan. 12, 2003, at A1 (estimating 4,268 people abused by priests over last six decades by reviewing court records, Church documents, news stories, and survivor group lists); Survivors First, <http://www.survivorsfirst.org/> (last visited Feb. 25, 2005) (estimating as of June 13, 2003, 1,608 allegations against priests, basing allegations mainly on newspaper reports).

“affecting more than 95% of dioceses and approximately 60% of religious communities.”<sup>8</sup> There were allegations of abuse made against “4.0% (4,392) of priests who were active between 1950 and 2002,”<sup>9</sup> and 10,667 individuals made allegations of abuse by priests.<sup>10</sup> In many instances, the Church hierarchy was aware of abuse allegations because adult survivors, victims’ parents, and attorneys representing victims reported the allegations to Church leaders. In 50% of the cases, victims reported allegations to the Church.<sup>11</sup> The survey did not distinguish between adult survivors and child victims but because “less than 13% of the allegations were made in the year that the conduct occurred and more than 25% of the allegations were made more than thirty years after the alleged abuse began,”<sup>12</sup> the survey creates a strong inference that most of the reports by victims were made by adult survivors. Research on child victims also supports the inference that large numbers of children did not report abuse directly to the Church. Generally, children who are the victims of abuse do not tell anyone about the abuse.<sup>13</sup> The reasons why children do not disclose the abuse include that they do not recognize that certain acts are abusive, they do not know who to talk with or what to do, and they are inhibited by the shame, guilt and fear that accompany abuse.<sup>14</sup> Disclosure may be delayed or not occur at all, especially if the offender is an acquaintance of the child.<sup>15</sup> Since so many children delay disclosure, if they disclose abuse at all, it is unlikely that children abused by priests reported their victimization directly to other members of the Church shortly after the abusive conduct occurred.

Of those children who did disclose abuse by priests, the John Jay survey suggests that many told their parents and guardians and some of those adults reported the allegations to the Church. In the survey, the other major reporting categories were parents and attorneys representing victims in civil litigation.<sup>16</sup> In 20% of the cases, allegations were made by victims’ attorneys and about

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8. JOHN JAY SURVEY, *supra* note 7, at 26-27.

9. JOHN JAY SURVEY, *supra* note 7, at viii.

10. JOHN JAY SURVEY, *supra* note 7, at ix .

11. JOHN JAY SURVEY, *supra* note 7, at 26-27.

12. JOHN JAY SURVEY, *supra* note 7, at 26-27.

13. David McCord, *Expert Psychological Testimony about Child Complaints in Sexual Abuse Prosecutions: A Foray into the Admissibility of Novel Psychological Evidence*, 77 J. CRIM. & CRIMINOLOGY 1, 60-61 (1986) (remarking delay in children reporting sexual abuse not unusual and most do not report); Jeffrey S. Siegel, *Timing Isn't Everything: Massachusetts' Expansion of the Excited Utterance Exception in Severe Criminal Cases*, 79 B.U. L. REV. 1241, 1268 (1999) (identifying reasons for children's failure to report abuse).

14. Siegel, *supra* note 13, at 1268.

15. KATHLEEN COULBORN FALLER, UNDERSTANDING CHILD SEXUAL MALTREATMENT 51 (1990) (discussing continuum of relationships between offender and victims and closer relationships delays disclosure).

16. JOHN JAY SURVEY, *supra* note 7, at 26-27 (reporting categories also include police officers, siblings of victims and other priests).

14% were made by a parent or guardian of the victim.<sup>17</sup> These statistics demonstrate that the Church was primarily asked to be a resource for adult survivors and adults acting on behalf of children rather than a reporting source for children. The distinction between the Church serving as a resource for adults rather than for children is an important one because adult survivors require a greater degree of autonomy in deciding whether and where to report abuse than children. For adults, the control to make this decision can be an important aspect of the process of healing from the abuse.<sup>18</sup> Societal intervention, with children, whether judicial or extrajudicial, is based on the premise that a child lacks the maturity to make decisions about the appropriate manner of intervention.<sup>19</sup>

### III. WHY DO ADULT SURVIVORS AND PARENTS TURN TO THE CHURCH?

#### A. Adult Survivors

For many survivors, the decision to report abuse to the Church was the culmination of a lifetime struggle to deal with the consequences of abuse. For years they struggled with shame, guilt, and social and emotional dysfunction.<sup>20</sup> As part of the healing process some survivors turned to the Church to seek acknowledgment of the pain that they suffered and to prevent other children from being abused.<sup>21</sup> Barbara Thorp, the Director of the Archdiocese of

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17. JOHN JAY SURVEY, *supra* note 7, at xii.

18. Nanett de Fuentes, *Hear Our Cries: Victim-Survivors of Clergy Sexual Abuse*, in BLESS ME FATHER FOR I HAVE SINNED 159 (Thomas G. Plante ed., 1999) (discussing needs of survivors). "Loving care and support in the abuse disclosure and recovery process should be provided by family, friends and Church congregation. However, they should not be pushed or rushed, but allowed to move at their own pace . . . . These decisions [about what action, if any, to take] need to be respected and supported." *Id.*

19. FALLER, *supra* note 15, at 15 (discussing that in victim centered approach). Appropriate intervention recognizes that victim's wishes should be taken into account but that young victims may not be able to judge what is in their own best interests. *Id.*

20. De Fuentes, *supra* note 18, at 141.

Psychological impact often includes self-blame, shame and guilt, damaged self esteem, lack of trust, social isolation, suppressed rage, ambivalence, impaired ability for intimacy, sexual confusion or dysfunction or distortion, clinical syndromes (e.g., depression, anxiety), post traumatic stress disorder symptoms (e.g., frozen fright, dissociation, autonomic hyper arousal). Vulnerability to revictimization, increased suicidal risk or substance abuse, and in some cases, increased risk to cross boundaries in others.

*Id.*

21. Survivors Network of Those Abused by Priests (SNAP), *Survivors Wisdom*, at [http://www.snapnetwork.org/survivors\\_wisdom/Survivors\\_wisdom\\_1.htm](http://www.snapnetwork.org/survivors_wisdom/Survivors_wisdom_1.htm) (last visited Feb. 27, 2004).

Many survivors have gone to Church officials to look for help, guidance and/or healing. Many of us went to the church leaders, after building up loads of courage and strength to face them, because we wanted to make sure that our perpetrators didn't abuse anyone else. We mistakenly thought that the church leaders would want to ensure others' safety too and that the perpetrators would be removed from ministry. So many of us did this without ever telling anyone else.

*Id.*

Boston's Office of Healing and Assistance Ministry, noted that some survivors come to the Church because "[i]t seems very important to many people that the Church, in some capacity, be prepared to listen to their stories, to acknowledge them, to apologize, and to provide them with some real help and healing."<sup>22</sup>

Closely related to the need for acknowledgment by the institution that harmed them is the desire by some survivors to have religious support and resolution of their allegations. Abuse by a priest has caused some survivors to lose their belief in God and the Church and to disconnect from their religious community.<sup>23</sup> Others, however, desired the prayers and support that only a religious institution can provide.<sup>24</sup> One survivor, who has written a service for victims, described the role religion played in his healing.

The laying on of hands, he says, not only signifies the love and support of those who care for survivors, but also represents God's direct intervention in their healing. Signing the cross, he explains, expresses the renewal of baptismal promises and reminds survivors that Christ, who died a cruel and humiliating death on the cross, identifies with their pain and suffering.<sup>25</sup>

Other survivors still had the respect and trust for Bishops that had been instilled in them by their religious training and believed that disclosure to these authority figures was the proper response to a painful problem.<sup>26</sup>

Although some survivors turned to the Church specifically for religious resolution of their allegations, some went to the Church because other forums were unavailable or undesirable. The primary secular institutions designated to respond to abuse allegations are child welfare agencies and law enforcement. A judicial forum that provides for resolution of the abuse would be civil litigation.

Child welfare intervention is a civil process designed to provide services to abused and neglected children and to protect them from future abuse. It is not a viable option for adult survivors because the child welfare system is designed to respond to child victims.

Law enforcement intervention holds the possibility of incarceration for the abuser, and civil litigation allowed survivors to obtain resources for recovery. In both criminal and civil litigation, however, a lapse in time between the abusive conduct and reporting the abuse severely complicates an effective

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22. Michael Paulson, *For Church Counselor, a 'Heartbreaking' Job*, BOSTON GLOBE, Oct. 2, 2002, at B1.

23. De Fuentes, *supra* note 18, at 141 (discussing spiritual consequences of sexual abuse by priests).

24. Jessica Trobaugh Temple, *Survivor Writes Liturgy for Healing*, SOUTH BEND TRIB. (Indiana), Jan. 20, 2003, available at SNAP, *The Survivor's Voice*, [http://www.snapnetwork.org/survivors\\_voice/liturgy\\_for\\_healing.htm](http://www.snapnetwork.org/survivors_voice/liturgy_for_healing.htm) (last visited Feb. 21, 2005).

25. *Id.* (discussing survivor's experience with service where family and friends laid hands on him and prayed to help him heal).

26. SNAP, *supra* note 21 (survivor's website discussing why survivors should not report abuse to Church). "Growing up Catholic has taught us to trust our priests and bishops implicitly. So we approach the Church leaders with full trust and disclosure. We look up to them and they are in positions of authority and power over us." *Id.*

response. The typical statute of limitations for civil tort cases ranges from one to six years<sup>27</sup> and for criminal cases, from one to ten years.<sup>28</sup> Therefore, the statute of limitations may often preclude access to civil and criminal forums because many of the allegations of abuse within the Catholic Church involved conduct that occurred years or even decades prior to the report.

Even increased statutory periods for bringing claims will not eradicate the other barriers to successful resolution of abuse cases in civil and criminal forums. The passage of time itself makes it more difficult to prove abuse cases, especially under the criminal law standard of proof beyond a reasonable doubt. Even with contemporaneous reports abuse cases are difficult to prove. There is often no physical evidence, no witnesses, and in older cases, survivors may have difficulty remembering details.<sup>29</sup> These problems are exacerbated when there is a lengthy delay between the abusive conduct and the report to authorities.

Ultimately, however, the real restriction on the use of secular institutions by adult survivors is the nature of the process itself. While survivors want acceptance and belief, judicial intervention requires that a victim publicly acknowledge that he or she has been abused<sup>30</sup> and then have his or her report of the abuse subjected to scrutiny and challenge.<sup>31</sup> Especially in criminal cases, with the defendant's liberty at stake, the process will permit the defense to force victims to reveal private and potentially embarrassing information in order to secure a conviction. Ironically, the evidence that demonstrates the post traumatic effects of abuse such as, sexual dysfunction, alcohol and drug abuse, and suicide attempts, can also be used to embarrass survivors and detract from their credibility.

### B. Reporting by Parents

Unlike adult survivors, who may be excluded from access to the judicial forums because of the statute of limitations, parents who learn about abuse from their children have more options for secular intervention. Child welfare, law enforcement, and civil litigation are all available as options to resolve

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27. Kristin E. Rodgers, Comment, *Childhood Sexual Abuse: Perceptions on Tolling the Statute of Limitations*, 8 J. CONTEMP. HEALTH L. & POL'Y 309, 309 (1992) (explaining problem applying typical statute of limitations to child sexual abuse).

28. Jessica E. Mindlin, Comment, *Child Sexual Abuse and Criminal Statutes of Limitation: A Model for Reform*, 65 WASH. L. REV. 189, 195-97 (1990) (discussing various legislative and judicial approaches to tolling statutes of limitations on child sexual abuse cases).

29. Lisa R. Askowitz & Michael H. Graham, *The Reliability of Expert Psychological Testimony in Child Sexual Abuse Prosecutions*, 15 CARDOZO L. REV. 2027, 2033 (1994) (discussing challenges in prosecuting sexual abuse cases).

30. Jay Weaver, *'John Doe' Cases Unfair to Accused, Church Says*, MIAMI HERALD, Mar. 23, 2003, at 1 (describing demands by Church that sexual abuse cases plaintiffs use their names in public court filings).

31. Michael Paulson, *Abuse Specialists Challenge Church Defense Tactics*, BOSTON GLOBE, Jan. 22, 2003, at A1 (reporting victims characterize Church's deposition of therapists as "an act of reabuse").

abuse allegations. Law enforcement and civil litigation are usually a better option for children, rather than adult, survivors because their claims are less likely to be barred by the statute of limitations. There may be other reasons, however, why parents would also prefer a Church resolution of abuse allegations rather than secular authority intervention.

Child welfare intervention is often unhelpful because the focus of such intervention is protecting the child from further harm and ensuring that there is no further inappropriate contact between the abuser and the child. Typically, child welfare is necessary when the abuse is within the family or there is the possibility of an on-going relationship between the abuser and the child. The parent can make sure there is no further contact between the abusing priest and the child. Child welfare intervention is unnecessary because the parent can make sure that there is no further contact between the abusing priest and the child.

Civil litigation is an option that a number of parents exercised but the adversarial nature of the process discourages other parents from utilizing it. Although children would not have the same privacy concerns as adult survivors, they would be more vulnerable to the necessity of repeating the details of the abuse in depositions and public forums. Perhaps the most difficult decision for parents is whether to contact law enforcement upon learning about abuse. Although a criminal conviction offers the possibility of incarcerating the abuser, it may come at the cost of the emotional well-being of the child. While a successful criminal prosecution requires the child's participation of the child, the child's interest is not the primary focus of the proceedings.<sup>32</sup> Constitutional due process requirements ensure that the defendant's procedural safeguards will take priority over the emotional needs of the child. Even though many states have made changes like allowing children to testify by videotape to make the process easier for them,<sup>33</sup> there is research that any participation in the criminal process can actually be harmful to the mental health of sexually abused children.<sup>34</sup>

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32. *Commonwealth v. Maduro*, 13 Phila. Co. Rptr. 513, 521, 1985 WL 384596 (Pa. Ct. Com. Pl. 1985) (considering constitutionality of taking child testimony of child rape victim over closed circuit television). In discussing the necessity of making criminal proceedings more comfortable for child sexual abuse victims, an appellate court related the importance of the victim and the necessity of criminal prosecution. *Id.* "Without cooperation by the victims, the criminal justice system is powerless to apprehend, convict, and punish offenders. Failure to prosecute sends an unmistakable message to such offenders and like minded potential offenders that they have little to fear." *Id.*

33. Thomas Heitkamp & Tara Lea Muhlhauser, *Children in the Courts: Rethinking and Challenging Our Traditions*, 66 N.D. L. REV. 649, 669 n.104 (1990) (listing variety of accommodations for child witnesses). The accommodations include a child-size witness chair, child comprehensible terminology, support props like stuffed animals, and allowing a child to have an advocate or guardian ad litem present while testifying. *Id.*

34. Desmond K. Runyan et al., *Impact of Legal Intervention on Sexually Abused Children*, 113 J. PEDIATRICS 647, 647 (1988) (stating "criminal proceedings may have an adverse effect on the mental health of the victim"); Meredith Felise Sopher, Note, "*The Best of All Possible Worlds*": *Balancing Victims' and Defendants' Rights in the Child Sexual Abuse Case*, 63 FORDHAM L. REV. 633, 637-40 (1994) (discussing

Similar to adult survivors, spirituality often contributes to the decision of parents to report allegations of abuse to the Church. Abusive priests often selected children from families who were devoted Catholics and would be deferential to the Church's authority. This deference included the notion that Church leaders would do the proper and moral thing to protect the children.<sup>35</sup>

#### IV. WHAT SURVIVORS AND PARENTS WANTED FROM THE CHURCH AND HOW IT FAILED THEM

The primary objection to the Church's response to abuse allegations is that Bishops and other Church leaders protected the reputation of the Church and abusive priests rather than the victims.<sup>36</sup> When Bishops failed to believe reports about abusive priests or attempted to minimize the harm that survivors had suffered, their actions directly impacted the needs of survivors and parents seeking a religious response to their allegations. The Church also misled survivors and parents about its willingness or ability to keep abusive priests away from children.

For many survivors, one of the most painful aspects of turning to the Church was that Bishops and other leaders did not believe their allegations. They were told that they had either misunderstood or misinterpreted a priest's affection as abuse and were wrong for making the report.<sup>37</sup> Although Church leaders made other decisions that placed the interests of the Catholic Church above those of survivors and children, the disregard of victims' pain was the most glaring failure of Church leaders in their role as an extrajudicial resource for survivors. The Church was in a unique spiritual and institutional position to acknowledge that the abuse suffered by survivors was not their fault and to confirm the Church's love and support for the survivors. The Church's failure to offer a compassionate response to their allegations not only created further distrust of the Church but also could have impacted survivors' willingness to turn to other institutions. If survivors were not believed by those they trusted and respected in the Church, they may have felt as though there was little hope that anyone else would believe them. The Church not only took away their hope for resolution in the Church, it took away their hope that there could be resolution

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relative advantages and disadvantages of criminal prosecution).

35. Walter V. Robinson, *A Father Laments Deference to Priest*, BOSTON GLOBE, May 2, 2002, at B1 (describing father who reported abuse to Church because of his deference to religious authority); UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, A REPORT ON THE CRISIS IN THE CATHOLIC CHURCH IN THE UNITED STATES 110 (Feb. 27, 2004), available at <http://www.usccb.org> [hereinafter USCCB, REPORT ON THE CRISIS] (noting families did not go to authorities because they trusted Church to solve problem.).

36. USCCB, REPORT ON THE CRISIS, *supra* note 35, at 9 (2004) (noting failure to adequately respond to allegations occurred because Church leaders favored accused priests' interests over victims).

37. SNAP, *supra* note 21 (advising victims of abuse by clergy not to go to Church officials for help, guidance and healing). SNAP literature points out that the Church made false promises to investigate and protect victims, delayed action so that the statute of limitations would run out, excused the abuse by priests, and even accused the victims of being the wrong. *Id.*

anywhere.<sup>38</sup>

Many survivors and parents also believed that the Church failed them because it did not remove abusive priests from the ministry and away from children.<sup>39</sup> The Church sent many of the accused priests to treatment centers and once the treatment concluded, returned them to ministerial duties.<sup>40</sup> At the time survivors and parents reported abuse to the Church, some survivors and parents agreed that treatment was an appropriate response to abusive priests.<sup>41</sup> When they agreed to treatment, however, they were unaware of the serial nature of the abusive conduct, and that after treatment the priests would be returned to an active ministry and allowed further access to children.<sup>42</sup>

Many of the shortcomings in the Church's response were caused by a cynical decision to protect priests and the institution rather than to protect children. The Church failed to recognize and disclose to survivors and parents the limitations of Church intervention. Even though parents and survivors considered treatment an option, there is every indication that they believed that after treatment abusive priests would not have access to children. Even if the Church had enforced its own rules and dealt more severely with abusing priests, it could not deny abusive priests complete access to children. Removal from the priesthood or the ministry is the most severe penalty for sexual misconduct under canon law.<sup>43</sup> Whether a priest is removed from the priesthood entirely or restricted to life of prayer and contemplation, there is still the possibility of interaction with children.<sup>44</sup> Essentially, removal from the ministry releases abusive priests into society without any controls and without

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38. SNAP, *supra* note 20.

Many survivors have gone to Church officials to look for help, guidance and/or healing. Many of us went to the Church leaders, after building up loads of courage and strength to face them, because we wanted to make sure that our perpetrators didn't abuse anyone else. We mistakenly thought that the Church leaders would want to ensure others' safety too and that the perpetrators would be removed from ministry. So many of us did this without ever telling anyone else.

*Id.*

39. Michael Rezendes, *Some Who Settled Now Feel Betrayed*, BOSTON GLOBE, Feb. 9, 2002, at A6 (describing how individuals felt betrayed after they settled sexual abuse claims against priests). The Church continued to place the priests in positions where they could work with children even when the settlement agreement specifically assured the victims that the accused priests would be isolated from children for the rest of their careers. *Id.*

40. USCCB, REPORT ON THE CRISIS, *supra* note 35, at 12 (describing Church response to allegations of abuse).

41. INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL 9 (2002) (detailing survivor's request to Cardinal Law). The survivors request included that the abusive priest receives treatment, the Church makes sure that he was never alone with child again, and that they initiate outreach program for victims. *Id.*; cf. Robinson, *supra* note 35, at B1 (discussing father's treatment requests for priest who abused his child).

42. INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 41, at 9 (describing attempts by adult survivor to get abusive priest into treatment and away from children).

43. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CANONICAL DELICTS INVOLVING SEXUAL MISCONDUCT AND DISMISSAL FROM THE CLERICAL STATE (1995) (describing penalties for sexual misconduct by priests).

44. *Id.*

being publicly identified as an abuser. Incarceration is the only penalty that ensures that for the time imposed, the abuser will have no contact with children.<sup>45</sup> The failure of the Church to disclose this information meant that survivors and parents were robbed of the ability to make informed choices about disclosure to secular institutions.<sup>46</sup> Even though disclosure to other institutions would not have been an option that would have been exercised by all survivors and parents, some would have made that choice. The Church's representations that their treatment would take care of the problem, however, took that informed choice away from survivors and parents.

## V. CHANGES TO THE CHURCH AND SECULAR LAW

In response to the sexual abuse scandal, secular laws and Church procedures for dealing with abuse allegations have undergone changes. In considering whether the Church will be able to meet the needs and expectations of parents and survivors in the future, it is important to consider whether these changes will correct the failures of the past.

### A. Secular Changes

Changes to secular institutions are not designed to improve the availability of the Church as an extrajudicial response to abuse allegations; secular changes, however, might impact whether adult survivors and parents will turn exclusively to the Church in the future. Changes to secular institutions can make those institutions more enticing, making it more likely that survivors and parents will rely on them instead of the Church. Conversely, changes can also make the Church less attractive by having it essentially serve as a reporting system to secular institutions.

Many jurisdictions have proposed extending the statute of limitations in civil and criminal cases, and including clergy as mandatory reporters of child abuse.<sup>47</sup> Extending the statute of limitations will permit additional victims to

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45. Christy E. Ford, Note, *Duty to Warn and Public Notification of the Release of Sex Offenders*, 49 S.C. L. REV. 1131, 1136 (1998). Even incarceration is a limited restraint because after serving a sentence a priest may return to a community with the terms of parole and community notification laws. *Id.*

46. Philip Elliot, *It's Hard to Keep Tabs on Abusive Priests*, EVANSVILLE COURIER & PRESS (Ind.), Mar. 21, 2003, available at <http://www.courierpress.com/ecp/news/article/0,1626,ECP-734-2746743,000.html>. (discussing three priests who left diocese but not removed from priesthood). The priesthood lacks a system to track their activities or to notify the community about allegations against them. *Id.*

47. Many jurisdictions have started to recognize that delay is the normative response to abuse and consequently have extended the statute of limitations or adopted doctrines that toll the statutory time period to allow abuse survivors a greater opportunity to use the civil and criminal systems. *E.g.*, Rudolph Bush, *End Urged for State's Abuse-Case Time Limits*, CHICAGO TRIB., Mar. 11, 2003, at 1 (discussing Illinois bills extending statute of limitations in sex abuse cases and making priests and clergy mandatory reporters of child abuse); Lesley Clark, *Bill Targets Sex Abuse of Kids; Would Let DCF Probe Churches*, MIMAI HERALD, Apr. 20, 2003, at 6 (examining proposed Florida bills lifting time caps on prosecuting sex abuse crimes and increasing penalties for failing to report); Ernst-Ulrich Franzen, *Holding Church Accountable*, MILWAUKEE J.

pursue judicial resolution of claims but it does not address the systematic reasons that survivors and parents avoid the judicial process.

Additionally, many jurisdictions have adopted laws or proposed bills to add clergy to the list of professionals required to report suspicions of child abuse.<sup>48</sup> The implications of this change differs for adult survivors and parents reporting the abuse of their children. The laws do not require professionals to report allegations from adult survivors who were abused as children because these laws are designed to identify children who are being abused, rather than adult survivors of abuse.<sup>49</sup> Thus, amending mandatory reporting laws to include clergy will not create a reporting requirement in cases of adult survivor allegations.

Adding clergy to the list of mandatory reporters, however, would require the Church to report allegations of abuse received from parents acting on behalf of their children. There is the possibility that this reporting requirement might inhibit parents from reporting abuse to the Church. Even with this limitation on confidentiality there will still be parents who desire the spiritual resources of a Church intervention, perhaps enough to overcome their aversion to the reporting requirement.

Although the current proposed changes to secular laws will provide more opportunities for some survivors to pursue claims in the judicial system and might deter some parents from reporting to the Church, they do not fundamentally alter the strengths and limitations of the secular systems. It is therefore unlikely that these changes will alter the desire and need of many survivors and parents to turn to the Church rather than secular institutions.

### *B. Changes to the Church's Response to Abuse Allegations*

In response to the sexual abuse crisis, the Church adopted two policies which establish the principles and procedures for processing sexual abuse allegation. The Charter for the Protection of Children and Young People (The Charter) sets forth the principles regarding sexual abuse allegations made to the Church and The Essential Norms for Dicesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons (The Norms)

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SENTINEL, Mar. 10, 2003, at 8A (discussing bill making clergy mandatory reporters, allowing victims to sue Church itself, and raise victim age limits on bringing criminal suit); Jay Tokasz, *Sex Abuse Victims Press Their Case for Redress*, BUFFALO NEWS, May 26, 2003, at B1 (examining New York bills extending statute of limitations for child sex abuse and make clergy mandatory reporters of child abuse).

48. Cynthia Roy, *Failure to Report Sex Abuse May Result in Prison, Fines*, BOSTON GLOBE, Mar. 13, 2003, at B8 (looking at amended Massachusetts' law making priests mandatory reporters of child abuse); Bruce Nolan, *Bill Makes Clergy Report Sex Abuse; Exceptions Added After Lawmakers, Religious Meet*, TIMES-PICAYUNE (La.), May 3, 2003, at 6 (discussing Louisiana bills that would make clergy mandatory reporters).

49. NATIONAL CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT INFORMATION, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT (2003), available at <http://nccanch.acf.hhs.gov/general/legal/statutes/manda.pdf>. Reporting statutes require a report from designated individuals when the reporter suspects that a child has been abused or neglected. *Id.*

establishes The Charter's implementing procedures.<sup>50</sup> From the victims' perspective, the most relevant changes made to Church policies by the adoption of The Charter and The Norms are reconciliation activities, removal of priests from the ministry for even a single act of abuse, and the policy of reporting allegations to civil authorities.

To ensure that each diocese has a compassionate and respectful response to reports from survivors and parents, the policies require that each diocese reach out to survivors and their families and provide support and compassion.<sup>51</sup> In response to this requirement, dioceses have appointed victim assistance coordinators and lay boards to work with survivors and their families.<sup>52</sup> Victim assistance coordinators are "to assist [survivors] in making a formal complaint of abuse to the diocese/eparchy, in arranging a personal meeting with the bishop or his representative, and for obtaining support for [their] specific needs."<sup>53</sup> Outreach and reconciliation programs have the potential to dramatically alter the manner in which the Church responds to survivors and parents and to ensure that they will receive the compassion and acknowledgment that they desire.

There are, however, two major impediments to implementation of this change: the Church's loss of credibility and the on-going litigation between the Church and survivors. By failing to respond appropriately to abuse allegations, the Church suffered a tremendous loss of credibility. Many survivors and parents no longer trust the Church and do not believe that these new policies will change the attitudes of the Bishops who are responsible for their enforcement.<sup>54</sup> Others have given up on the possibility of using the Church as a resource. For example, SNAP, one of the largest and most vocal priest abuse survivor groups, advises survivors on their web site not to go to the Church with their allegations because of the Church's poor response to survivors in the past.<sup>55</sup> In order to overcome the stigma of past failures, individual dioceses must act in a manner that is consistent with these new policies and hope that the passage of time will alter the current reputation of the Church.

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50. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, THE CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE (2002) [hereinafter USCCB, THE CHARTER], available at [http://www.usccb.org/bishops/charter\\_final.pdf](http://www.usccb.org/bishops/charter_final.pdf); UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, THE ESSENTIAL NORMS FOR DIOCESAN/EPARCHIAL POLICIES DEALING WITH ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY PRIESTS OR DEACONS (2002) [hereinafter USCCB, ESSENTIAL NORMS], available at <http://www.usccb.org/bishops/norms.htm>.

51. USCCB, THE CHARTER, *supra* note 50, art. I.

52. Paulson, *supra* note 22, at B1.

53. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, HELP AND HEALING, available at <http://www.nccbuscc.org/ocyp/helpandhealing.htm> (last visited Feb. 25, 2005).

54. David Briggs, *Abuse Victims Seek Bishops Compassion*, PLAIN DEALER RELIGION REP., Feb. 28, 2004, at A10 (discussing victims' suspicions of ability of Catholic Bishops to meet requirements of The Charter).

55. SNAP, *supra* note 21. On its website, SNAP advises survivors not to go to the Church, but instead to explore other resources. *Id.*

The on-going litigation between the Church and survivors is another impediment to a compassionate response by the Church. Many survivors find the litigation practices of the Church, such as seeking discovery of survivors' treatment records and asserting First Amendment defenses, inconsistent with the Church's avowed new policy of compassion and reconciliation.<sup>56</sup> The on-going litigation in several instances has precluded meetings between Bishops and survivors.<sup>57</sup> Until these cases are resolved there will be a barrier between the Church and those it seeks to help.

Another major change is that the new rules now require all dioceses to report allegations of abuse to secular authorities. When the allegation concerns a child, the Norms requires a diocese to "comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities"<sup>58</sup> and to cooperate with public authorities about reporting in cases when the person is no longer a minor.<sup>59</sup> The Charter also requires dioceses to "advise victims of their right to make a report to public authorities and . . . support this right."<sup>60</sup>

As discussed in the section on secular reporting laws, the requirement to report allegations of abuse when the victim is a minor might impact the willingness of parents to turn to the Church but the concern about disclosure to secular authorities might be balanced by the need to have spiritual support to cope with a difficult problem.<sup>61</sup> The requirement that dioceses cooperate with secular authorities on allegations made by adult survivors has the potential to invade the autonomous decision making of survivors. In the past, the unwillingness of the Church to turn over its personnel records and names of priests accused of sexual abuse has frustrated secular agencies.<sup>62</sup> The Church enacted this policy to facilitate a cooperative relationship between the Church and secular authorities for the purpose of secular investigation of abuse allegations. If cooperation is restricted to the sharing of information about

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56. Michael Paulson, *Abuse Specialists Challenge Church Defense Tactics*, BOSTON GLOBE, Jan. 22, 2003, at A1 (discussing survivors' complaints about Church defense tactics including deposing their therapist and asserting First Amendment defense); Ralph Ranalli, *Church Sets Hard Line on Abuse Trials*, BOSTON GLOBE, Oct. 20, 2003, at B3 (commenting on Church's refusal to consent to consolidate civil cases).

57. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, REPORT ON THE IMPLEMENTATION OF "THE CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE" 22 (2004), available at <http://www.usccb.org/ocyp/audit2003> [hereinafter USCCB, REPORT ON IMPLEMENTATION] (stating lawyers on both sides advised their clients not to meet during litigation).

58. USCCB, ESSENTIAL NORMS, *supra* note 50, ¶ 11. The Charter originally passed by the United States Conference of Catholic Bishops required dioceses to report all allegations of abuse to secular authorities. *Id.* A special commission of United States Cardinals and Vatican officials, however, changed the policy to only require reporting of allegations when such reports were required by civil law. *Id.*; Michael Rezendes & Thomas Farragher, *Mandate to Report Abuse is Altered*, BOSTON GLOBE, Nov. 4, 2002, at A1.

59. See USCCB, THE CHARTER, *supra* note 50, ¶ 11.

60. USCCB, THE CHARTER, *supra* note 50.

61. See *supra* Part IV.

62. Linda Deutsch, *Cloak of Secrecy Shrouds an Archdiocese's Files*, TIMES UNION, Nov. 16, 2003, at A6 (reporting on Los Angeles Diocese's fight to prevent release of personnel records of priests accused of abuse).

those accused of abuse, it will potentially strengthen the ability of both the secular and religious institutions to prevent abusive priests from harming children.

In some instances, however, cooperation between a diocese and secular authorities has meant reporting all cases of abuse to law enforcement.<sup>63</sup> Cooperation might therefore necessitate giving law enforcement the names of adult survivors who have chosen to make their allegations exclusively to the Church. While adults should be made aware of the relative strengths and weaknesses of reporting to the various institutions, an effective extrajudicial institution needs to respect the autonomy of adults to make decisions about whether and when to disclose their abuse to secular authorities.<sup>64</sup> A mandatory adult reporting policy will compromise this autonomy.<sup>65</sup>

Another aspect of the Church's new reporting policies is that "[i]n every instance, dioceses/eparchies will advise victims of their right to make a report to public authorities and will support this right."<sup>66</sup> Advising survivors and the parents of victims of the other options for reporting is a critical step in allowing them to make informed decisions about disclosure. Merely providing a statement that acknowledges the existence of the public institutions designated to respond to abuse, however, does little to educate survivors and parents as to the different results that can be obtained from the various institutions.

A primary objective for survivors and parents reporting allegations of abuse to the Church is to ensure that abusive priests will be prevented from harming children in the future by removing them from contact with children. The Charter and the Norms state that for even a single act of abuse, a priest should be permanently removed from the ministry and possibly removed from the clerical state.<sup>67</sup> Two issues that arise for survivors are the effectiveness of removal for the protection of children and the nature of the proceedings to remove a priest from the ministry or the clerical state.

It is not clear that the removal or dismissal of a priest results in more safety for children. Certainly, those removed will not enjoy the assumption of trust from children and parents that enabled many abusers to have unfettered access to children, but the removal process will not result in the type of public designation as an abuser, such as registration as a sex offender, that will put

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63. USCCB, REPORT ON IMPLEMENTATION, *supra* note 57, § 1.

64. *Supra* notes 18-19 and accompanying text.

65. This essay does not address whether mandatory reporting of allegations from adult survivors would be the best policy for society.

66. USCCB, THE CHARTER, *supra* note 50, art. IV.

67. USCCB, ESSENTIAL NORMS, *supra* note 50, ¶ 8.

When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.

parents on notice that these individuals are a danger to children. In the absence of restraints imposed by other institutions, those dismissed from the Church can simply move into society and find other children to abuse.<sup>68</sup>

The other aspect of removal or dismissal of priests that is relevant to the needs of survivors and parents is the process that will be employed in these proceedings. It is important to consider the process the Church will use because many sought Church intervention as an alternative to the confrontational nature of secular intervention. The Norms states that priests accused of sexual abuse have due process rights and require an investigation of allegations.<sup>69</sup> As a result of the Charter commitments, about 700 priests and deacons have been removed from the ministry since January 2002.<sup>70</sup> There is reason to believe that the large number of recent dismissals involve cases in which the priests have been found to be abusers by the criminal or civil systems because the Church had not proceeded against most priests in the past. In such cases, there is not really a question of the guilt of the accused.

The lack of a need for a factual determination in these cases masks the difficulty of establishing abusive conduct generally. Like the secular system, future cases will require the Church to confront instances in which there is a single allegation of abuse, no physical evidence of abuse, and an exemplary record of service. In such cases, an investigation and resolution of the case will require a critical analysis of the factual allegations and the person who made them. The Church is currently struggling with this problem and some priests are arguing that in the current climate, the Church has neither afforded them the requisite due process protections nor adequately investigated the claims against them.<sup>71</sup> Priests have already begun to demand that Church leaders follow the appropriate due process safeguards in investigating allegations.<sup>72</sup> As the Church more aggressively pursues dismissals, it is likely that those accused will become more aggressive in their defense and demand opportunities to challenge the allegations against them.<sup>73</sup>

The necessity of the Church resolving difficult factual issues and providing due process to those accused, means that the Church will either have to

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68. Elliot, *supra* note 46..

69. USCCB, ESSENTIAL NORMS, *supra* note 50, ¶ 6.

70. Statement, Belleville Bishop Wilton D. Gregory, President of the United States Conference of Catholic Bishops, available at <http://www.usccb.org/comm/archives/2004/04-040.htm> (last visited Feb. 21, 2005).

71. Sacha Pfeiffer & Michael Rezendes, *Man Drops Claim Against Two Priests*, BOSTON GLOBE, Aug. 21, 2002, at A1 (describing how priest accused of sexual abuse immediately secured legal representation consisting of three civil attorneys and canon law specialist).

72. Mich Paulson, *Priests' Organization Seeks Rights for Accused*, BOSTON GLOBE, Aug. 21 2002, at A1 (describing Chairman of Boston Priests Forum's thinking about priest abuse allegations). The Boston Priests Forum is an organization representing 250 of the 900 Boston priests. *Id.* The Chairman stated that "[t]here is a rush to judgment, a presumption of guilt. . ." when there is an allegation of sexual abuse by a priest. *Id.*

73. *Id.* (describing a letter sent by Boston Priests Forum to Cardinal Law demanding due process for priests before removal from their positions after allegations of abuse).

replicate certain aspects of secular intervention or not impose severe sanctions on those accused of abuse. Even though the Church has finally acknowledged the necessity of some type of cooperation with secular institutions, it has not acknowledged that every system that imposes severe consequences must challenge the allegations presented. The changes within the Church have the potential to strengthen the spiritual response to survivors and parents, however, they do not address the inherent limitations of the Church to act alone against abusers in a way that will keep children safe and preserve the privacy and autonomy of survivors.

## VI. CONCLUSION

There will always be a need for extrajudicial institutions to respond to victims of abuse. Some victims will never want to participate in a public judicial confrontation with their abuser, but they will want a place where they can be heard and believed, and they will want the abuser to be stopped. A compassionate and understanding response from Church leaders can enable them to use a religious institution to meet some of their needs. Until the Church acknowledges its limitations in protecting children from abusive priests, however, survivors and parents will continue to be disappointed by the Church's response to abuse.