

# The Fog of Scandal

## The chair of the Philadelphia review board speaks

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When a Philadelphia grand jury found "substantial evidence of abuse" committed by 37 priests in ministry, it criticized the archdiocese's review board: "In cases where the...review board has made a determination [about those cases], the results have often been even worse than no decision at all." What happened?

Eight years ago, Cardinal Anthony Bevilacqua asked me to join the Archdiocese of Philadelphia's sexual-abuse review board, which he was putting together to help him determine the credibility of allegations against priests. His invitation provided an opportunity and a challenge. If I wanted to be a part of the solution, here was my chance. And so, after much praying—and hand-wringing—I accepted.

Given the nature of the cases we'd have to review, I never imagined the work would be easy. Board members have worked hard to help the church address the crisis—and keep children safe. We thought we were making a difference. So, when a [2005 grand jury strongly criticized](#) [PDF] the archdiocese for its handling of abusive priests, the board was as surprised and dismayed as anyone. But none of us was prepared for the news that broke this past February, when a [second grand-jury report](#) [PDF] resulted in the indictment of four priests and claimed that it had found "substantial evidence" another thirty-seven, all still in active ministry, had abused. (Subsequently, twenty-seven priests have been suspended, pending further investigation.)

The February 2011 grand jury criticized the review board for not recommending the suspension of several priests. "In cases where the archdiocese's review board has made a determination," the grand-jury report states, "the results have often been even worse than no decision at all." That sweeping judgment stunned review-board members. The grand jury had never asked us to testify about how we arrived at recommendations. In fact, the board had reviewed just ten cases involving the thirty-seven priests. None of the evidence we saw concerning the ten led us to conclude they had sexually abused minors. But until the grand-jury report came out, the board was under the impression that we were reviewing every abuse allegation received by the archdiocese. Instead, we had been advised only about allegations previously determined by archdiocesan officials to

have involved the sexual abuse of a minor—a determination we had been under the impression was ours to make. The board still doesn't know who made those decisions.

Within a week of the February report's release, Cardinal Justin Rigali, now archbishop of Philadelphia, suspended three priests and announced the hiring of former prosecutor Gina Maisto Smith to review the cases of the thirty-seven priests in the grand-jury report. Meantime, the media had been reporting that the review board recommended leaving the thirty-seven with credible allegations in ministry. So the board requested a meeting with Cardinal Rigali and his auxiliary bishops to voice our concerns. When that happened, about a week after the grand-jury report came out, the bishops were apologetic about "the way the media had treated the review board," but, for fear of being misinterpreted, said they would not make any public statements defending the review board.

Even more surprising to the review board, on March 8 Cardinal Rigali issued a press release announcing the suspension of twenty-one priests. The press release seemed to imply that the board had reviewed the cases of all twenty-one priests, which it had not. So we again requested a meeting, this time with Gina Maisto Smith and Bishop Michael Fitzgerald, who oversees the Office of Child and Youth Protection. We expressed our displeasure with the implication in the press release, and informed them of our intention to speak publicly about how the review board functions. We agreed not to discuss specific cases and Bishop Fitzgerald agreed to release us from the confidentiality agreement we had signed in 2003.

This article is my attempt to answer the question being asked by Catholics in Philadelphia and across the nation: What went wrong?

Let's start with the Philadelphia review board. When we convened for the first time, Cardinal Bevilacqua explained that our charge was based on Article 2 of the [Charter for the Protection of Children and Young People](#) [PDF] and Norm 4 of the [Essential Norms for Diocesan/Eparchial Policies Dealing with Sexual Abuse of Minors by Priests or Deacons](#) [PDF]. (The Norms were approved by the Vatican as canon law for U.S. dioceses.) We were to help him assess allegations of abuse against minors with an eye to determining the suitability of a priest for ministry. Part of that task would include reviewing diocesan policies for dealing with sexual abuse and "offering advice on all aspects of the cases."

From the beginning, membership on the board has been diverse. It has included health-care providers with expertise in child abuse, a clinical psychologist who treats sexual-abuse victims, social workers with experience in child welfare, a family-law attorney, a county probations officer, a private investigator, and a pastor. Two members are survivors of child sexual abuse, one by a priest. Most board members are parents. Two are not Catholic. No one is paid. All are committed child-welfare advocates.

Three promoters of justice (canon lawyers) were appointed by the archdiocese to help us interpret the charter and the norms. After the 2005 grand-jury report, a civil attorney employed by the archdiocese also began attending meetings.

It is the archdiocese that determines which cases the board reviews. We do not examine cases in which an ongoing criminal investigation or civil litigation is involved. The board reviews allegations the district attorney has already determined cannot be prosecuted (for lack of evidence or because the statute of limitations has expired). When we are given a case, external investigators, hired by the archdiocese, interview the accuser, the accused, and anyone suggested by either party. The board does not take testimony, but we consider written testimonies, along with the investigators' transcripts and any information provided to us by the archdiocese.

The review board does not have the power to subpoena, nor does it have the authority to remove a priest from ministry. We simply examine the evidence available to us, determine whether there is enough evidence to indicate that a minor has been sexually abused, and make a recommendation to the cardinal regarding that priest's suitability for ministry. It is up to the cardinal to accept or reject our recommendations.

Determining whether a minor has been sexually abused is not an easy matter. The charter and norms are supposed to provide criteria to help diocesan review boards determine the credibility of allegations and the cleric's suitability for ministry. Yet the norms' definition of "sexual abuse" is vague. What is meant precisely by "an offense by a cleric against the Sixth Commandment of the Decalogue with a minor"? What about "grooming"—when an adult attempts to establish a relationship leading to sexual relations? In cases where review-board members argued that grooming constituted sexual abuse, one canon lawyer countered that it does not. Does the definition in the norms regarding the sexual abuse of a minor apply to inappropriate touching of a seventeen year old if it occurred in 1973? A canon lawyer argued that until 1994 the age of majority according to canon law was sixteen; therefore, canonically, a minor had not been involved. If we find evidence that a priest engaged in inappropriate behavior, such as allowing a minor to drink alcohol in his presence, but there is no evidence of actions that involve sexual abuse, should the priest be permanently removed from ministry? About a quarter of the cases we reviewed involved such situations. In several cases, we could not say that a priest's inappropriate actions violated the norms, but we still determined that the matter was serious enough to recommend his permanent removal.

The canonists' role in the review board's deliberations raises a series of questions. Often, our deliberations involved heated discussions between board members and the canon lawyers who insisted that only *canonical* statutes could be used to determine whether a minor had been sexually abused and whether to recommend removing a priest from ministry. But shouldn't review boards advise

bishops on more than whether a *canonical* crime occurred? Shouldn't they also consider civil statutes, which may differ from canonical statutes, in making recommendations to their bishops? Further, is our job to determine whether it was a canonical or civil law that had been broken, or whether an alleged act of abuse took place? Philadelphia bishops and canon lawyers insist that the review board's role is canonical. Yet other bishops and canon lawyers at the USCCB told me that canon law is not the review board's concern. Rather, they said that review boards are to determine whether an accused priest abused a minor and then to make a recommendation about his suitability for ministry.

The allegation that resulted in the February indictments of the three priests, as well as the former vicar for clergy and a lay teacher, was reported to the district attorney by the archdiocese. (The archdiocese did not inform the review board of the grand jury investigation until days before the report came out.) In response, the district attorney convened a grand jury, which in turn requested the names and files of all priests in ministry against whom the archdiocese had received an allegation of "inappropriate behavior" with minors. The archdiocese turned over a list of names and some—not all—of the relevant files. It is not clear why the archdiocese did not send all the files. Still, the grand jury concluded that thirty-seven priests with "credible allegations" of sexual abuse remained in ministry.

The review board did not see two-thirds of those cases because, according to the archdiocese, allegations against most of those priests involved only inappropriate behaviors that were not related to the sexual abuse of minors. And, citing privacy laws, the archdiocese had not provided the priests' psychological evaluations and other health records in cases the board reviewed. Board members don't know for sure whether the archdiocese gave us all relevant information, or whether the archdiocese presented the grand jury with information that was not made available to us. If so, that might explain the grand jury's criticism of the board.

If the grand jury had interviewed us we would have explained our decision-making process. But what seems clear is that the grand jury's standard for determining the credibility of allegations was different from the review board's. Apparently relying on the Pennsylvania Crimes Code and the Pennsylvania Child Protective Services Law, the grand jury considered a wide range of behaviors reportable offenses. The review board's standard, in accord with the charge given to us in 2003 and at the insistence of archdiocesan canon lawyers, was the charter's and norms' problematic definition of sexual abuse.

Another problematic area is the legal advice the archdiocese sought from its civil attorneys. Attorneys are hired to protect clients from liability. In so doing, they necessarily create an adversarial situation. When the person on the other side of the conference table is a sexual-abuse victim, an adversarial style of relationship is hardly ideal. Civil attorneys—as distinct from canon lawyers—apparently did not advise the archdiocese that receiving confidential information about accusers

from archdiocesan victims-assistance coordinators presented a conflict of interest. That's not surprising. In building a defense case, the lawyer wants to know as much as possible about the plaintiff. Yet, we should expect better from the church and from our bishops. Although concerns about liability can be legitimate, addressing the abuse scandal from a legalistic perspective focused on protecting the archdiocese from liability is simply wrong.

Cardinal Rigali and his auxiliary bishops also failed miserably at being open and transparent. Their calculated public statements fueled speculation that they had something to hide. Since the release of the February grand-jury report, their carefully scripted statements led laity and clergy alike to wonder whether the archdiocese had told the whole truth. As a result, many Philadelphians believe the archdiocese kept child molesters in ministry. Other Catholics think the cardinal simply allowed accused priests to be convicted by the media. As a result, many priests are disheartened. After all, they were not given any explanation about the thirty-seven priests mentioned by the grand jury until Cardinal Rigali and his auxiliary bishops met with them a month after the grand-jury report was released. Some priests continue to fear they could be falsely accused and hung out to dry by the bishops. Despite that, they continue to minister faithfully.

Apparently Philadelphia's bishops don't fully grasp that by failing to speak openly from the outset they will continue to pay a higher price, in terms of both credibility and cash. If only they would have followed the example of the late Cardinal Joseph Bernardin of Chicago. Confronted with an accusation against him, Cardinal Bernardin openly, humbly, and without a prepared text, answered all the questions he was asked. That's the sort of response the people of Philadelphia expect and deserve.

So why haven't they gotten it? In a word, clericalism. In his book *Clericalism: The Death of the Priesthood*, George B. Wilson, SJ, articulates "unexamined attitudes" typical of clerical cultures: "Because I belong to the clergy I am automatically credible. I don't have to earn my credibility by my performance." And: "Protecting our image is more important than confronting the situation." And: "We don't have to be accountable to the laity. We are their shepherds." Over the past few months, that's how some Philadelphia Catholics and review-board members have perceived the attitude of Philadelphia's bishops. When will bishops exemplify the teaching of *Lumen gentium* that laity and clergy are equally responsible for building God's kingdom on earth? What will it take for bishops to accept that their attitude of superiority and privilege only harms their image and the church's?

Sadly, too few people realize that a lot really *has* changed in Philadelphia since 2002. For example, the archdiocese set up a Web site that includes photos of priests with substantiated allegations of sexual abuse. The archdiocese developed the Prayer and Penance Program, a residential facility for credibly

accused priests who have accepted a supervised life of prayer and penance in lieu of laicization. Priests in the program are closely monitored, receive counseling, and have their activities restricted to prevent their access to minors. Seminary and personnel records of priests who have abused minors and left the priesthood are flagged so that anyone requesting transcripts or records will be advised that these men should not have access to minors. Those are just a few of the significant changes the archdiocese has made at the recommendation of the review board.

During the past eight years, the review board has consistently worked to improve its procedures. That has not always been easy. In the wake of the February grand-jury report, board members discussed the possibility of resigning. We decided against it because we have nothing to hide. Furthermore, the archdiocese has responded to some of our recommendations. And board members remain committed to keeping children safe. If we had resigned, we concluded, the archdiocese would no longer have to listen to us. But there are other things to tell them. The board offers the following recommendations to the Archdiocese of Philadelphia and to review boards across the country.

1. When a diocese receives an allegation concerning the inappropriate behavior or sexual abuse of a minor that has the semblance of truth, the accused should be immediately placed on administrative leave, pending determination by the review board or an investigation by civil authorities. All communication between diocesan and religious authorities and an accuser should be conducted by a qualified professional who has experience working with victims of sexual abuse.
2. Dioceses should refer *all* allegations to review boards, even if they involve inappropriate behaviors with minors that do not involve sexual abuse. What's more, review boards should have access to all information regarding an accused priest's past behavior and mental-health issues. Single incidents of "boundary violations" may not rise to the level of sexual abuse, but patterns of inappropriate behavior may indicate a risk for sexual abuse.
3. The work of a review board should not be considered a canonical process. Civil and canonical standards are needed to determine whether inappropriate or abusive acts took place and whether the cleric should remain in ministry. Review boards need clearer standards to determine what counts as sexual abuse.
4. "Safety plans" are problematic. In some cases, the Philadelphia review board recommended a plan that would allow the cleric to remain in ministry under close supervision and with no unsupervised access to minors. "Safety plans" required supervising priests to assume the role of policemen, a role several clerics told us later they didn't want. Who is qualified to be on the monitoring team and how often should they meet with the accused? How long should a safety plan remain in place? Is it even possible to monitor a priest twenty-four hours a day? If "safety

plans” are used, review boards should request quarterly reports to make sure they are being followed.

5. Even though bishops lack the authority to investigate allegations against members of religious orders in their diocese, religious superiors should report the results of any investigations and the status of the accused priest to the local bishop.

6. The charter requires dioceses to have a written policy for handling allegations. It does not address *how* allegations should be investigated. Dioceses should publish an annual report that includes: the number of allegations received; how many of them were referred to the review board; the names of clerics against whom allegations were substantiated or found credible; the standards used to review the allegations; the whereabouts of priests permanently removed from ministry; and any changes in the process for reviewing allegations.

The solution to the sexual-abuse scandal rests on being honest, acting promptly and transparently, being open to constructive criticism, and being committed to protecting minors. If Philadelphia’s bishops had authentically followed their call to live the gospel, they would have acted differently. Instead, they succumbed to a culture of clericalism. Breaking free of that culture won’t be easy. It will require a change of heart and practice. For if the bishops’ resolve to see this tragedy never happens again is not firm and sincere, all the canon laws, review boards, civil laws, and grand-jury reports in the world won’t solve this crisis. And the scandal will continue.