

The Vatican Adjusts Its Child-Sex-Abuse Policies Again:

A Reminder of How Statutes of Limitations Play a Nefarious Role

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By Marci A. Hamilton



People rightly shake their heads in disbelief at each halting step that the Holy See makes toward fixing its morally-reprehensible approach to child sex abuse by clergy. Even now, the enormity of the revelations regarding the coverup is still hard to absorb. As readers will remember, it all started with the *Boston Globe's* groundbreaking investigative reporting in 2002. Today, abusing priests in countries around the globe -- and those in the Church hierarchy who knew, but stayed silent -- have been implicated.

The crisis demands an emergency response of grand magnitude. Yet an institution of the size, scope, and political structure of the Catholic Church is inherently incapable of such movement. Each new announcement falls short of reaching the other side of this chasm of error. Sadly, the recent early reports on the Vatican's "new" amendments to the canon law governing church trials of child abusers are no different.

These amendments appear to be simply some re-packaging of internal practices, with some clarification. They offer little to reassure those inside and outside the Church who care about children that children will finally, actually be safe.

The Church States that Priests are to Follow Civil-Law Reporting Statues -- But Lobbies Hard for Priests to Be Exempt

On July 6, John L. Allen, Jr. published [an op-ed in the National Catholic Reporter](#), explaining that this latest announcement is in addition to the earlier declaration that bishops should follow the civil-law reporting statutes. As usual, though, the devil is in the details. What hardly anyone understood, when the Vatican announced that bishops should follow the civil law, is that the Catholic Conferences in each state lobby against priests and bishops having to report abuse.

That is correct. Thanks to such lobbying, there are express clergy exceptions to reporting statutes, or -- more subtly -- clergy are simply omitted from the list of categories of persons who must report abuse (despite the fact that they typically have access to such information). Where do folks think such exceptions come from? Legislators do not stand around and think, Hey, let's make sure clergy never have to report abuse. They come directly from the religious groups'lobbyists, who argue for the "right" to avoid having to report abuse.

In addition, the Catholic Conferences lobby to expand confessional privileges or church lawyers make similar arguments in pending cases, either of which permits priests to legally refuse to testify regarding their knowledge of abuse. The goal of all this jockeying is plainly to expand the privilege to the point that confessions are not the only communications covered by the privilege. Ideally, from the Church's point of view, any conversation with a priest or bishop ought to count as a "confession," and thus need not be reported to the authorities.

Who are the Catholic Conferences? They are the lobbyists for the bishops. Thus, the directive to bishops to report abuse -- if the civil law requires it -- is actually a clever, but ultimately empty move. If the Vatican were to order bishops to cease lobbying for exceptions to reporting statutes, and to cease making arguments in court cases that every conversation is a confession, then that would be real reform. No other position is adequate for child protection. Without bringing the civil authorities into the vicious cycle of abuse that is occurring in the Church, children simply cannot, and will not, be safe.

Some Bishops Sidelined Abusing Priests -- But Sidelining Shifts Abuse, Rather than Shutting It Down

In a recent, [extremely well-researched article](#) in the *New York Times*, entitled "Church Office Failed to Act on Abuse Scandal," Laurie Goodstein and David Halbfinger examined how the Vatican's policies did not routinely result in the removal of abusing priests from the priesthood. Memorably, they stated that the Holy See established "a culture of nonresponsibility, denial, legalistic foot-dragging and outright obstruction" in cases involving child sex abuse.

But there was one segment in the article, especially, that made me pause. Goodstein and Halbfinger wrote the following:

"Bishops had a variety of disciplinary tools at their disposal — including the power to remove accused priests from contact with children and to suspend them from ministry altogether — that they could use without the Vatican's direct approval.

Some used this authority to sideline abusive priests, minimizing the damage inflicted on their victims. Other bishops clearly made things worse, by shuffling

abusers from one assignment to the next, never telling parishioners or reporting priests to the police." (Emphasis added).

The problem with the italicized language is that it presumes that when the hierarchy removes an abusive priest from priestly duties, it somehow makes the world a better, safer place for children. That is inaccurate.

In fact, when members of the hierarchy removed a priest from his typical role, they may have removed the man's collar, but they did not make him any safer for children to be around. By failing to involve the criminal justice system, they kept the perpetrator's dangerous identity secret and put all children at risk. He remained a danger to children -- simply one without a collar on. So these men moved into communities, and sought other vocations and living situations that afforded them regular access to children. And even as children were put in direct danger of life-altering victimization, the hierarchy stayed completely silent.

The hierarchy may have washed its hands of these priests, but it did so without regard to the impact on children outside the Church's universe. The hideous element here is that when the hierarchy thought it was doing the right thing under church law, it still was doing wrong to society. The crucial element here is that the hierarchy has spent so much political and fiscal capital on ensuring that priests and bishops do not have to report abuse under the civil law. Given the Church's decision to leave civil authorities ignorant of the abuse it had uncovered, its movement of priests from within to outside the Church was no safer, and no more morally superior, than its movement of abusing priests within the Church. Here, the proper vantagepoint centers on the needs of children, not the machinations of the hierarchy.

The New -- and Almost Surely Useless -- System of Internal Church Trials, and the Church's Statute-of-Limitations Struggle

Similarly, the new procedures for internal church trials of abusers may be intellectually interesting, but there is little reason to believe that children will be any safer from abuse as a result of these trials. Unless the Church is telling civil authorities and surrounding communities about the abusers whom it has identified, its actions are more about window-dressing than child safety.

Still, it is interesting to note that the statute-of-limitations issue for these internal proceedings has played a pivotal role in the Church's own struggle to come to grips with the situation. As I have written in previous columns [such as this one](#) and in my book *Justice Denied: What America Must Do to Protect Its Children*, the states' brief statutes of limitations for child sex abuse bear direct responsibility for the quantity and severity of child sex abuse across our society. One of the new elements in the Vatican's policies, according to John L. Allen, Jr.'s recent op-ed in the *National Catholic Reporter*, is to waive the statute of limitations in child-sex-abuse cases.

This suggests that even the Church has come to understand that short statutes of limitations hamstringing those who are trying to reach justice in these cases. This is particularly interesting in light of American canon-law expert Nicholas Cafardi's response in *Commonweal Magazine* to the Goodstein/Halbfinger article in the *New York Times*. Cafardi asserts that there has been confusion among United States bishops regarding the governing statute of limitations in child-sex-abuse cases in the ecclesiastical court system. Most bishops, he says, believed that the Church's statute of limitations was five years long, and, therefore, the Vatican's foot-dragging in these cases was frustrating. However, Cafardi noted, the *Crimens Sollicitationes* actually eliminated the statute of limitations for church trials involving child sex abuse. Moreover, whatever the American bishops may have believed, and whatever the Vatican may have intended, [Cafardi stated](#) what is obvious to anyone who has met with even a few victims of child sex abuse:

"The problem with [a five-year] statute, of course, is that it takes children much longer than five years to come to terms with an instance of abuse and begin to tell people about it. The literature suggests that the average time for a child to figure out exactly what was done to them, how wrong it was, that it was not their fault, and that they have nothing to fear from telling people about it, is about twenty years. So a five-year statute on child sexual-abuse crimes is unrealistic to begin with."

There are now hundreds of studies establishing that child-sex-abuse victims typically cannot comprehend what has been done to them, or how it will affect them in later life, for decades. In light of the studies, Cafardi is stingy in his assessment of the actual time that is needed by most victims, but it is refreshing to see one spokesperson within the Catholic fold who is acknowledging the facts of child sex abuse and how they play into the statutes of limitations for child sex abuse.

The Suggestion that With a Long Statute of Limitations, Numerous False Claims of Abuse will Be Made, Is Entirely Incredible

Sadly, one cannot say the same for the indefensible [op-ed noted Professor Douglas Laycock published](#) in the *Detroit Free Press* recently, in which he concocted the following hypothetical involving a child-sex-abuse victim:

"Suppose a man claims that, 35 years ago, he was sexually molested as an adolescent. He may be telling the truth. He may be exaggerating. He may have forgotten the details but filled them in by trying to remember what actually happened and imagining what might have happened. He may be making the whole thing up. If there is no evidence to refute his claim, his own story is all the evidence he needs. Some old claims are certainly valid, but some are greatly exaggerated, and some are certainly fraudulent. The courts have no good way to sort them out."

Laycock is, to many, a highly-respected law professor, but he is ignoring the facts regarding how child-abuse victims actually deal with their trauma and make sense of their situation. He is also, meaning to or not, insulting the vast majority of victims, who rarely fabricate their abuse and who need tremendous courage to tell others about it.

I have written in favor of creating statute-of-limitations "windows" for child sex abuse -- that is, limited periods during which claims could be brought even if they otherwise would not have been timely. This is the first time, to my knowledge, that Laycock has opposed such windows. The facts are on my side.

To take one example, the California statute-of-limitations of window of 2003 produced 1,000 claims of abuse. Of these, only a bare handful were shown to be false, and those were quickly disposed of. There is no need to make up hypotheticals here; we have facts.

Here's how tort law really works, in practice, in these cases. The plaintiff bears the initial burden of proof. If all he can put forward is his own uncorroborated statements, then it will be extremely difficult, if not impossible, for him to carry the day. More likely, he may have told someone of the abuse, in confidence, at that time or later, and that person may be able to provide evidence on his behalf. There are also frequently signals at the time of the abuse, such as a sudden fall in grades, the onset of depression, or the abandonment of outside interests, and even the start of addictions to alcohol or drugs. The victim may also suffer from psychiatric symptoms that date from the time of the abuse, and/or that a psychiatrist can testify are sure signs of abuse.

Also likely is that once one victim comes forward, others will follow, as we learned in California and Delaware. Experts like retired FBI agent Kenneth Lanning, have established that child perpetrators typically have dozens of, and even on average 100, victims. The victims have a difficult time identifying each other, though, if the statutes of limitations have locked them out of the justice system.

Contrary to Laycock's imaginary claims, plaintiffs' statements alone do not often win the day. And if they do, it will be because the credibility of the plaintiff is so crystal-clear to the judge or jury that the judge or jury believes him or her. For a law professor to state that "[t]he courts have no good way to sort" out questions of fact is just mystifying. Courts and juries must judge the credibility of literally every witness that testifies before them; that is their job.

In the last several decades, a mountain of materials on the topic of child sex abuse has been published. Several years ago, when Seton Hall Law School held a gathering of law professors to discuss the diocesan bankruptcies, Laycock -- a speaker at the conference -- claimed that a child knows at the moment of sexual abuse that he or she is being harmed and that, therefore, the statute of

limitations for child sex abuse need not be long at all. Unfortunately for Laycock, however, the massive literature on the topic powerfully, and univocally, rebuts that claim.

Setting aside the ubiquitous statutes-of-limitations issue, the Vatican apparently will also, among other changes, create expedited procedures through which an abuser's removal can occur without a trial. Appeal reportedly will be to the Congregation for the Doctrine of the Faith in Rome, not the Church's highest court. These may be good changes in that they expedite the hierarchy's handling of abusing priests. They do not, however, necessarily contribute to the safety of children, and that is the only baseline that matters.

Marci Hamilton, a FindLaw columnist, is the Paul R. Verkuil Chair in Public Law at Benjamin N. Cardozo School of Law and author of [*Justice Denied: What America Must Do to Protect Its Children* \(Cambridge 2008\)](#). A [review of Justice Denied](#) appeared on this site on June 25, 2008. Her previous book is [*God vs. the Gavel: Religion and the Rule of Law* \(Cambridge University Press 2005\)](#), now [available in paperback](#). Her email is hamilton02@aol.com. [A related op-ed](#) addressing how Washington has handled the Catholic Church abuse crisis may also be of interest to readers.