

#### **IV. The Mandatory Reporting of Child Sexual Abuse**

There were priests in the Diocese of Rockville Centre who promoted themselves as experts in dealing with issues relating to the sexual abuse of children. They were relied on in individual cases, for the development of Diocesan policy and to interpret state law so as to allegedly guard against potential violations. To that end, some of the priests involved in these issues were canon lawyers. Some were civil lawyers admitted to practice in New York. Still others were both. Numerous documents authored by these priests were examined by the Grand Jury. These documents contributed a great deal to the Grand Jury's understanding of the Diocesan perspective on these cases.

In a 1988 memo addressing concerns that were raised when a Diocesan priest was alleged to have abused a boy on a trip outside of the country, one of the priest/experts posits his legal interpretation of the administrative, criminal and civil process that could stem from the allegations, "if we are unable to deal with the matter ourselves." (Grand Jury Exhibit 19E) The writer outlines the following scenarios, and provides an early view into the legal posture developing at this time. This posture would later become the standard by which similar allegations were measured.

"Administrative process" or intervention by Child Protective Services is a realistic possibility in this case. Investigators would interrogate all persons who were on the trip... they would most likely interview other children and families in (name omitted) school and in the parish, and would also, likely attempt to interview children and families in other parishes where (name omitted) has served. This process is, obviously, very damaging in itself.

In my opinion, no "criminal process" is likely in this case. In the first place, there is no allegation of a complicated sexual assault here. Although what (name omitted) is accused of doing is clearly a breach of our "child abuse" laws, there is no allegation that anything took place in the State of New York. In fact, all of the alleged events took place in a foreign country, and the...courts (not our courts) would have jurisdiction over any criminal matters.

Civil suits for money damages against (name omitted) personally and against the parish and the diocese are a realistic possibility, although no large money recovery is likely since the level of “damage” is relatively low.

In 1990 this same priest outlined his interpretation of the legal aspects of the sexual abuse of children as a contributing author in a publication about child sexual abuse and the Catholic Church. (Grand Jury Exhibit 131) In his article, this priest authoritatively outlines what he alleges to be both the law and the required procedures for the reporting and investigation of child sexual abuse.

He generally outlines the legal obligations of individuals to report child abuse and divides them into two categories, those laws that require certain specified persons to make reports (such as New York) and those that require any person to report child abuse. Both schemes require the reporting party to have “reason to believe” that a child has been abused. The priest goes on to outline the investigative process that would follow such a report. He writes,

In any event, once a hotline report is made under either of the two kinds of statutes, the state’s Child Protective Services or “CPS” agency must undertake an investigation. If such a report were made against me, as a priest, for example, employees of my state’s CPS would present themselves at my rectory asking for a list of the names and addresses of the parish’s altar boys (or other children with whom I might have had contact). Armed with that list, the CPS investigators would visit each family indicated and ask to interview the children to determine whether they had been molested by their parish priest.

In a footnote to this paragraph the priest alleges that the quality of these Child Protective Service investigations tends to be somewhat “spotty at best”. He argues that the individuals who conduct them are not properly trained, as they are neither, “professional social workers ... police officers or persons trained to understand the rights of accused persons.” (Grand Jury Exhibit 131,p.171) He goes on to reference a notorious child sexual abuse case in California, where investigators were criticized for asking leading questions, and implies that they are trained to do so.

In the body of his chapter the priest cautions that the investigative process itself is, “very damaging to the person accused. Whether the accusation is true or false, once the possibility of child abuse by a priest...has been raised in people’s minds, this concern will spread like wildfire, making it impossible for the accused person to continue to work effectively in that community.” (Grand Jury Exhibit 131,p.156)

The article goes on to recite the potential consequences of the Child Protective Services investigation,

If the CPS investigation determines that the report is “unfounded” then most state statutory schemes require that all records of the report and investigation be expunged from the state’s “central register” of child abuse reports and investigations. On the other hand, if the investigation concludes that the report is “founded” CPS is required to turn the matter over to the local prosecutor or district attorney. District attorneys are elected officials, and their function is to evaluate the quality of evidence gathered and to exercise “prosecutorial discretion” in making a decision to prosecute or not to prosecute an accused person. In most cases, a district attorney will use police officers to conduct further investigation. (Grand Jury Exhibit 131,p.156)

In 1999, a memorandum to three high-ranking Diocesan officials by this priest addressed the current status of New York State’s child abuse reporting laws. (Grand Jury Exhibit 234) The priest attaches a copy of New York State Social Services Law, section 413 to his memo. He indicates that the requirement to report is limited in two ways,

(1) In the **first** place only *certain, specified classes of persons* are “mandated reporters”- required to make a report “when they have reasonable cause to suspect that a child is an abused or maltreated child.”

(2) **Second**, the obligation to report is triggered *only* when the “mandated reporter” acting in his or her “professional or official capacity” learns of alleged abuse *from the allegedly abused child or from the “parent, guardian, custodian or other person legally responsible”* for the allegedly abused child.

The Grand Jury finds that either through ignorance or by design, this priests' published understanding of the reporting laws and the investigative process that followed was seriously flawed.

In fact, a thirty year veteran of New York's child protection system, explained to the grand jury the relevant, applicable statutes, administrative rules, regulations and procedures for the reporting, investigation and determination of child abuse reports in New York.

Child Protective Services is a division of the Department of Social Services and has the legal responsibility to investigate allegations of abuse and/or neglect<sup>68</sup> made against either a **parent, guardian or other person legally responsible** for a child.<sup>69</sup> The administration of Child Protective Services is governed by Article 10 of the New York State Family Court Act, various provisions of the New York State Social Services Law and by numerous state administrative rules and regulations issued by the New York State Office of Family and Children's Services.

Allegations are made through the State Central Register of Child Abuse and Maltreatment, a toll-free hotline, physically located in Albany. Thereafter, if the report is accepted, it is referred to the geographically appropriate jurisdiction for investigation and determination. The local Child Protective Service conducts an investigation and is required, within sixty days, to determine whether the report is indicated, in other words, that is there is some credible evidence to believe the abuse occurred or unfounded, there is not.

<sup>68</sup> Any sexual conduct involving a child 18 or younger constitutes "abuse" for CPS purposes. Neglect or maltreatment most often occurs as an act of omission relating to the duty of parents, guardians or other persons legally responsible to provide food, shelter, education etc.

<sup>69</sup> This phrase includes other adults who normally reside in the household, foster parents and in some situations day care providers.

The goal of a Child Protective Service investigation is two-fold. First and foremost Child Protective Services exists to protect children from harm inflicted on them by individuals who have a legal responsibility to care for them. Second, while ever mindful of their responsibility to keep children safe, Child Protective Services is required by law to restore or enable family functioning and to keep families together whenever possible. Thus, Child Protective Services has no legal responsibility to investigate cases involving children who have been abused by a legal stranger to them including a priest, teacher, physician, boy scout leader, camp counselor or other adult who is not a parent, guardian or other person legally responsible for the child.

Similarly, abuse alleged to have been committed by someone other than the parent, guardian or other person legally responsible for the child is not the proper subject of a report to the State Central Register. While, these reports are frequently made, they become the subject of what is called a law enforcement referral; because of the conduct alleged the caller is not turned away. The staff of the registry takes the information and refers it to the geographically appropriate law enforcement agency for action. There is no Child Protective Service investigation into these cases.

The description of the Child Protective Services investigation that would follow a report of child sexual abuse to the State Central Register by the Diocesan expert in his article is “thoroughly inaccurate”. First, the entire premise of the article is wrong. Child Protective Services does not investigate allegations that a priest sexually abused an altar boy or anyone else except in the unlikely scenario that the priest is also the child’s parent or guardian. Second, an investigation would typically be started by interviewing the reporter of the information to the State Central Register, then the victim and anyone else who possesses relevant information. The child protection expert explained to the Grand Jury that the scenario posited by the priest, that

CPS would obtain a list of altar boys and begin randomly interviewing them, would be an, “absolutely inappropriate use of governmental power. At least our governmental power...that is not permitted.”

In Suffolk County and in many other counties throughout New York State, child abuse cases are investigated using a multi-disciplinary approach.<sup>70</sup> This means that while the Child Protective Services investigation is ongoing, there is often a parallel police investigation. Information and decision making in these cases is shared with the understanding that the responsibilities and goals of each agency are different.

A Child Protective Service investigation terminates in one of two ways. The case is either indicated or unfounded.<sup>71</sup> Under the law, indicated means that there is some credible evidence to substantiate the allegations. Unfounded means there is not. If a case is unfounded it is sealed. If the case is indicated there are a variety of actions that the agency can initiate including filing a petition in the Family Court. Contrary to the assertions of the priest/expert/author there is not now nor has there ever been, a legal requirement that Child Protective Services turn over indicated cases to the District Attorney. While the cooperation that exists currently between Child Protective Services and law enforcement benefits the investigation, their roles and responsibilities under the law are different.<sup>72</sup>

The statutory scheme for the mandatory reporting of child abuse in New York reflects the legal role of Child Protective Services. Thus, mandatory reporters are required to make reports to

<sup>70</sup> Indeed, in Suffolk County, there are detailed written protocols that govern the relationship of the individual agencies in these cases.

<sup>71</sup> “Founded” is not a term utilized in Child Protective Services cases.

<sup>72</sup> Child Protective Services exists to protect children and unify families. Law enforcement agencies arrest and prosecute offenders who violate the Penal Law and other criminal statutes.

the state central registry if they suspect they have encountered child abuse by a parent, guardian or other person legally responsible for a child. They are not required to report cases of abuse and/or neglect where the perpetrator is a legal stranger to the child. Therefore, revising the current statute to make clergy mandatory reporters would give them the legal responsibility only to report the abuse of a child committed by a parent, guardian or other person legally responsible, not abuse committed by another member of the clergy. There is no legal requirement for a priest, doctor, social worker, psychologist, nurse or any other mandated reporter to report child abuse committed by a colleague unless that person also happens to be the parent, guardian or a person who is otherwise legally responsible for the child.