

**Report of the April 'E' 2002
Westchester County Grand Jury
Concerning Complaints of Sexual
Abuse and Misconduct against Minors
by Members of the Clergy**

I. Preface

On April 29, 2002, the Westchester County April "E" 2002 Grand Jury began to hear evidence in connection with complaints of sexual abuse and misconduct against minors by members of the clergy.

The Grand Jury met on 15 separate dates during the months of April, May and June 2002, received testimony from 21 witnesses, including 8 victims of sexual abuse or misconduct, and reviewed 31 exhibits consisting of thousands of pages of documents.

Following careful consideration of the evidence and the applicable legal instructions, the Grand Jury submits this report to the Honorable James R. Cowhey, Justice of the Supreme Court, State of New York, pursuant to CPL 190.85(1)(c), recommending legislative action based upon specified findings.

II. Legislative Recommendations

The New York State Legislature is respectfully urged to adopt the following proposed changes:

1. Amending the New York Criminal Procedure Law to eliminate the Statute of Limitations where the victim of a sex offense is a minor.
2. Amending the New York Social Service Law to require that clergy members and other employees or officials of a religious institution must immediately report to law enforcement authorities any allegation of sexual abuse and/or misconduct toward a minor, and provide felony sanctions for all mandated reporters who fail to do so.

3. Amending the New York Penal Law to provide criminal penalties for an individual or organization that allows an employee with a known record of child sexual abuse or misconduct access to minors.
4. Amending the New York Civil Practice Law and Rules to prohibit confidentiality agreements when settling claims of sexual abuse and misconduct involving minors.

III. Factual Findings

The Grand Jury urges the Legislature to adopt the measures specified above to remedy the form of child abuse testified to during this proceeding: sexual abuse and misconduct¹ against minors by members of the clergy. This particular form of abuse, the evidence demonstrated, had a unique impact on the vulnerable victims involved, because of the position of religious authority held by their abusers. The legislative changes proposed are also designed to remedy what the evidence has shown to be a systematic failure by the religious institution that these clergy members serve to respond appropriately when receiving a report of this activity.

A. *Why Victims Do Not Report These Crimes Promptly*

This Grand Jury heard testimony from many victims who, as minors, suffered sexual abuse or misconduct or both by members of the clergy. The specific types of abuse varied, including instances when the abusing clergy member masturbated the child victim to climax; engaged in oral sex; fondled the victim's penis and buttocks; forced the victim's hand onto the

¹ The Grand Jury heard evidence of other forms of misconduct by clergy including, but not limited to, improper touching and indecent, sexually laced discussions.

offender's penis; and engaged in mutual masturbation to climax by force.

The overwhelming evidence demonstrated that sexual abuse and/or misconduct by a member of the clergy had shattering psychological effects on the victim-child. Indeed, the passage of time, in some instances more than thirty years, still had not provided relief from the psychological trauma of the crime. Although testifying years after the event, some victims broke down emotionally when describing the sexual abuse and misconduct.

While the trauma suffered by each victim is unique to that person, with no two victims reacting in precisely the same way, certain similarities among victims' reactions are apparent from the evidence. Rarely, if ever, did the victim report the abuse promptly. In fact, all of the victims who testified before the Grand Jury described their inability to come forward and recount the abuse perpetrated upon them.

This Grand Jury heard testimony from a distinguished psychologist specializing in cases of child sexual abuse, recognized as an expert by the court of New York, who described how children who are sexually abused often experience memory suppression, a condition customarily associated with Post Traumatic Stress Syndrome. Twenty to thirty years may elapse before some child-victims are able to report their experiences of sexual abuse or misconduct for the first time. Others never report their victimization.

The trauma experienced by the victims heard in this proceeding was especially acute, since victims viewed the offender as both a family friend and a religious authority, indeed God's representative. In particular, every instance of abuse or misconduct was characterized by the calculated and predatory manner in which the abuser would become an integral and trusted part of the victim's family before committing the crime. The abusing clergy member gained this trust by having dinner in the family home and involving himself in every aspect of the family's life. It

was only after this trust was gained that the abusing clergy member would begin to manipulate events to arrange to be alone with the victim.

The testimony of one parent of such a victim was extremely probative of this manipulative conduct: the witness described how the clergy member, over a period of time, ingratiated himself to the family to the point that he was considered a trusted family member and allowed complete access to the child without parental supervision.

Once he had gained this trust, the abusing clergy member then involved himself as both a parental and religious authority in the victim's life; taking a parental role in providing tutoring, advice and discipline to the victim, in addition to engaging in social activities. Consistently, the victims described situations in which, prior to the abuse, the offender would act as a substitute parental authority, scolding, praising and spending time with the child-victim. Victims also described conflicted feelings, namely, happiness at gaining recognition from the abuser, as well as a fear that the new authority figure had the "power" to punish and harm them.

Constituting a powerful influence on the child was the fact that the clergy member-abuser held a position of religious authority, a person viewed by the victims and their family as next to God in their spiritual life. Thus, victims and their families stated that their abuser, as a member of the clergy, "is always right," "sits at the right hand of God," and "never does anything wrong." Such were the explanations given by victims for not promptly reporting their abuse or, in some instances, never reporting it until this proceeding. Victims feared that, if they did not keep silent about the crime, the consequences would be disbelief by family members and others, retaliation and/or punishment from God. Armed with this powerful shield, abusing clergy members knew they could rely on the child-victim's silence.

The emotional and psychological effects of child sexual abuse by the type of offender

involved in these cases are extraordinarily acute and powerful. Combining both a loved parental figure with a trusted religious authority, the offenders exerted a powerful hold on victims and their families. The power of this status rendered the child-victim helpless to resist the abuse of his offender and unable, in some cases 20 to 30 years after the crime, to divulge the crime and identity of the offender.

Additionally, the religious institution, when it became aware of the abuse, rather than seeking to alleviate the trauma to the victim, increased it. The testimony of the expert witness revealed that child victims of sexual abuse and misconduct feel isolated. Many abused children believe that they are the only ones so singled out. In this regard the evidence demonstrated that, upon receipt of a complaint, the religious institution, rather than disclose similar allegations against a particular abuser, routinely asserted to the victim that no other such claims ever had been made against the particular clergy member, even when such an assertion was untrue.

The Grand Jury heard testimony from a person who was abused by a clergy member from the ages of 11 to 13. After years of attempting to cope with his victimization, he reported this abuse to his family and the religious institution. After so reporting, this victim and his family set out to determine whether other children in the community also had been victimized by this offender. The victim not only was able to locate other victims sexually abused by the clergy member, but also to establish that some of these victims had reported their abuse to the religious institution. However, when the victim asked the religious institution whether he was the only victim of this clergy member, the religious institution lied, answering in the affirmative. Despite all of these allegations, the religious institution went so far as to tell the victim that it viewed his complaint as "your word against his."

According to the institution's own records, subpoenaed and reviewed by the Grand Jury,

the religious institution routinely questioned the veracity of the victims' claims, even in the face of substantial evidence of abuse including, in some cases, multiple allegations from different victims against a single offender. This practice was utilized by the religious institution to suppress the victims' resolve to come forward to law enforcement authorities. In addition, the religious institution most often supported the abusers' version of events and minimized the abuse claims by the child-victims. There was evidence, for example, that a victim reported that the clergy member had forced him to masturbate the clergy member to climax on four occasions, and that there was one instance of oral sex between them. When confronted with these allegations, the abusive clergy member, while admitting to one instance of masturbation, insisted that the 14-year-old victim was the aggressor. When told this, the religious institution adopted the clergy member's version of events as 'true fact' in all of its future entries into the offender's personnel records.

The emotional suffering of the victim from these acts of abuse, as well as the response of others, can each silence the victim for much of a lifetime. The abuser should not be permitted to cause this silence, and then avoid prosecution and punishment by the mere passage of time. Consequently, such crimes should remain eligible for prosecution, even if years have passed since the conduct occurred. For these reasons, this Grand Jury urges the Legislature to amend the New York Criminal Procedure Law to eliminate the Statute of Limitations where the victim of a sex offense is a minor.

B. *The Religious Institution Failed to Report Complaints of Abuse*

In none of the cases reviewed by the Grand Jury, in which the religious institution received an allegation of child sexual abuse or misconduct, was the information reported to law

enforcement authorities. As a result, the prosecution of these offenses is barred by New York's Statute of Limitations. Every victim and family member who testified stated that the religious institution never recommended that they report the abuse to law enforcement officials.

The Grand Jury has carefully examined more than ten cases in which the religious institution learned of a complaint concerning sexual abuse and misconduct against a minor by a clergy member. In the face of overwhelming evidence of sexual abuse and misconduct presented by victims, other minors and adults who witnessed the abuse, the religious institution never reported such allegations to law enforcement authorities. Further, in each and every one of these cases, the evidence demonstrated unequivocally that neither the victims nor their families ever were counseled by the religious institution to contact law enforcement authorities themselves. The Grand Jury infers that this was an orchestrated effort to protect abusing clergy members from investigation, arrest and prosecution by civil authorities. Likewise, the Grand Jury infers that this effort also protected the religious institution from adverse publicity that might have affected its economic welfare.

In many instances, the religious institution's internal investigation of the allegations was primarily geared to delay, with the hope that the victim and his family would not persist in pursuing their claim. The religious institution usually failed to communicate with the victim's family after the initial complaint. The evidence presented clearly established that victims and their families were ignored. The Grand Jury heard testimony from victims that telephone calls to high-ranking officials at the religious institution were not returned. Further evidence indicated that letters written by victims outlining specific abuse allegations were not answered. Repeatedly, the evidence portrayed extremely frustrated families attempting to get information from the organization without success; but conflicted about whether to proceed further, viewing

the organization as the ultimate arbiter on matters of morality.

Such a comprehensive strategy of self-protection by the religious institution leads the Grand Jury to conclude that permitting a religious institution to decide for itself how to handle complaints of this kind are ineffective, inappropriate and self-serving. For this reason, the Grand Jury recommends that the New York Social Service Law be amended to require that clergy members and other employees or officials of a religious institution must immediately report to law enforcement authorities any allegation of sexual abuse and/or misconduct toward a minor, and provide felony sanctions for all mandated reporters who fail to do so.

C. *The Religious Institution Failed to Supervise Clergy-Abusers*

The Grand Jury heard evidence that showed that the religious institution consistently shuttled the abuser from place to place each time an allegation came to light. The track was frequently the same: after a short stay with superficial treatment at an facility affiliated with the institution, never longer than six months, clergy-abusers were systematically transferred to administrative duties within the religious institution. Within a year, most offenders were transferred back into a local congregation, where they were again given full ministerial duties, including working with children. The evidence clearly shows that, in most cases, these clergy members were transferred by the religious institution to a new congregation without notifying anyone locally, including the other clergy at the new assignment, of the transferee's prior troubling history. The new congregation was purposefully kept in the dark by the religious institution. By virtue of this reassignment strategy, the religious institution put more children at risk.

The Grand Jury also heard testimony and viewed evidence that, after an allegation of

abuse became public by the filing of a lawsuit or otherwise, there was a concerted effort on the part of the religious institution to mislead the community: defending the abuser while simultaneously attempting to humiliate victims and their families -- even in the face of mounting credible evidence against a particular abuser. Congregants where the abuser was employed were lied to during religious services in their house of worship. Articles in newspapers sponsored by the religious institution questioned the victim and his family's motives; further, the religious institution used the media to lie about the past record of certain clergy members, thereby willfully misleading the public. In one case in particular, the religious institution sent a high level religious official to the congregation to vouch publicly for an abuser against whom multiple claims had been lodged by separate victims.

After an allegation of abuse was made public, false accusations were made by the religious institution to the community at large, such as that the victim "is only out for money," and "the allegation consists of one twenty-year-old unsubstantiated complaint." Clearly, the institution abdicated its responsibility to appropriately supervise employees who posed a danger to their own community as well as children in the public at large, and conducted a concerted campaign to marginalize and discredit victims.

Indeed, the testimony to the Grand Jury established that during the 1970's, 80's and 90's, the religious institution knew' abusing clergy members would routinely invite children to enter and remain in their living quarters. Victims, fellow clergy members, and others testified that children routinely visited the abuser and, in many instances, stayed overnight. When these actions were reported, the institution did nothing.

This Grand Jury further learned that the abusing clergy member would take children on unchaperoned trips, sometimes to private residences, miles away from both the community and

the children's parents. On most occasions, these trips required overnight lodging. During such trips, some of the sexual abuse and sexual misconduct transpired. Time and again, the Grand Jury finds, the religious institution knew that accused clergy members were orchestrating these unchaperoned trips.

The Grand Jury heard evidence that the religious institution also was alerted to the fact that victims were routinely provided with alcohol and cigarettes by clergy-abusers. There was no evidence from the testimony and records reviewed by the Grand Jury that these clergy members were reprimanded or that rules were ever adopted prohibiting such behavior.

Indeed, the only remedial action taken by the religious institution to prevent further abuse by an offending clergy member, the evidence revealed, was that the religious institution sent the abuser for medical evaluation and treatment after the sexual abuse and misconduct was reported. However, many times, the document referring the clergy member for treatment contained no mention of the original complaint of abuse. Instead, clergy members were often referred for alcoholism or depression instead of pedophilia. Moreover, no one from these treatment facilities ever contacted any of the victims to discuss the specific conduct that led to the clergy member being hospitalized and treated.

Furthermore, in at least two instances, the offending clergy member was given routine injections of a female hormone (Depo-Provera) to treat abusive tendencies, and then, as stated previously, sent back to work in the community as if cured. No supervisor was notified at the time the clergy member returned that this medication was needed, thereby making monitoring impossible. It is not responsible supervision to allow known sex offenders back into the community where they will have unfettered access to children.

Accordingly, the Grand Jury recommends that the New York Penal Law be amended to

provide criminal penalties for an individual or organization that allows an employee with a known record of child sexual abuse or misconduct access to minors.

D. Claims Were Settled on the Condition of Confidentiality

In a few instances, the victim was offered counseling shortly after an allegation was made. However, the institution's offer to pay for this counseling was conditioned on the victim and his family signing a confidentiality agreement. By so manipulating this "free" counseling service, the religious institution was able to maintain a shroud of secrecy over the clergy member's sexual misconduct, as well as silence the victim who needed counseling.

It should be noted that, according to evidence the Grand Jury reviewed, limited counseling rarely had a positive impact on the victim's long-term recovery. In fact, after a certain period of time, typically 12 to 18 months, the religious institution routinely discontinued payment for counseling, further demonstrating that the counseling was viewed by the religious institution solely as a means to keep claims of abuse and misconduct against clergy members from public view and the attention of law enforcement authorities. This discontinuance of "free" counseling placed the victim in an extremely vulnerable position; as expert testimony showed, any unplanned disruption of counseling has a devastating impact on a victim's attempt to recover.

As stated, the evidence showed that the religious institution demanded a promise of confidentiality in exchange for "free" counseling, in the settlement agreement with the victim and his family. The Grand Jury examined some of these agreements and finds them troubling for several reasons. First, all the agreements contained the following provision:

Claimant covenants and agrees never to commence, aid in any way,

prosecute or cause to be commenced or prosecuted, any action or other proceeding whether civil or criminal based upon any claims, demands, causes of action, obligations, damages, allegations, or liabilities, which are subject to this Agreement and to hold harmless or indemnify [the religious institution] from and against any and all claims including court costs and attorneys fees arising out of and in connection with any action or proceeding brought, assisted, prosecuted by claimant contrary to the provisions of this Agreement.

The express wording of this provision forever bars the victim from reporting the sexual abuse and misconduct to law enforcement officials or the general public, thereby ensuring continued secrecy of the clergy member's sexual abuse and misconduct. The provision also benefits the religious institution; by insulating from public exposure the offending clergy member's sexual misdeeds and its own failure to responsibly rectify the problem, the religious institution is saved from public embarrassment.

Confidentiality agreements can be a routine part of civil lawsuit settlements. But in this context, by prohibiting the victim from aiding law enforcement authorities in the investigation and prosecution of potential criminal activity, dangerous and injurious to the victim and others, such agreements should not be acceptable public policy in this State. Furthermore, the cases examined by the Grand Jury demonstrated that the use of these agreements was not properly controlled. By making confidentiality a condition of "free" counseling services, the religious institution used a coercive tactic to persuade the victim and his family to execute these contracts. In addition, the Grand Jury learned, the religious institution, while represented by counsel, urged victims in some cases to execute these legally binding confidentiality agreements without the advice of an attorney of their own.

For these reasons, the Grand Jury recommends that the legislature amend the New York Civil Practice Law and Rules to prohibit confidentiality agreements when settling claims of

sexual abuse and misconduct involving minors.

IV. Conclusion

The Westchester County April "E" 2002 Grand Jury believes that legislative action is urgently required to address sexual abuse and misconduct against minors by members of the clergy, and their religious institution's improper response to this activity. For this reason, the Grand Jury has recommended that New York's Statute of Limitations be eliminated for crimes of this kind; that New York's mandated reporting law be amended to require the notification of law enforcement authorities of these offenses; that the reckless supervision by employers of employees known to have harmed children result in criminal penalties; and that the practice of utilizing confidentiality agreements to silence victims be stopped. Prompt action on these proposals is warranted.