

# THE CHURCH SCANDAL: FODDER FOR STATE MEDDLING

*By William A. Donohue*

The sexual abuse scandal in the Catholic Church is being used by state lawmakers to crack the wall of separation of church and state. Unless this is resisted by the hierarchy of the Church, state meddling in the internal workings of the Church will grow.

One of the more conspicuous examples is the willingness of some state legislators to undermine the confidentiality of the confessional by revoking the traditional priest-penitent privilege. They say this must be done in order to protect children: by breaking the seal of the confessional, it is argued, priests would have to disclose information concerning the sexual abuse of minors. But this is a fatally flawed argument and it is being advanced by hypocrites.

There is no evidence to suggest that by ending the confidentiality of the confessional children will be protected. This is a red herring. To begin, let's put the issue into perspective.

A study by the *Washington Post* revealed that less than 1.5 percent of priests over the past 40 years have been accused of sexually molesting a minor. *The New York Times* did a study as well, covering the years 1950 to 2001: it put the figure at 1.8 percent. Currently, less than one percent of priests nationwide are under investigation. While one priest would be too many, it is important to remember that scholars who have studied this issue (Penn State's Philip Jenkins comes quickly to mind) have determined that the incidence of abuse by priests does not differ from that of the clergy of other religions, and may even be lower.

The overwhelming majority of those abused are postpubescent males—they are not children. Breaking the seal of the confessional could not have saved any of them; nor will it protect anyone in the future. Let's remember a few basic facts.

The seal of the confessional does not apply to the penitent. If someone confesses knowledge of abuse to a priest, there is nothing to stop him from contacting the authorities. Nor is there something that would prevent the priest from asking such a penitent to discuss this further in his office, thereby freeing the priest from his confessional vows. The priest could also withhold absolution until such time as the authorities were notified. In short, there are ways a priest can fulfill his duties without sacrificing anyone.

Another problem with attempts to break the seal of the confessional is the grave implications it has for the First Amendment. Freedom of religion, and the establishment clause which keeps church and state separate, will not mean much if the state is permitted to encroach on the Church's doctrinal prerogatives. The Sacrament of Reconciliation is not something the state can be allowed to trespass upon without doing irreparable harm to Catholicism. It would be a violation of separation of church and state of grave magnitude, having wide implications for all religions. Nothing would be sacrosanct.

Then there is also the problem of unenforceability. How could the state possibly know whether a priest has learned of sexual abuse in the confessional? The priest is certainly not going to say. In the event the penitent calls the cops after revealing such knowledge, and the priest is questioned about what he knows, he could simply refuse to discuss anything he learned in the confessional. What are they going to do, put him in handcuffs? Will the police wire the confessional? All of this is nonsense.

Hypocrisy is fueling this issue as well. There is no push

being made to end the attorney-client privilege, just the priest-penitent privilege. Yet are we to believe that lawyers learn less about the sexual abuse of minors in confidential discussions than do priests? Moreover, the public has little regard for lawyers as a group: a Harris survey in October, 2001 revealed that as a profession, attorneys have "hardly any prestige at all." They finished in a tie for last place with union leaders; doctors were first.

Another hypocritical element in this is the failure of the media to discuss why mandatory sexual abuse reporting bills are being held up in the states. It is not the fault of the bishops. It is the fault of Planned Parenthood and the ACLU.

Planned Parenthood staffers find out about cases of statutory rape on a regular basis, yet they report almost none of them. We know this to be true because a sting operation conducted by a pro-life group recently reported as much. The lobbying arm of Planned Parenthood, Family Planning Advocates, has been trying to ward off any bill that would blanket all professionals equally. What they want to do is keep the exemption for abortion providers while ending the exemption for the clergy. And their friends in the ACLU are working with them, providing legal cover.

Getting the priests is what this game is all about; it has nothing to do with protecting children. That it is being done without much of an uproar from Catholic circles is disturbing. A happy exception to this is Cardinal Theodore McCarrick, Archbishop of Washington.

When the Maryland legislature was contemplating a bill requiring priests to report cases of suspected child abuse learned in the confessional, Cardinal McCarrick rightly got his back up. He quickly denounced the bill and publicly stated that he would gladly go to jail before ever breaking the seal of the confessional. We immediately supported him, as did others. And the result? The bullies backed off and dropped the

bill.

There is another lesson to be learned here. Not only was Cardinal McCarrick's leadership indispensable to this effort, it won the admiration of those not generally in our corner. For example, an editorial in the pages of the *Washington Post* took note of McCarrick's determination. "As one of the most responsible bishops during the sex abuse scandal," the editorial said, "the archbishop of Washington should be taken seriously when he takes such a passionate stand."

What this goes to show is that our side needs to do more than dialogue. Too often dialogue is a recipe for paralysis. There are some things so fundamental—like breaking the confessional seal—that no amount of conversation is going to matter. What matters is playing hardball. That's what wins and that's what earns respect. There is no need to play dirty, but there is every reason to play to win.

Catholics need to check another abuse by lawmakers: far-ranging subpoenas of sensitive documents must end. For example, there is no doubt that some are using the scandal as a pretext to read internal Church memos, priest personnel files and the like. If there is something specific that is needed, that is one thing. But the mass collection of records is quite another. What is so obscene about this is that no other profession is being treated this way. Why not grab the files on members of the clergy from other religions as well? Why limit it to the clergy? Why not obtain the personnel files of teachers, psychologists, social workers, et al.?

Another way some states are playing fast and loose with the Catholic Church these days is by rescinding laws governing the statute of limitations as it applies to the abuse of a minor. It cannot be said too many times that this long-standing provision in law was formulated to protect the rights of the accused from those with fading memories. Moreover, witnesses may die or cannot be located. No one can really be safe from

reckless charges if decades after an alleged offense occurred, the state is going to prosecute alleged offenders.

Impaneling grand juries is another game to watch. What is the purpose of establishing a grand jury knowing that the statute of limitations has run its course? This is what was done on Long Island. Suffolk County District Attorney Thomas Spota impaneled a grand jury knowing full well he could not produce one indictment.

What Spota did was a disgrace. He spent the taxpayers' money on a fishing expedition. He never cross-examined the witnesses, nor did he allow officials from the Diocese of Rockville Centre to testify. He refused to release the names of the jurors and he deliberately leaked a copy of his report to the local newspaper, *Newsday*, before the Diocese of Rockville Centre had a chance to respond. And when I wrote to him asking him to support a bill in New York State that would cover abortion providers, as well as members of the clergy, he failed to respond.

Some of the attorneys involved in bringing the lawsuits against the dioceses are suspect players themselves. Jeffrey Anderson likes to sue the Catholic Church more than anyone in the nation. He aims high—he would like to bring down the Vatican and is not shy about using the infamous RICO law to do so. He has also made quite a living off of this: he has made an estimated \$20 million suing the Catholic Church.

None of this is to say that Church officials have always conducted themselves with honor. Some have not. But it is to say that Catholics would do well to keep their guard up during times like these. There is a lot to exploit at the moment and there is no shortage of mean-spirited persons ready to do so. The role of the Catholic League in all this is to come to the aid of the Church when it is under fire. We have been busy writing to state legislators about many of these issues. We have taken the opportunity to debate these issues on

television and radio, informing the public what is at stake. For the most part, we have been received well.

Unless we beat back overly aggressive lawmakers and trial lawyers at this time, we will pay for it down the road. The scandal should never have happened, but it did. What should not be allowed to happen next is for the Church to be hammered by those who seek to meddle in the Church's internal affairs.