

***An Abuse of Power: The Impact of the Media, the Public & the
Massachusetts Attorney General on the Catholic Church's Sex Abuse Crisis***

Jennifer Miletic
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Professor Tierney
Multistate Litigation

Massachusetts and the Roman Catholic Church appear to be two entities that are affirmatively linked in the public's mind. The creation of this link could date back to 1960 when John F. Kennedy, a native of Massachusetts, was inaugurated as this nation's first Roman Catholic President or as recent as January 6, 2002 when the *Boston Globe* published a story focusing on Reverend John Geoghan which detailed the shuffling of sexually abusive priests to parishes around the Boston Archdiocese. Regardless of whether one of these events proved to be stronger in solidifying the link between these two entities in the public's mind, the more recent of these events gained the attention of Massachusetts's "internal legal watchdog,"¹ the State Attorney General, Thomas F. Reilly. As the *Boston Globe* began to unearth the egregious acts allowed by the Roman Catholic Church and as the State Attorney General's Office became aware of these acts, it becomes necessary to note the similarity between this public office and the institution of the Roman Catholic Church. It can be seen that both of these entities have mandates to protect and serve those who are most vulnerable in our society. For the Attorney General, this mandate stems from a "common law duty to represent the public interest,"² and thus the person who inhabits this office has the "right and responsibility to promote the interests of all the citizens of the state."³ For the Roman Catholic Church, this mandate stems from "Bishops and priests being...God's interpreters and ambassadors, empowered in His name to teach mankind the divine law and the rules of conduct, and holding, as they do, His place on earth...For the power of consecrating and offering the body and blood of our Lord and of forgiving sins, which has been conferred on them, not only has nothing equal or like it on earth, but even surpasses human reason and understanding."⁴

Although it could be argued that these entities have similar mandates, it was clear that the Roman Catholic Church's actions had violated this mandate, incensed the public and brought its egregious actions to the attention of the Attorney General. In many ways, the convergence of the media, public sentiment and government reaction to sexual abuse against children brought about the investigation headed by Reilly into the sex abuse scandal. With the *Boston Globe* publishing accounts of sexual abuse within the Catholic Church, the problem had become "real" and something that could no longer be hidden or explained away by Catholics or the general public. As the "[v]ictims' stories were given both publicity and credence...they had been 'given permission' to tell their stories,...the community had been given permission to believe them,"⁵ and the government had become "less willing to permit the institutions [like the

¹ Brief of Amici Curiae William H. Pryor, Jr. et al. at 8, *Davidson v. Salazar*, (2003) (No. 03SA147).

² *Feeney v. Commonwealth*, 366 N.E.2d 1262, 1266 (Mass. 1977).

³ Brief of Amici Curiae, *supra* note 1.

⁴ Thomas P. Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 *Fordham Urb. L.J.* 549, 603 (2004).

⁵ *Id.*

Roman Catholic Church] to self-regulate and operate beyond the reach of the criminal law.”⁶ Also, of importance was the fact that “America takes sexual abuse of minors very seriously” and “Federal and state governments have coordinated efforts to prosecute child neglect, abandonment and abuse with increasing attention paid to child sexual abuse.”⁷ Specifically, intervention into the Church’s practices “occurred as a result of a complex mix of social and political factors that at once weakened its intimidating influence and impelled the government to act.”⁸ Within the Boston Archdiocese, it was clear that “children, grandchildren, and great-grandchildren of immigrants who would never dream of challenging anything a priest did now demanded not just answers from their Church leaders but accountability...Cardinal Law could rightly say that by hiding the sexual abuse of priests from public view, he was doing no more than what his predecessors did. But that no longer cut him any slack with prosecutors and politicians, whose outrage at the Church’s conduct was rising as their deference waned.”⁹

This public outrage coupled with horrendous media accounts and an “evolving body of secular law directed towards the protection of children and adults in abusive situations”¹⁰ motivated Reilly to introduce the state as a party that had to deal with the reality of sexual abuse in the Catholic Church. This paper will seek to examine how Reilly’s role as an individual attorney general investigating the Catholic Church’s veil of secrecy concerning sexual abuse, although not producing criminal indictments against the Church hierarchy, provided the necessary notice of the problem to the citizenry of Massachusetts and the entire nation. The circumstances in Massachusetts also provided the “ice-breaker” needed that impelled Attorney Generals in other states, like New Hampshire, and state prosecutors in Connecticut, to examine how the Catholic Church sex abuse scandal impacted their state. Reilly’s investigation also inaugurated changes/reforms that were made in the American Catholic Church, the Boston Archdiocese, the way practitioners and politicians will deal with the Church and the sex abuse scandal and perhaps the way American Catholics will participate in their faith. Although his investigation did not result in litigation that rose to the multistate level, his actions provided Attorney Generals with information that was relevant to their states although the foundation of his power to investigate this matter was questioned. With some questioning Reilly’s decision to investigate the Catholic Church, it is necessary to also examine if Reilly’s Catholic faith impacted the investigation as it is often hard to separate the person from the work that sculpts his life. Reilly may have personally felt betrayed as a Catholic for the “very job of a priest is to inspire trust, act as a confidant and spiritual. The violation of that trust on an individual basis can create

⁶ Wayne A. Logan, *Criminal Law Sanctuaries*, 38 Harv. C.R.-C.L. L. Rev. 321, 364 (2003).

⁷ Rev. Raymond C. O’Brien, *Clergy, Sex and the American Way*, 31 Pepp. L. Rev. 363, 368 (2004).

⁸ Logan, *supra* note 6.

⁹ *Id.* at 365.

¹⁰ O’Brien, *supra* note 7.

doubt in even the most faithful. The sense of betrayal is all the greater when the broader spiritual organization appears more willing to protect its own institutional reputation than doing what is best for its congregation's members."¹¹

Therefore, the question becomes whether Reilly feeling like a "betrayed Catholic" compromised his position as Attorney General by crossing legal boundaries that would have never been crossed in conducting this investigation and the subsequent issuance of a report if he was not a member of the Roman Catholic Church. As evidenced by the report and subsequent actions, it is clear that Reilly's faith in no way compromised his work as Massachusetts Attorney General.

Piercing the Veil of Secrecy through Frustration and with High Hopes

With the *Boston Globe's* unveiling of the way in which the Catholic Church dealt with complaints of sexual abuse by priests, Boston's Cardinal Law apologized for the egregious actions of the former priest, Geoghan, who was at the time "standing trial on charges that he sexually molested a young boy, [and] was assigned to parishes throughout the 1980s even though Law and other ranking church officials knew he had abused children in at least three parishes."¹² In light of the article, Law announced a reporting policy which "ordered priests and other church officials...to report future instances of abuse to authorities." The policy promulgated by Law required "priests and other archdiocesan employees, as well as church volunteers, to abide by the state's 'mandated reporter' law - even though members of the clergy [were] not...required by state law to do so." As the Boston Archdiocese was being confronted by the media and public about its knowledge of the sexual abuse of children occurring under its auspices, Massachusetts was one "of about 20 states that exempt[ed] clergy from laws requiring people who work with children - including doctors, teachers, day-care workers, and guidance counselors - to report alleged abuse to the Department of Social Services. DSS, in turn, refers cases to prosecutors. Since the mid-1980s, attempts to include clergy among the 'mandated reporters' have been stymied by the archdiocese's opposition."¹³

This reporting policy did not satisfy Reilly. In addition to mandating the reporting of future cases of abuse to authorities, Reilly would have also liked for Law to have mandated the reporting of past cases of sexual abuse by priests as the "retroactive reporting of sexual molestation might prompt prosecutions of some priests, given the lengthy statute of limitations for child molestation."¹⁴ Reilly stated that, "When it comes to any evidence, they [the Church] should report any priest or member of the church. Let prosecutors make decisions on whether they are actionable...Given what's happened here, the church should err on the side of complete disclosure on the issue of the abuse of children. There

¹¹ Robert A. George, *Who Watches the Watchmen?*, National Review, Mar. 7, 2002.

¹² Sacha Pfeiffer & Kevin Cullen, *AG wants church to report past sex abuse*, The Boston Globe, Jan. 17, 2002.

¹³ *Id.*

¹⁴ *Id.*

shouldn't be a free pass on anything when it comes to the sexual abuse of children.”¹⁵ Further clarifying Reilly's sentiments, the Essex District Attorney, Kevin M. Burke, stated, regarding the archdiocesan reporting deadline, that “I don't think you can put a deadline date on this, or draw a line in the sand and say that people victimized before a certain date shouldn't receive proper treatment by the system and by health care professionals.”¹⁶ In refuting the sentiments expressed by Reilly and Burke, Donna M. Morrissey, a spokeswoman for Cardinal Law, stated that “it would be ‘inappropriate’ for the church to go to authorities with evidence of past abuse by priests because it would violate assurances of confidentiality that the archdiocese had given to victims who came forward.” Morrissey referring to a 1993 sex abuse policy promulgated by the Boston Archdiocese stated that “[i]t was our intent in 1993, when we instituted the policy, to be available to all victims, including those that did not want to go to the authorities...This policy was put in place to encourage all victims to come forward,”¹⁷ which included the church's support of victims who decided to alert the authorities to the abuse. Again, it can be concluded that this explanation of the Church's current and previous sexual abuse policy did not satisfy Reilly and may have motivated him to get the state more involved in revealing what was behind the veil of secrecy that was put in place by the Church hierarchy to keep the actions of priests who sexually abused children out of the purview of the Catholic laity and general public.

Perhaps due to this duty to represent and promote the public interest which was incensed by the horrific and thorough actions taken by the Church in covering up sexual abuse by priests, Reilly in March of 2002 told the *Boston Globe* that his office had an “ambitious plan to have a say in the way the archdiocese hires its employees, and the way those employees interact with children...given the size, scope, and history of the problem within the metropolitan area's Catholic Church.”¹⁸ Although an independent commission was formed by the Cardinal in order to overhaul the way the Archdiocese handled the sexual abuse of children by clergy and church workers, Reilly saw the role of his office as “separate and independent and distinct” from the commission. In particular, Reilly stated that although the commission and the office had the same objectives “in the end we're going to be looking for a comprehensive program focused on the protection of children, and we're going to want it implemented.” Therefore, Reilly characterized the role of his office as that of “enforcing the stated aims of the commission - in effect, to ensure the commission leads to real reform instead of toothless recommendations.”¹⁹ Yet, as soon as Reilly articulated a strong stance from his office in order to deal with past and present occurrences of sexual abuse in the Catholic Church he faced critics who were questioning the basis of his

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Kevin Cullen, *AG's office asks to monitor priests*, The Boston Globe, Mar. 8, 2002.

¹⁹ *Id.*

power and whether or not he had taken an appropriate stance in the matter as the state's chief law enforcement officer. For instance, a few constitutional law experts "suggested Reilly's attempt to have such a significant role in the archdiocese's affairs would violate the separation of church and state."²⁰ Those who supported Reilly taking a firm stance from his office suggested, like Wendy Murphy, a lawyer representing victims of sexual abuse, that the "attorney general could cite the state's civil rights statute in seeking a role in the way the church recruits, trains, and monitors its employees." Murphy stated that Massachusetts had "one of the broadest civil rights statutes in the country. It gives enormous power to the state... You could argue that he has the authority to intervene on behalf of certain classes of vulnerable people, such as children." Yet, even Murphy conceded that she thought that Reilly was "pushing the envelope here."²¹ Although it appeared that Reilly was on shaky legal grounds his actions were described by John Garvey, the dean of Boston College Law School as "politically astute." According to Garvey, Reilly "[f]rom the public's point of view...is doing what attorney generals do...He sees a problem the public is interested in and he's going at it with both feet...Maybe for an attorney general, not knowing when to stop is a good quality. But I think he has to stop somewhere short of this."²² Echoing Garvey's sentiments Murphy also noted that "I'm the first one to jump on the bandwagon of a creative AG, and this is creative...It's a heavy hammer to swing when the government gets involved in something like this, particularly in the area of religious freedoms. But I think it's a moral question, not a legal one. Are we comfortable with the AG doing this? It takes a lot of chutzpah."²³

Although Reilly may have questioned his legal grounds on making this type of statement, he knew that he had confronted shaky legal grounds before and had prevailed. Asking the then Cardinal to have oversight into church affairs could not have appeared that foreign to Reilly who had convinced "former Red Sox CEO John Harrington to give him veto power over who would be appointed to the Yawkey Foundation, the charitable group that suddenly became one of the best endowed in New England when the Red Sox sold for \$700 million. [Although] Harrington's lawyers initially rejected the request as outrageous...in the end [they] agreed to give Reilly an advisory role in the appointment of board members."²⁴ In securing this "outrageous" request, legal experts had concluded that "the degree to which Reilly's office could influence church policies likely depend[ed] on the extent of cooperation the archdiocese grant[ed] him." What was clear was that there was no precedent for "an attorney general having such involvement with a religious institution."²⁵

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Regardless of his legal grounds, Reilly was quick to assure the public “that his office's role would [not] amount to a violation of the constitutionally guaranteed separation of church and state. Reilly stated that “We have the authority.” But, when Reilly was “pressed to explain the legal authority he was citing, Reilly declined to elaborate.”²⁶ Instead, Reilly held firmly on matters that should change in light of the sexual abuse scandal like the fact that the Legislature should quickly pass a bill that would “require clergy to report suspected child abuse.” Such legislation was definitely needed for it was only when Reilly and other district attorneys of various counties threatened to convene a grand jury did the “archdiocese agree to turn over the names of victims to prosecutors.”²⁷

His statements regarding the necessary legislation and potential prosecutions did not encompass what Reilly wanted to accomplish in regards to reforming the Catholic Church in the wake of this crisis. He stated that

We're on two tracks here...Track one is to get information about past allegations in the hands of prosecutors so they evaluate, analyze, and see whether there's any cases that will come out of it...The second track, which is every bit as important, we're looking at as an area of our responsibility. It involves the protection of children. What policies, what procedures, what programs are going to be in place within the archdiocese that will prevent this from ever happening again. If it happens again, obviously the legislation will involve reporting and these cases will be prosecuted or at least evaluated for prosecution. But how do you build in a comprehensive program that prevents this from ever happening again? That's what we're looking for. We intend to stay very involved in that until it's accomplished.²⁸

When the attorney general was asked “if the role he was seeking was beyond the jurisdiction of the attorney general,” Reilly replied, “We're very respectful of the fact that this is a religious institution that we're dealing with. We're also mindful of our responsibilities to protect children, to ensure that there are programs and a comprehensive set of programs in place that make children safe.”²⁹ It appeared that Reilly was not at all daunted by the task that he was bringing to the attorney general's office as he stated that “We'd be looking at education. We'd be looking at training. We'd be looking at monitoring. We'd be looking at supervision... ‘We would look at ways to ensure that what has been put in place’ by the blue-ribbon commission ‘is working. We'd be looking at selection and recruitment.’”³⁰ Therefore, in other words, Reilly proposed that the attorney general's office would directly supervise the configuration of the churches in the Boston Archdiocese, a job that the church had apparently failed at and a job that could be unimaginable for a state office to assume. Perhaps such statements are made by an attorney general in order to make an accused entity feel as if its time is up and reform and change will necessarily have to be made through its own prerogative as the state's “internal watchdog” has ascertained a harm to the citizenry, his one and only client, and is unwilling to let it continue.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

When a 22-page draft was released for comment by Cardinal Law's commission for the Protection of Children, Reilly declared that it was deficient in major ways.³¹ A letter written by Assistant Attorney General Alice E. Moore, the chief of the public protection bureau, revealed that the office believed that the draft lacked "'meaningful oversight' of priests removed from ministry for abuse, 'clearly articulated procedures' to investigate allegations, and meaningful sanctions against those who don't follow the policy."³² In addition, Reilly felt that the archdiocese was "failing to implement measures that...could be easily and quickly taken to ferret out abuse and make it less likely that children would be abused by priests or other church workers. Reilly said the draft needs language that obligates the archdiocese to follow the policy and that the Vatican must not be allowed to veto it." On the work of the commission, Reilly stated that he was "sure that the final product will be a good piece of work. Our concerns are with the archdiocese. Their words are good, but the actions have not matched the words. They are dragging their feet on implementation...We have concerns about implementation. What is the role of the Vatican? If the Vatican doesn't like it, does it still get implemented? Is this policy going to be statewide or just for Boston? It must be statewide. We have to nail this stuff down. So far, the archdiocese has not impressed us with their commitment to implementation. They take half-steps, so you have to question their commitment."³³ For example, Moore's letter detailed that the office had hoped that the Archdiocese would have begun to provide "immediate education to children on what constitutes sex abuse and how to respond and report it" provide parents with 'basic information on how to detect signs of sexual abuse, or what to do if a child wants to report an uncomfortable or abusive experience with a priest.'³⁴ The attorney general's office had also recommended "an immediate mass mailing of information and that the archdiocese update its Web site to include links to information on sexual abuse and a victim's advocacy center" but this information was not available on the Web site when "accessed by the office." Although Moore recommended a transition team with the necessary authority, expertise and financing resources, to help institute these measures it was clear that the letter conveyed the frustration of the attorney general's office for as Moore wrote, "We continue to be frustrated by the Archdiocese's slow pace of progress toward implementing the essential components of a comprehensive program."³⁵

This frustration was only compounded when the Vatican delayed approval "of the [U.S.] bishops' proposals [to address the sexual abuse crisis] adopted at a June [2002] meeting in Dallas because 'some aspects are difficult to reconcile with the universal law of the Church [or canon law, the body of internal laws governing the Catholic

³¹ Kevin Cullen, *AG raps archdiocese abuse plan*, The Boston Globe, July 16, 2002.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

Church].”³⁶ Victim support groups such as “Voice of the Faithful...formed in the wake of the sexual abuse scandal,” stated that it “is deeply troubling that the Vatican has concluded that the judgment of those closest to the problem and to the 64 million members of the U.S. Catholic community is so severely flawed.” Perhaps motivated by the sentiments of these victim groups, Reilly stated that “Canon law is irrelevant when it comes to crimes committed against children...By now everyone should recognize that - the Vatican as well as every bishop in this country.”³⁷ Somehow concluding that the Boston Archdiocese, through the media’s unveiling of the sex abuse scandal, no longer had to adhere to the mandates promulgated by the Vatican as well as the fact that six decades of practices which were successful in covering up sexual abuse would suddenly be eradicated in a matter of months, Reilly stated that Cardinal Law should directly implement the commission’s child protection recommendations. This action would allow “‘Cardinal Law [to] send a very clear message that notwithstanding the Vatican’s failing, change is necessary and that change will begin here with the implementation’ of the commission’s recommendations...’The time for action is now.”³⁸

The Legislature Heeds Reilly’s Call for Action

Clearly for Reilly, the Church was not moving with the immediacy and urgency that was needed in wake of the unmasking of the sex abuse scandal. Yet, his call of action was heard by the Massachusetts Legislature. In amending the statute which lists the persons required to report cases of injured, abused or neglected children in wake of this scandal, the Legislature added the following persons: “priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis.”³⁹ Now these individuals were required to report suspected abuse when they had “reasonable cause to believe that a child under the age of eighteen years is suffering physical or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk of harms to the child’s health or welfare, including sexual abuse...”⁴⁰ Interestingly as the media noted, it “took public fury at the sex abuse scandal in the Archdiocese of Boston...to force the Legislature to do what prosecutors and social workers have been advocating for years: Add clergy to the list of those required to report suspected child abuse.”⁴¹ The report issued by the Attorney General’s office notes that in “January and February 2002, as the magnitude of the clergy sexual abuse in the Archdiocese was becoming known, a working group comprised of Assistant Attorneys General and Assistant District

³⁶ Michael Rezendes, *AG says state law takes precedence*, The Boston Globe, Oct. 19, 2002.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Mass. Gen. Laws Ann. ch. 119, § 51A (2004).

⁴⁰ *Id.*

⁴¹ Eileen MacNamara, *A Higher Authority*, The Boston Globe, Nov. 13, 2002.

Attorneys worked closely with the Legislature to amend the mandatory reporting law to include clergy and other church workers.”⁴² Although the Legislature succeed in adding clergy to the mandatory reporting statute, Moore noted, in the letter she wrote in response to the commission’s draft policy, that the “archdiocese [had] failed to train priests on how to recognize signs of sexual abuse or about the mandatory reporting law that was amended in May to include priests among those required to report suspected child abuse,”⁴³ suggesting that once again Reilly’s words fell on the deaf ears of the Church’s hierarchy.

In addition to amending the mandatory reporting statute, the Legislature passed a statute effective in December 2002. This statute “created for the first time in Massachusetts the crime of recklessly endangering children.”⁴⁴ The statute punishes one who “wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act.”⁴⁵ Comments following the statute state that it was enacted due to a “significant public interest and urgent necessity to protect children from physical and sexual abuse by penalizing reckless behavior.”⁴⁶

What is undoubtedly clear from Reilly’s words and actions was his dedication to reform the perverse practices of the Catholic Church that led to the victimization of vulnerable children. The attorney general was not going to let the known harmful consequences of the Church’s practices go unpunished and forgotten. There is no doubt that there is always a need to try to bring change where there has been harm especially towards those who are the most vulnerable. This sentiment was reflected by Reilly and it was certain that he was going to change the way the Catholic Church had operated under this veil of secrecy.

A Report Disclosing What Was Found Under the Veil

With the tumultuous year of 2002 drawing to a close, the group composed of Catholic lay people known as “Voice of the Faithful” organized a demonstration in front of the Holy Cross Cathedral, the seat of the Boston Archdiocese, in “response to revelations...of even more sexual misconduct by priests of the Boston Archdiocese, and of Cardinal Bernard Law’s knowledge of the acts.” Leaders of other Boston-based activist groups were to also hold a press conference in front of the cathedral to demand that Reilly and all district attorneys in the state ‘criminally prosecute the bishops and priests....[and] that all deference to the Roman Catholic Church by judges, law enforcement, publicly

⁴² Office of the Attorney General, Commonwealth of Massachusetts, *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston*, Report, July 23, 2003, 23, available at <http://www.ago.state.ma.us/sp.cfm?pageid=1673>.

⁴³ Cullen, *supra* note 31.

⁴⁴ Office of the Attorney General, Commonwealth of Massachusetts, *supra* note 42.

⁴⁵ Mass. Gen. Laws Ann. ch. 265 § 13L (2004).

⁴⁶ *Id.*

elected officials...be extinguished completely.”⁴⁷ Clearly, Reilly’s statements and actions suggested that he was more than willing to meet the demands of the protestors if state law allowed it. In fact, “during the early summer of 2002 because of the slow pace at which the Archdiocese was producing records; the Archdiocese’s refusal to voluntarily produce certain categories of important documents, including medical and psychological records of priests evaluated or treated for pedophilia and ephebophilia, correspondence with the Vatican and Papal Nuncio, and related matters; and the fact that important witnesses either had refused to submit to voluntary interviews or had placed unacceptable restrictions and conditions on voluntary interviews,”⁴⁸ the Attorney General’s Criminal Bureau began a grand jury investigation into the veil of secrecy that the Catholic Church had erected in response to known incidents of sexual abuse by priests and clergy workers. A similar response to ascertain the causes and consequences of the practices the Church engaged in to protect priests and victimize children was not elicited by Cardinal Law. Instead in December of 2002, the Cardinal traveled to Rome to meet with the Pope to discuss his resignation. In resigning from his post during this time, Law apologized for the actions that occurred under his direction of the Boston Archdiocese and begged forgiveness from ‘all who have suffered from [his] shortcomings and mistakes.’⁴⁹

The shortcomings and mistakes of Cardinal Law’s reign over the Boston Archdiocese became fully known to the public with the publication of Reilly’s investigation of the sexual abuse of children in the Boston Archdiocese on July 23, 2003. Enlisting the expertise of eleven Assistant Attorneys General, ten State Police Officers, a civilian criminal investigator, five civil investigators, two paralegals and a support staff, this team “reviewed more than 30,000 pages of documents obtained from the Archdiocese, and conducted numerous interviews of present and former Archdiocese priests and senior managers, various experts and academics, and victims of sexual abuse by priests.”⁵⁰ The investigation centered on nineteen years (1984-2002) the period of time during which Cardinal Law was the Archbishop of the Boston Archdiocese. The office attributed this focus to the following: “[t]he applicable statute of limitations would likely bar prosecution of criminal conduct that occurred prior to 1984; The two Archbishops who preceded Cardinal Law...are deceased, and the senior Archdiocese managers who served in their administrations have moved to other dioceses, retired or died; [e]xpanding the scope of the investigation to earlier years would have substantially lengthened the investigation; and [t]he actions under Cardinal Law’s administration were most relevant to the consideration of necessary policies and

⁴⁷ Kathleen A. Shaw, *Catholics from area to protest in Boston*, Telegram & Gazette (Massachusetts), Dec. 7, 2002.

⁴⁸ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42, at 1-3.

⁴⁹ “Second Crisis in the Church The Cardinal Resigns; A Tumultuous 2002 in the Boston Archdiocese,” The Boston Globe, Dec. 13, 2002.

⁵⁰ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42, at 1-1.

procedures to prevent future abuse.”⁵¹ Having chosen the relevant time period for the investigation, the office of Attorney General set out to accomplish three objectives through its investigation. These three objectives were: “to determine whether sexual abuse of children within the Archdiocese was recent or ongoing; to determine whether the Archdiocese or its senior managers had committed crimes under applicable state law; and to use all available means to ensure that children within the Archdiocese would be safe in the future.”⁵²

Conducting a 16 month investigation into the sexual abuse of children in the Boston Archdiocese, the Attorney General’s office succeeded in revealing “a dark side to the Church’s relationship with its children”⁵³ which resulted in an institutional acceptance of the sexual abuse of children evidenced by the Archdiocese’s own records which revealed that “[t]wo hundred and fifty priests and other Archdiocese workers are alleged to have sexually abused at least 789 children since 1940.”⁵⁴ This number reflects the victims who brought the abuse to the attention of the Archdiocese and unfortunately the actual number of victims is probably higher and could exceed one thousand. In Reilly’s opening letter to the report addressed to the People of Massachusetts, he states that his office “undertook to address the massive and prolonged mistreatment of children by priests...with [a] single motivation—to protect children.” The investigation showed that this “widespread assault on children has occurred for at least six decades under the administrations of three successive Archbishops...The facts learned...describe one of the greatest tragedies to befall children in [the] Commonwealth. Perhaps most tragic of all, much of the harm could have been prevented.”⁵⁵ Thus, the Archbishop, the Archdiocese’s chief executive, “Cardinal Bernard Law bears ultimate responsibility for the tragic treatment of children that occurred during his tenure. But by no means does he bear sole responsibility. With rare exception, none of his senior managers advised him to take any of the steps that might have ended the systemic abuse of children.”⁵⁶ Therefore, Reilly wrote that it was “essential to create an official public record of what occurred. The mistreatment of children was so massive and so prolonged that it borders on the unbelievable. This report will confirm to all who may read it, now and in the future, that this tragedy was real...[T]he Archdiocese chose to protect the image and reputation of their institution rather than the safety and well-being of children. They acted with a misguided devotion to secrecy and a mistaken belief that they were accountable only to themselves. They must be held to account, if not in a court of law, then before the

⁵¹ *Id.* at 1-3.

⁵² Letter from Thomas F. Reilly, Attorney General Commonwealth of Massachusetts, to the People of the Commonwealth of Massachusetts (July 23, 2003).

⁵³ *Id.*

⁵⁴ Office of the Attorney General, Commonwealth of Massachusetts, *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston*, Executive Summary and Scope of Investigation, July 23, 2003, 1.

⁵⁵ Letter from Thomas F. Reilly, Attorney General Commonwealth of Massachusetts, *supra* note 52.

⁵⁶ Office of the Attorney General, Commonwealth of Massachusetts, *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston*, Executive Summary and Scope of Investigation, July 23, 2003, 1.

ultimate arbiter in our democracy: you, the people...Until the Archdiocese clearly demonstrates an understanding of what occurred and how to provide a safe environment for its children, there must be a period of vigilance by the public and its officials and by members of the Archdiocese, including priests and the laity.”⁵⁷

The investigation by the office of Attorney General enumerated three major findings:

Finding No.1: The Investigation Did Not Produce Evidence of Recent or Ongoing Sexual Abuse of Children in the Archdiocese of Boston, But It Is Too Soon to Conclude that the Archdiocese Has Undertaken the Changes Necessary to Ensure that Abuse Has Stopped and Will Not Occur in the Future.

Finding No. 2: The Investigation Did Not Produce Evidence Sufficient to Charge the Archdiocese or its Senior Managers With Crimes Under Applicable State Law.

Finding No. 3: The Investigation Did Produce Evidence that Widespread Sexual Abuse of Children Was Due to an Institutional Acceptance of Abuse and a Massive and Pervasive Failure of Leadership.⁵⁸

Examining the internal structure of the Boston Archdiocese and how it handled claims of sexual abuse against priests, it was observed that it was not until 1993 that the Archdiocese created written policies on handling complaints of the clergy’s sexual abuse of children. Before and after the written policy was put into effect, the Archdiocese’s practice of handling complaints of sexual abuse was made through the use of “informal channels” where these complaints were communicated to “a very small number of senior Archdiocese managers at the Chancery and ultimately to the Cardinal.” These complaints were usually made orally, although sometimes in writing, with vague language that omitted pertinent details concerning the alleged abuse. The 1993 policy’s main features included the creation of the position of Delegate of the Archbishop, “who was responsible for coordinating sexual misconduct matters, and outlined a method to handle clergy sexual misconduct allegations”; a Review Board, composed of members of the clergy, medical and psychological professions, the judiciary and the public, which “was accountable for making recommendations to the Archbishop on the disposition of cases of clergy sexual abuse of children including actions...to be taken against abusive priests”; and a “pastoral’ response to sexual misconduct allegations that included assessing the veracity of the complaint, providing spiritual and psychological counseling to the victim and his/her family, respecting the ‘civil’ and ‘canonical rights of the accused priest while seeking to assist him,’ providing outreach to parishes or communities affected by clergy sexual abuse of children, and mandating that restrictions be placed on abusive priests ‘to prevent the repetition of sexual misconduct by clerics.’” Although the 1993 policies appeared promising on paper, there was no effort by the Archdiocese to uphold or enforce these policies as “neither the Cardinal nor his senior managers participated in comprehensive periodic evaluations of the policy, and there were no amendments made to the policy between 1993 and

⁵⁷ Letter from Thomas F. Reilly, Attorney General Commonwealth of Massachusetts, *supra* note 52, at 2-3.

⁵⁸ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42.

2002.”⁵⁹ Therefore, the systemic failure of the Archdiocese to adequately address and deal with the egregious ongoing sexual abuse of children by those under its auspices resulted in the attorney general investigating the circumstances so that the public could better understand how an institution dedicated to helping those in need would choose to protect itself rather than those who were in pain and would take further actions resulting in additional children being harmed.

A Closer Examination of the Attorney General’s Findings

Finding No. 1: The Investigation Did Not Produce Evidence of Recent or Ongoing Sexual Abuse of Children in the Archdiocese of Boston, But It Is Too Soon to Conclude that the Archdiocese Has Undertaken the Changes Necessary to Ensure that Abuse Has Stopped and Will Not Occur in the Future.

The report states that the investigation “did not produce evidence of recent or ongoing sexual abuse of children by priests or other Archdiocese workers. Significantly, the investigation also did not produce evidence that would readily explain the lack of recent complaints.” Due to the fact that the abuse of children within the church spanned well over six decades as well as the Archdiocese’s inadequate response in trying to change its practices following the media and public’s backlash at the massive cover-up, the office concluded that “it is far too soon to conclude that the abuse has, in fact, stopped or could not reoccur in the future.”⁶⁰ In particular, the office stated that the Archdiocese’s May 30, 2003 new sexual abuse policy, *Policies and Procedures for the Protection of Children*, was a “disappointment” as the policy issued more than sixteen months after the media exposed the scandal showed that the “Archdiocese needlessly delayed in adopting new policies and procedures” and the policy, according to the attorney general’s office remained deficient in the following ways: the investigation and discipline process apparently still favored the protection of deviant priests instead of victims; independent review boards were not completely independent as the Archdiocese controlled the selection of the members who must be “in full communion” with the church; the supervision of abusive priests; the lack of penalization for bishops, other clergy, employees and volunteers for committing sexual abuse or permitting it to occur through inaction; and a decentralized implementation body.⁶¹

Finding No. 2: The Investigation Did Not Produce Evidence Sufficient to Charge the Archdiocese or its Senior Managers With Crimes Under Applicable State Law.

The investigation into the culpability of the Archdiocese and/or senior managers revolved around certain state statutory and common law crimes that could be applied to their conduct such as: Accessory after the Fact to a Felony, Accessory Before the Fact to a Felony, Conspiracy, and Obstruction of Justice (common law).⁶² Yet, the evidence gathered by the investigative team did not provide a basis for bringing criminal charges against the Archdiocese or its

⁵⁹ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42, at 5-8.

⁶⁰ *Id.* at 15.

⁶¹ *Id.* at 17-20.

⁶² *Id.* at 21.

senior managers. Specifically, the investigation “did not produce evidence that senior Archdiocese managers encouraged priests to abuse children, intended that priests would abuse children, intended to obstruct justice by helping abusive priests avoid arrest or punishment, interfered with the testimony or role of a witness in a judicial proceeding, or entered into unlawful agreements. Nor is there evidence that the Archdiocese benefited by priests sexually abusing children.”⁶³ In addition, the report points to the Legislature’s new laws, the inclusion of priests under the mandatory reporting law and the crime of recklessly endangering children. The report states that the “abuse of hundreds of children might have been prevented if the Archdiocese had adopted and followed a policy over the years of promptly disclosing allegations of child sexual abuse to public authorities.” The addition of these parties to the law “significantly reduces the chance that widespread sexual abuse by clergy ever will go unreported again and recognizes that allegations of sexual abuse of children by those entrusted with the care of children are not appropriately dealt with in a non-law enforcement, informal manner.”⁶⁴ Although the report praises the inclusion of these parties in the law, the Attorney General remained displeased with the then and current penalty of “not more than one thousand dollars” for those who fail to report the abuse. As the Attorney General characterized this penalty as “too small to effectively deter non-compliance,” he and others “introduced legislation to increase the penalty to \$25,000 or imprisonment for not more than 2 ½ years, or both.”⁶⁵ According to Reilly, this type of legislation would “put[] some teeth into the current law and force those with knowledge of crimes against children to come forward...Current law does not make it difficult for mandated reporters to meet their legal obligations...[T]he sad truth is that much of the abuse still goes unreported.”⁶⁶ The newly established crime of recklessly endangering children was noted by the report as the Legislature taking “another important step to protect children.” Although the Legislature had answered the need to protect children more fully under the laws of the state, the office concluded that “[n]one of these statutes may be applied retroactively to address the past conduct of Archdiocese officials. If these laws had been in place earlier, however, the Attorney General and District Attorneys would have had much more effective tools at their disposal as they sought to hold accountable those responsible for placing children at risk of sexual abuse.”⁶⁷

Finding No. 3: The Investigation Did Produce Evidence that Widespread Sexual Abuse of Children Was Due to an Institutional Acceptance of Abuse and a Massive and Pervasive Failure of Leadership.

⁶³ *Id.* at 22.

⁶⁴ *Id.* at 23.

⁶⁵ *Id.*

⁶⁶ Cynthia Roy, *Failure to Report Sex Abuse May Result in Prison, Fines*, The Boston Globe, Mar. 13, 2003.

⁶⁷ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42, at 24.

This general finding was based on a number of specific findings concerning the Archdiocese's practices in regards to allegations of sexual abuse by priests. First, the report concluded that "Top Archdiocese Officials Knew the Extent of the Clergy Sexual Abuse Problem for Many Years Before it Became Known to the Public." This finding was based on "overwhelming evidence that for many years Cardinal Law and his senior managers had direct, actual knowledge that substantial numbers of children in the Archdiocese had been sexually abused by substantial numbers of its priests...Cardinal Law was generally aware of instances where priests had sexually abused children even before arriving in Boston, and he and his management team were aware of an ongoing problem in the Archdiocese of clergy sexual abuse of children almost from the time of his installation as Archbishop in 1984."⁶⁸ In addition, "by June 2000, eighteen months before the public became fully aware of the scope of child sexual abuse within the Archdiocese, the Archdiocese already had received complaints from 402 victims alleging sexual abuse by 191 priests and had expended more than \$17 million to settle victim claims."⁶⁹ The report also found that the "Archdiocese's Response to Reports of Sexual Abuse of Children, Including Maintaining Secrecy of Reports, Placed Children at Risk." According to the report when top officials concluded that it was better to conceal their knowledge of individual complaints of abuse, it "reflected tragically misguided policies" as "Top Archdiocese officials regularly addressed and supported the perceived needs of offending priests more than the needs of children who had been, or were at risk of being, abused."⁷⁰ In documenting Cardinal Law's role in this massive secrecy, the report states that he "had direct knowledge of the scope, duration and severity of the crisis experienced by children in the Archdiocese; he participated directly in crucial decisions concerning the assignment of abusive priests, decisions that typically increased the risk to children; and he knew or should have known that the policies, practices and procedures of the Archdiocese for addressing sexual misconduct were woefully inadequate given the magnitude of the problem."⁷¹

Those entrusted with the responsibility to deal with these allegations enhanced the scope and destruction of the sexual abuse scandal. For example, Bishop Robert Banks, Vicar for Administration (second in command to the Cardinal) from 1984-1990, "preferred to keep priests who sexually abused children in pastoral ministry and generally refrained from restricting their ministerial duties if the priest received a positive evaluation by medical personnel, even if other medical experts had cautioned the Archdiocese against returning the priest to ministerial duties. Significantly, because Bishop Banks believed that abusive priests could be rehabilitated, he did not take any steps to limit their ministry

⁶⁸ *Id.* at 25.

⁶⁹ *Id.* at 29.

⁷⁰ *Id.* at 30.

⁷¹ *Id.* at 31.

or tell others in their parish of their past conduct.” Yet, in addition to this general philosophy and action, Bishop Banks was not “candid when interviewed during an active criminal investigation of John Geoghan...Bishop Banks failed to provide full information then known to him and the Archdiocese about Geoghan’s past history of child sexual abuse.”⁷² Bishop Banks’s action of retaining information led the office to make another finding that the “Archdiocese Officials Did Not Provide All Relevant Information to Law Enforcement Authorities During Criminal Investigations” as “safeguarding the well-being of priests and the institution over the welfare of children and preventing scandal”⁷³ were the main goals of their silence. The Vicar for Administration that followed Bishop Banks, Bishop Alfred Hughes, as a priest conducted a “spiritual assessment” of a Reverend Robert Burns in 1982. Although Bishop Hughes found Burns “open, candid, and humble” he was concerned about his history of sexually abusing children. Yet, this concern did not deter the then Cardinal and Vicar for Administration to allow Father Burns into the Archdiocese of Boston where he “was assigned to two different parishes...[and] [n]one of the parish priests received any warning of Father Burns’s history, so that Burns was left totally unmonitored and had unfettered access to children.”⁷⁴ In addition to the actions of his subordinates, Cardinal Law in 1984 visited Saint Luke Institute, the “in-patient facility in Maryland affiliated with the Church that provided psychiatric evaluations and treatment for, among other behavioral problems, pedophilia,” where he met with priests who were patients there and discussed the treatment program of a priest who was being treated for pedophilia with the facility’s staff. The Cardinal had also engaged in correspondence in January 1986 with Dr. Thomas Kane, Director of the House of Affirmation, a counseling and psychiatric treatment center in Massachusetts, which dealt with the recidivism risk presented by pedophiles and whether a pedophile priest should return to ministry duties.⁷⁵ Such instances show the gravity of the problem within the Catholic Church and the incomprehensible means taken by the church hierarchy to suppress its knowledge of sexual abuse from the public and the legal system.

The report also chronicles that finding that the “Archdiocese Did Not Notify Law Enforcement Authorities of Clergy Sexual Abuse Allegations” and “steadfastly maintained” this practice even after the Archdiocese had created the Office of the Delegate under its 1993 policy and even when the Archdiocese “was dealing with priests who continued to abuse children after unsuccessful intervention by the Archdiocese.”⁷⁶ Although Archdiocese personnel gave the investigative team various reasons for why they did not report abuse allegations, the report points out that if the Archdiocese had simply adopted a policy of reporting with the knowledge of incidents of sexual abuse occurring in the

⁷² *Id.* at 34.

⁷³ *Id.* at 54.

⁷⁴ *Id.* at 35-36.

⁷⁵ *Id.* at 27-28.

⁷⁶ *Id.* at 52-53.

Archdiocese, many children would have been saved from the trauma and innumerable consequences that sexual abuse inflicts on a victim. In addition, the report finds that the “Archdiocese Failed to Conduct Thorough Investigations of Clergy Sexual Abuse Allegations” and “Placed Children At Risk By Transferring Abusive Priests to Other Parishes,” “Accepting Abusive Priests From Other Dioceses,” “By Transferring Abusive Priests to Other Dioceses in the United States and Abroad,” and “Failed to Adequately Supervise Priests Known to Have Sexually Abused Children in the Past.”⁷⁷ In relying on transferring priests accused of sexually abusing children to keep the problem hidden and appease the victims, the “transfers simply placed abusive priests in new environments without reducing the risk of future sexual abuse of children.” Although these transfers meant that the priests were to engage in a “restricted” ministry which “includes assignments to hospitals, nursing homes, prisons” and the like, these abusive priests “still were permitted to wear clergy attire in these placements and in public, which certainly could be expected to assist pedophile or ephebophile priests in gaining access to and the trust of young children.”⁷⁸ Therefore, at the expense of protecting young children the Archdiocese had chosen to keep the knowledge of abuse a secret and not deal with the problem until the media, the public and the Massachusetts Attorney General decided it was necessary to bring all of the hideous secrets into the realm of public knowledge.

Conclusions and Thoughts about an Investigation that Exposed the Dark Side of the Church

Investigating the sexual abuse of children by priests in the Boston Archdiocese was primarily motivated to protect the children of the state and the Attorney General concluded that the “widespread abuse of children was due to an institutional acceptance of abuse and a massive and pervasive failure of leadership...They acted with a misguided devotion to secrecy. And they failed to break their code of silence even when the magnitude of what had occurred would have alerted any reasonable, responsible manager that help was needed.” Uncertain about how the Boston Archdiocese would analyze and act upon all of the information uncovered by the investigation, the Attorney General called for the need for the Archdiocese to “demonstrate a commitment to reform proportional to the tragedy it perpetrated.”⁷⁹ Calling for a “period of vigilance” by the public and its officials, the laity and priests, the Attorney General stated that this period of vigilance would terminate when there was an assurance that children would be safe with members of the Archdiocese. Therefore, the Archdiocese had to demonstrate “over time its understanding that it is criminal to sexually abuse a child;” that it must “end the culture of secrecy that has protected the institution at the expense of children;” that it must “adopt and implement comprehensive and effective measures to prevent the sexual abuse of children;” that it must

⁷⁷ *Id.* at 57, 59, 63, 65, 68.

⁷⁸ *Id.* at 68-69.

⁷⁹ *Id.* at 73.

“appropriately respond to all allegations of child sexual abuse;” and that it must “be accountable at every level of the Institution for ensuring the protection of children.”⁸⁰ In providing this guideline, the Attorney General also acknowledged the role the public and government played in prolonging the veil of secrecy that allowed sexually abusive priests to go unpunished and victimize more children. The report notes that for years “deference was afforded to the Archdiocese when it came to the protection of children. In many ways, that climate allowed these abuses to continue unchecked for so long. Should there be any deference in the future, let it be to the notion that the protection of children comes before all else and to the proposition that abuse of this kind against children must never happen again.”⁸¹

Stating that children would be protected in the future, could not quell the disappointment the Office of Attorney General felt at the time of the issuance of the report. Reilly, in remarks made at the time the report was issued, stated “no one is more disappointed than I and my staff that we cannot bring criminal charges against top management. We worked hard at this and we tried, and if we could have, we would have. But the bottom line [is] that the laws in existence at the time that these events occurred do not permit us to initiate criminal charges. You could say this, that if the conduct that happened in the past would have happened in the past year with the laws that the Legislature passed last year, it would be a far different story today.”⁸² Perhaps the disappointment felt by the Attorney General and his staff could be attributed by the sheer lack of human compassion and understanding exhibited by the church hierarchy for “time after time, decision after decision, when they were tested, when they were forced and faced with the choice between protecting children and protecting the reputation of the church and the priest abusers, they chose secrecy, and they chose to protect the church at the expense of children. In effect, they sacrificed children for many years.”⁸³

In Wake of the Report: the Public Reaction

The 76 page report issued by the Office of Attorney General was clearly anticipated by not only victims who were sexually abused by priests but also the general public who was appalled that the “infallible” Roman Catholic Church had severely abused its power over the most vulnerable in our society. There is no doubt that during the 16 month probe conducted by the Office of Attorney General various groups believed that the chief legal officer of the state could bring these men who had abused their power while standing behind an altar to justice under the laws of the state. Unfortunately, the hopes of these groups as well as the Attorney General, himself, could not find fulfillment through the laws of the state. An investigation probing the moral and spiritual foundation of an institution with tangible victims, can

⁸⁰ *Id.* at 74-76.

⁸¹ *Id.* at 76.

⁸² *Excerpts from Attorney General’s report on clergy sexual abuse*, The Boston Globe, July 24, 2003.

⁸³ *Id.*

only produce reactions spanning from anger to numbness. All of these reactions were evidenced by the release of the report to the public.

On hearing that Reilly was not going to indict Cardinal Law and other church officials, members of Survivors First, an advocacy group for victims of clergy sex abuse protested the report. The group's president stated that "We demand; we are not asking, that Attorney General...Reilly find ways to indict."⁸⁴ In addition, the protesters delivered letters to the offices of Reilly, Governor Mitt Romney and the House Speaker Thomas Finnernan "stating their disapproval of the decision, calling it 'political,' and 'denouncing the state's 'deference' to the church." The founder of another victim's group, the Coalition of Catholics and Survivors, stated that "We want him [Reilly] to go back to the books and find a law to hold the bishops accountable...If we can't keep our bishops accountable, then we'll have to keep our politicians accountable." A victim of clergy sexual abuse recounted that "If nothing's going to be done, why did I come forward?...There's thousands of people that need to feel safe. And Reilly needs to make it feel safe."⁸⁵ Although these victims suffer from an unimaginable pain due to being abused by a person that they trusted, Reilly in conducting the report and making statements to the Archdiocese aimed at urging reforms of its wronged ways was already on shaky legal ground when he called the grand jury investigation. Although Reilly, as well as these victims, desired to have these wrong-doers behind bars, the laws had failed to protect the victims of the past. Yet, Reilly was dedicated to make sure that the laws would protect the victims of the future and also to prevent this type of sexual abuse to happen in any type of institution. Reading these statements from victims, it is clear that Reilly must have felt that there was an implicit duty in his role as Attorney General to investigate the Archdiocese in order to not only protect children but also to find answers for those who had been violated by a sacred institution.

Although some victims' groups demanded immediate action, other groups met with Reilly, and praised his efforts at helping to dismantle the veil of secrecy that protected abusive priests. The group, Members of the Coalition of Catholics and Survivors, following a closed-door meeting with the Attorney General "pledged to push for an independent oversight board to review allegations against priests and for new laws that would allow for the criminal prosecution of church officials who shielded priests at the expense of children."⁸⁶ In a press conference held after the meeting, a group spokesperson stated that "Reilly encouraged close communication with his office and did not rule out the possibility of prosecutions in the future."⁸⁷ The inability of the Attorney General to bring forth criminal charges also merited a

⁸⁴ Nicole Fuller, *Protesters Demand AG Indict Church Officials*, The Boston Globe, July 23, 2003.

⁸⁵ *Id.*

⁸⁶ C. Kalimah Redd, *Victims praise Reilly report, but want secular oversight*, The Boston Globe, July 25, 2003.

⁸⁷ *Id.*

response from the Governor, Mitt Romney. After the Attorney General disclosed to the public that there would be no criminal charges brought against church officials, the Governor stated that, “The conduct that was outlined in the report must be illegal. People need to go to jail for what happened here. I have already instructed my chief legal counsel...to meet with the attorney general’s office and determine what action we should take—what we can do.”⁸⁸ Some interpreted Romney’s remarks as second-guessing Reilly’s legal conclusion but the governor’s spokesperson stated that the “administration plan[ned] to ‘enhance’ state laws to require tough prosecutions of people whose actions lead to the abuse of children.” Such rumors developed due to the fact that there are speculations that the Republican governor would face Reilly, a Democrat in the governor’s race in 2006.⁸⁹ Although perhaps an attempt to politically profit from Reilly’s shortcomings in the eyes of the public, Romney’s statements reflected the frustration that Reilly experienced upon finding out that the state could not afford these past victims of abuse any kind of remedy under state law.

There were also groups that were pleased with the report. Specifically, attorneys representing victims suing the Archdiocese found the report promising. Jeffrey Newman, a plaintiff’s attorney with the Boston law firm, Greenberg Traurig, stated that the “report will have a ‘great impact’ on those who might believe the scandal over the clergy abuse has been hyped by plaintiffs’ lawyers and the media...’This is an independent authority saying these things, the highest ranking law enforcement official in the state.” Plaintiffs’ lawyers also hoped that the “Reilly report would push the archdiocese closer to a settlement with victims.”⁹⁰

There is no doubt that it appeared easy at the time to blame Reilly and his investigative team for the lack of criminal indictments but such an easy target would fail to take into account the other parties who contributed to the Church’s ability to keep the sexual abuse of its priests out of the public eye. These parties include the media and legislators. A reporter observed that it “was not prosecutors, but legislators, who exempted the clergy from the mandatory reporting laws that govern cases of child abuse in Massachusetts...It was the news media, not the attorney general, which conferred the status of sacred cow on the now—disgraced former archbishop through years of fawning coverage.”⁹¹ Although there was no law that Reilly could use to prosecute those who were responsible for the sexual abuse to continue within the confines of the Archdiocese, his report served as a “moral indictment of Law and all of his minions who did so little to protect the children.”⁹² Others disagreed with Reilly’s work. Stemming from his statements concerning his office’s desire to have direct oversight in the way the Archdiocese hired its employees some saw Reilly as

⁸⁸ Ralph Ranalli, *Push Made to Toughen Abuse Laws Romney, Reilly Weigh Changes*, The Boston Globe, July 26, 2003.

⁸⁹ *Id.*

⁹⁰ Ralph Ranalli, *Many Outraged, Some Cautious after Reilly’s Report*, The Boston Globe, July 24, 2003.

⁹¹ Eileen McNamara, *Prosecutors not to Blame*, The Boston Globe, July 23, 2003.

⁹² *Id.*

“pushing his own headline-generating agenda.”⁹³ According to this view, there was no way Reilly could “reform the Catholic Church from the AG’s office” and it was interesting to note that the “cause [to protect children from abuse was] taken up with particular passion when the headlines [were] hot and the public [was] supportive.” Once it was “clear that the people [had] lost respect, not for their religion, but for their religious leaders, it [was] safe for Reilly and others to challenge them.”⁹⁴ Yet, such an assessment ignores the fact that “Reilly’s candor [throughout the investigation] came as a pleasant surprise. It displayed the continued erosion of the deference that had protected church officials through an unbelievable six decades of sexual abuse allegations.”⁹⁵ In fact, “[c]riminal charges were always unlikely; Reilly [had] never indicated otherwise. The necessity to prove criminal intent on the part of the church hierarchy made it impossible to charge them for most of the wrongdoing that had been committed...But criminal charges are not the only way to use the influence of the attorney general’s office.”⁹⁶ Clearly, victims and the greater public would have liked to have seen the church officials prosecuted in court. For many, a trial provides a therapeutic release from the anger and pain that was suffered at the hands of others and provides one with the ability to see “real” justice occur when a guilty verdict is handed down. Yet, it is necessary to acknowledge the importance of allowing the attorney general to not only have the ability to bring those who have wronged society to court but also to provide the public with information that brings attention to a problem that can be reformed both inside and outside of a courtroom’s confines. As Reilly stated, “One of the reasons I decided that this report must be issued now is [that] this report will draw a clear line between the past and a hopeful future.”⁹⁷ A future where the public possesses not only more knowledge but an opportunity to enact reforms that will protect children but will also allow them greater oversight within certain institutions that were or remain shrouded in secrecy. With the veil being lifted on the Church’s hidden sex abuse scandal, the Church will now realize that it will have to contend with state law and the attentive eye of the internal watchdog, the attorney general, which is “a lot more than anyone would have expected not long ago, when clergy sex abuse was a sordid, silent, and frequently occurring crime.”⁹⁸

A New Beginning for the Boston Archdiocese: A New Archbishop and a Settlement

A poll conducted of Boston-area Roman Catholics, a group estimated at 2 million, before Cardinal Law resigned as Archbishop showed that 57% believed that Cardinal Law “should face prosecution for failing to remove sexually

⁹³ Joan Vennoch, *An Overeager Clergy Watchdog*, The Boston Globe, Mar. 12, 2002.

⁹⁴ *Id.*

⁹⁵ Adrian Walker, *No Charges; lots to fault*, The Boston Globe, July 24, 2003.

⁹⁶ *Id.*

⁹⁷ Kevin Cullen, *After Grueling Probe, AG Frustrated but at Peace with Himself*, The Boston Globe, July 24, 2003.

⁹⁸ Walker, *supra* note 95.

abusive priests from the ministry.”⁹⁹ The majority of those polled also wanted “the church to settle the more than 500 claims brought by alleged clergy sexual abuse victims, and to sell chancery property to deal with its money problems.”¹⁰⁰ Although eventually Cardinal Law was appointed as “pastor of Rome’s Basilica of St. Mary Major,” where he “will live in a palatial apartment and receive a monthly stipend of about \$5,000,”¹⁰¹ it was clear that the man that would follow him as Archbishop of Boston would face a disillusioned and discontented laity and an entire Archdiocese suffering intensely from being dethroned in the public domain. The man destined to occupy Cardinal Law’s disgraced chair was Sean Patrick O’Malley.

Being installed as the new Roman Catholic Archbishop of Boston a week after the Attorney General’s report was issued, O’Malley promised “a new start”¹⁰² for the Catholic community in Boston. Wanting to be referred to as “Archbishop Sean,” the new Archbishop in his homily stated that the “whole Catholic community is ashamed and anguished because of the pain and damage inflicted on so many young people and because of our inability or unwillingness to deal with the crime of sexual abuse of minors.”¹⁰³ Archbishop Sean’s words conveying a type of apology to those gathered at the Holy Cross Cathedral on the day of his installation exhibited his place in the Roman Catholic Church as one of its “most experienced healers of wounded dioceses. He has a track record of settling lawsuits, soothing victims of sexual abuse and instituting criminal background checks for priests and other church workers.”¹⁰⁴ In fact, the installation of O’Malley was a complete change from his predecessor. Comparing O’Malley to Law, a Boston lawyer who had worked with O’Malley in the mediation of lawsuits when he was the Fall River (Massachusetts) Bishop stated that “There’s not a lot of flash and glitz [in O’Malley], but what is lacking in flash and glitz is made up for in sincerity...What this really says is that the Vatican really does care about what people think about this scandal.”¹⁰⁵

Unlike his predecessor and living up to his reputation, O’Malley went to talk to the Attorney General shortly after being installed in his new position.¹⁰⁶ Scheduling a meeting with the Attorney General, unlike his predecessor who met with Reilly as a result of being subpoenaed, Reilly stated that during the meeting O’Malley “asked for comments and suggestions, and he was clearly open to them. There was an openness to him that was refreshing, and it was an openness that I have not seen before.” According to Reilly, “My sense is he wants the very best policies and procedures in place to

⁹⁹ AP, *Poll: Catholics Back Prosecution of Law*, AP Online, May 12, 2003.

¹⁰⁰ *Id.*

¹⁰¹ Renee Schafer Horton, *Guest Opinion*, The Tucson Citizen, June 23, 2004.

¹⁰² Denise Lavoie, *Incoming Archbishop appeals for forgiveness*, Times Union, July 31, 2003.

¹⁰³ *Id.*

¹⁰⁴ Alan Cooperman, *O’Malley Will Become Archbishop of Boston*, The Washington Post, July 1, 2003.

¹⁰⁵ *Id.*

¹⁰⁶ Ralph Ranalli, *AG Praises O’Malley openness on Abuse Policy*, The Boston Globe, Aug. 14, 2003.

protect children...He is clearly appalled by the magnitude of what happened. He wants to change things, to reach out to others. That wasn't the case before. It's a fresh start. I want to look at it that way.”¹⁰⁷ This openness exhibited by the new Archbishop to listen to the ideas espoused by the Attorney General who was not content with the revised policy issued by the Archdiocese in May of 2003 showed not only the new Archbishop’s attitude towards the need to heal those harmed by the sexual abuse scandal but also the acknowledgement that outside forces, such as the Office of Attorney General, was a resource for ideas but also a party that would monitor the actions of the Church in the future.

Reilly’s assessment of Archbishop Sean appeared to be correct. In September of 2003, the Boston Archdiocese reached a settlement with sexual abuse victims which was a “powerful indicator that the archdiocese [was] committed to helping abuse victims and preventing children from being victimized in the future.”¹⁰⁸ The \$85 million dollar settlement which suggested that the “archdiocese [was] acknowledging the harm done to the victims by men acting with the authority of the priesthood”¹⁰⁹ was reached with O’Malley only being Archbishop of Boston for six weeks. In another gesture showing that the Boston Archdiocese was trying to make amends with the victims and laity was the announcement made by the Archdiocese that it was going to sell the “opulent mansion that formerly housed Cardinal Bernard Law and his staff...[a]long with 28 acres of surrounding land.”¹¹⁰ The money garnered from the sale was to be used towards paying the \$85 million settlement reached with victims. In addition, O’Malley in a February 2004 report issued by the Archdiocese about the scope of the abuse in the Archdiocese stated that he believed that the “screening, training, and supervision of seminarians have improved, that 6,000 church employees and volunteers have gone through criminal background checks and abuse-detection training, and that the church has a better understanding of how to spot and respond to abuse allegations.”¹¹¹ Here, it is important to note that this report would have never been made if the stories of clergy sexual abuse were not picked up by the media and the Attorney General did not respond in the manner he did by investigating the scope and breadth of the clergy sexual abuse scandal. With the Church’s “dirty laundry” being aired to the public, the media and the office of the Attorney General succeeded in providing the public with the knowledge it needed in order to protect children and bring reform to an institution that would have probably continued to mask the atrocities happening in its midst.

Reilly, the Catholic, Clericalism & American Catholics: Bringing an End to the Church’s Hidden Secret & Opening the Door to Change

¹⁰⁷ *Id.*

¹⁰⁸ Editorial, *Serious Settlement*, The Boston Globe, Sept. 10, 2003.

¹⁰⁹ *Id.*

¹¹⁰ Tara Dix & Grennan Gary, *Prime real estate; signs of the times; Archdiocese of Boston will sell property to raise money for settlement with sex-abuse victims*, U.S. Catholic, Feb. 1, 2004.

¹¹¹ Michael Paulson, *Diocese gives Abuse Data Report*, The Boston Globe, Feb. 27, 2004.

In many ways, it is essential to note the intersection of the personal and professional that appeared in the clergy sexual abuse crisis on the part of the Attorney General. One's life experiences shape the way one views the world and thus how he/she will participate in it. Although it is clear that Reilly's Catholicism did not impact the way he executed his role as Attorney General, it is interesting to examine how his Catholicism might have motivated him to uncover the atrocities of his Church. Therefore, it is also necessary to examine the entire culture surrounding the Church which allowed this secrecy to last over six decades and how Catholics as a result of this scandal being brought to light by the media and attorney general now view their religion and those who represent it.

Reilly is a devout Catholic. As a child, he was taught by nuns in his hometown of Springfield and later attended a Catholic university "thanks to the intercession of a generous priest." Also, "until he left for college, [Reilly] was expected to be home every night at 7 to kneel and say the rosary with his parents."¹¹² Therefore, it was not surprising that he "felt sick to his stomach when he read the initial Boston Globe Spotlight Team reports in January 2002 about the extent of sexual abuse by priests and the archdiocese's attempt to keep the scandal hidden." Perhaps due to his shock and a sense of betrayal, Reilly was the first elected official to challenge Cardinal Law publicly and he frequently interjected himself "to prod the cardinal or the archdiocese to shift their positions."¹¹³ In addition, Reilly "threw more resources at the case than any other criminal matter his office [had] pursued," which resulted in no criminal charges brought against the Church hierarchy. The lack of criminal charges frustrated Reilly who said the investigative team was "thwarted by the accessory and conspiracy laws in Massachusetts that require evidence showing that alleged accomplices share the criminal intent of those they enable and assist," but he was "at peace with [himself] about [it]." Reilly's sense of peace came from the fact that he could "look [himself] in the mirror and know [he] took [his] best shot. More importantly, [he could] look the victims in the eye and know that." Reilly stated that all of this "was worth the effort, if only to show them we care."¹¹⁴ Acknowledging the tension between his role as Attorney General and as a Catholic, Reilly told reporters on issuing the report:

I stand before you as attorney general. But I am also a Catholic. I am proud to be a Catholic. This is not about my faith. And this is not about my religion. The Catholic faith and the Catholic religion teaches and values the basic sense of right and wrong. The Catholic faith and the Catholic religion teaches to protect the most vulnerable, particularly our children. Now this is not about the Catholic faith, the Catholic religion. This is about a massive inexcusable failure of leadership in the Archdiocese of Boston. That leadership is about to change.¹¹⁵

¹¹² Cullen, *supra* note 97.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Although many may speculate on whether Reilly's Catholicism influenced the prolonging of the investigation when it may have been clear early on that criminal charges could not be brought against the Cardinal and others, his ability to be "passionate" about this investigation perhaps impacted by his deep faith has paved a way for major changes in regards to how the Church will treat and handle sexual abuse of children in the future.

The shock and disgust felt by Reilly and many other Catholics when they first read the articles chronicling the clergy sexual abuse scandal may be due to the power of clericalism. The sexually abusive relationship between clerics and children involved "an abuse of power held by the perpetrator." This abusive relationship can be explained by clericalism and the related concept of religious duress which "are grounded in the reality of an inordinate power held by clerics over lay people, and within the clerical subculture, by higher clerics over those of lower rank."¹¹⁶ Understanding that Catholicism is "both a complex socio-cultural reality and a worldwide political entity [that] touches the spiritual, moral, emotional, psychic, and economic aspects of the lives of its members," it is clear that the Church "is identified with the clergy who hold all-important positions of power in it." Also, it is ironic that "[l]ay Catholics and congregants of other denominations almost universally held their clergy in the highest esteem, without them having earned it. They are taught to extend to them the greatest respect and deference. The cleric was traditionally presumed to be a man of integrity and impeccable morals. Perhaps because of this lofty position, clerics have been able to carry out the seduction and grooming process of victims without arousing suspicion." Clericalism, thus, is derived from the "mistaken belief that members of the clergy are a spiritual elite, superior to the average lay person, and in closer touch with the Almighty."¹¹⁷ It is also a "pejorative term describing an attitude the clergy themselves caused by fostering the false assumption that the clerical state is of divine origin. Much of clericalism is about power. Power seeking, power sharing, and power keeping are part of the clerical mindset, but not part of the essential concept of authority, which is rooted in scripture."¹¹⁸ Therefore, the clerical culture was based on the belief that the clerics were superior to the laity and thus entitled to "special privileges and respect" which allowed them to honor a code of secrecy "that existed around the private lives of clergy [and] was once considered part of 'being a good bishop.'"¹¹⁹ This mindset allowed clergy to "operate as an anointed culture accountable to no one, except those above them in the church hierarchy." Additionally, this mindset was secured by lay Catholics who placed clergy members on pedestals and "allowed clericalism to thrive."¹²⁰

¹¹⁶ Doyle, *supra* note 4, at 593.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 594.

¹¹⁹ Susan Hogan-Albach, *Recent Scandals Prompt Scrutiny of Clerical Culture*, Augusta Chronicle, July 26, 2003.

¹²⁰ *Id.*

Catholics have admitted that the “dismantling of clericalism is necessary to overcome the leadership failures that contributed to the scandals. But no blueprint exists on how to undo a culture that took centuries to create and permeates the church.”¹²¹ In addition to this manipulative power structure, the “victims of Catholic clergy sexual abuse are a bit different from the victims of protestant sex abuse; Jewish or Hindu sex abuse. The difference is that the role of the priest puts the priest in close connection with Jesus and with God. And what you hear from victims...is that they feel that their soul has been murdered. It’s soul murder and they can never get over the guilt and shame of what their responsible role was.”¹²² Yet, at the time the clergy sexual abuse scandal became uncovered by the media and the later works of the attorney general, American Catholics were more prepared to deal with the reality that their priests were not as “immaculate” as they portrayed themselves to be to the laity. American Catholics have been described as “educated, literate, informed, and interested in their religion,”¹²³ therefore it is not surprising to assume that in wake of this crisis American Catholics will become more involved in the running of the institution that promulgates their faith. It has been observed that the “next pope may be forced to address calls from Catholics for lay input on governance and accountability.”¹²⁴ A survey conducted in January of 2004 indicated that “58 percent of American Catholics ‘think the Church should become more democratic in its decision-making.’” Now especially in the wake of the sex abuse scandal, American Catholics desire “greater openness and accountability from church leadership” and thus will “demand for increased responsibility and input.”¹²⁵ Although American Catholics may crave greater input, they stand firmly behind their faith as it was found that “Catholics put an estimated \$58 billion in Sunday collection baskets in 2002, during the height of the sex abuse scandal, not to mention an economic downturn...But those same Catholics did cut their contributions to diocesan and bishops’ appeals by 2.3 percent, implying a stronger commitment to their parishes than to wider Catholic organizations.”¹²⁶

After two years of watching the sins of the Church being unleashed before them, Boston Catholics are slowly returning to their churches. In the Boston Archdiocese, “Church pews are fuller. More money is collected. Priests are feeling more hopeful and less like objects of suspicion. The resignation of Cardinal Bernard F. Law, whom parishioners criticized as imperious and self-serving; the installation...of Archbishop Sean P. O’Malley; and the settlement of claims

¹²¹ *Id.*

¹²² Doyle, *supra* note 4, at 608-09.

¹²³ O’Brien, *supra* note 7, at 469.

¹²⁴ Bill Broadway, *Next pope needs to hear the people: Catholics feel ignored by John Paul II*, Journal Gazette, Feb. 11, 2004.

¹²⁵ *Id.*

¹²⁶ Heidi Schlumpf, *The Scandal’s True Cost*, U.S. Catholic, April 1, 2004.

by abuse victims have been turning points.”¹²⁷ A Capuchin priest commenting on the reconnection of Boston Catholics to their churches stated that the “lay folk are a little bit like somebody who has been very badly hurt in a marriage which they totally trusted for a long time, and now they're dating again...There was a separation, and I think many just said: ‘This is awful. I don't want anything to do with it.’ And then they missed something in their lives. They're taking a look again, but they're not rushing back and just saying it's all like it never happened. They're anxious and tentative and questioning and wanting.” This questioning and wanting primarily turns on the fact that Boston Catholics no longer trust the priests who stand behind the altar telling them how to best live their lives. One parishioner stated “I still certainly believe in God, but I just no longer believe in these priests. I go to Mass now, and I see a priest saying Mass, and I say to myself, ‘Why am I listening to him?’”¹²⁸ Yet, this parishioner returns to church every week which shows that although bruised by the experience, Boston Catholics and American Catholics have not only changed the way they feel about those who preach their religion but the media and public officials, like the Attorney General of Massachusetts, have enabled them to begin reforming the Catholic institution with a degree of legitimacy and credibility so that the sexual abuse of children will never happen again under the hands of a priest as the Church now knows that their actions are subject to scrutiny by the public, media and public officials, like the Attorney General, who will no longer accept actions that harm the society.

Beyond Massachusetts: New Hampshire & Connecticut

New Hampshire: Agreement in the Face of Indictments

On March 3, 2003, the Attorney General of New Hampshire, Peter W. Heed, issued a report documenting its investigation beginning in February 2002 of how the Roman Catholic Diocese of Manchester “handled allegations that priests committed sexual assaults against minors.” The report notes that inquiry into this matter “was prompted by news reports from Massachusetts regarding the Archdiocese’s practice of reassigning priests after allegations of sexual abuse became known to the Archdiocese.”¹²⁹ Through the use of grand jury subpoenas and meetings with witnesses, evidence was collected showing that the Manchester Diocese had endangered the “welfare of children” as it “knew [in multiple cases] that a particular priest was sexually assaulting minors, the Diocese took inadequate or no action to protect these children within the parish, and that the priest subsequently committed additional acts of sexual abuse against children that the priest had contact with through the church.” The evidence collected was sufficient for the Attorney General’s

¹²⁷ Yvonne Abraham, *Wary on abuse but hopeful, Catholics return to church*, The Boston Globe, Mar. 2, 2004.

¹²⁸ *Id.*

¹²⁹ Office of Attorney General of New Hampshire, *Report on the Investigation of the Diocese of Manchester*, Mar. 3, 2003, 1, available at: <http://doj.nh.gov/publications/reports.html>.

office to prepare criminal indictments “charging the Diocese of Manchester with multiple counts of endangering the welfare of a minor in violation” of New Hampshire’s Child Endangerment law. Before these indictments came to fruition, the Diocese on December 10, 2002 entered into an agreement with the State that terminated the criminal proceedings. In the agreement, the Diocese “acknowledged that the State had evidence likely to sustain a conviction against the Diocese for child endangerment.”¹³⁰

The State’s reasons to forego the presentation of indictments to the grand jury centered on two reasons: “First, the Diocese acknowledged that certain of its decisions concerning the assignment to ministry of priests who had abused minors in the past resulted in other minors being victimized. Second, the Diocese agreed to comply with several conditions that will safeguard children, ensure transparency of both its prior and future conduct, and create a system of accountability.” The agreement states that the “Diocese is required to comply with mandatory reporting requirements for sexual abuse of minors...that are even more stringent than under current law.” The Diocese also is “obligated to submit to an annual audit by the [Attorney General, over the next five years], focusing on the manner in which the Diocese has responded to allegations of sexual abuse of minors. It is also required to permit the [Attorney General] to review and comment on policies, protocols, and training materials relating to such matters.” In addition, the agreement provided “for a complete disclosure of the facts relating to the Diocese’s past handling of sexual abuse allegations against priests.”¹³¹ In many ways, Heed’s office appeared to execute an agreement that encapsulated what Reilly had suggested particularly a closer connection between the Attorney General’s office and the way in which the Diocese would run its churches. Like Reilly, Heed stated that the “State believes that the release of this public report and the accompanying documents will help to protect minors in the future by educating the public about the dangers and devastating effects of child sexual assault, and reinforcing the need for immediate intervention in any case of suspected abuse.”¹³²

There are clear distinctions between the Massachusetts report and the New Hampshire report. By focusing on the actions of eight priests, the New Hampshire report appears to be a bit more “sensational” as it intimately describes the priests and the victims that were abused by them. The focus on these priests is explained by the New Hampshire Attorney General’s office as being due to the fact that “for some of the cases the statute of limitations expired on or about February 1, 2003...[and] [a]s a practical matter, the manpower resources were simply inadequate to investigate all cases in a timely manner. The bulk of the investigation needed to be completed by November 1, 2002.”¹³³ Although their

¹³⁰ *Id.*

¹³¹ *Id.* at 2.

¹³² *Id.* at 20.

¹³³ *Id.* 2-3.

styles are apparently different, the Attorney Generals of these states felt that it was imperative to address the concerns of the public and investigate the criminal misconduct of the church hierarchy. Interestingly, the Bishop of Manchester, John B. McCormack, held various positions under Cardinal Law beginning in 1984 until he was installed as the Bishop of Manchester in 1998.¹³⁴ This connection not only shows the scope of the clergy sexual abuse scandal but also the ability of Attorney Generals to benefit from each other's work in connection to similar investigations as the information garnered by one, can in most situations, be used by another to bring alleged misconduct to justice or provide the necessary notice to prevent further misconduct from occurring. Therefore, both Attorney Generals were working to serve the public interest and to protect the most vulnerable, the children.

Although the New Hampshire Attorney General succeeded where the Massachusetts Attorney General had failed—namely in the ability to bring criminal charges under the child endangerment law that was in place in New Hampshire but had only been recently passed in Massachusetts—there were critics of the agreement. A law professor from Louisiana State University Law Center, John Baker, stated that the agreement was an “outrageous interference’ by the government in religious matters.”¹³⁵ Regardless of whether or not such an agreement can be deemed an “interference,” this Diocese was also able to settle most of the sexual abuse lawsuits it was facing in 2003. Perhaps having conceded its actions to the State, it became easier for the Diocese to reach a settlement agreement that ended “nearly all the remaining sex abuse lawsuits filed against it” and “pay \$6.5 million to settle 61 civil claims.”¹³⁶ With this settlement, the Manchester Diocese had settled with 176 individuals agreeing to pay \$15.5 million and “largely resolving its legal problems stemming from the nationwide sex abuse scandal.”¹³⁷ Once the settlement was reached Bishop McCormack through a written statement stated that ‘I am personally sorry for the hurt they [the victims] have experienced and I have written to each person expressing my deep regret.’¹³⁸ The regret expressed by McCormack is only the beginning of a long process that will attempt to rebuild a foundation of trust between the laity and church officials as well as a transformation of the Diocese that will occur under the auspices of the Office of Attorney General.

Connecticut: Clergy Sexual Abuse Scandal Shows Where State’s Attorneys Lack Power

In light of the clergy sexual abuse crisis, Connecticut state prosecutors encountered a hurdle in the state’s law that has prevented them from uncovering the possible concealment of evidence of child sexual abuse by the Catholic

¹³⁴ Office of the Attorney General Commonwealth of Massachusetts, *supra* note 42, at 39-40.

¹³⁵ Adam Liptak, *Abuse Cases Pose Threat to Worship, Experts Say*, N.Y. Times, Apr. 6, 2003.

¹³⁶ Ralph Ranalli, *Victims Reach Deal in N.H. \$6.5M Agreement ends 61 More Abuse Claims*, The Boston Globe, May 23, 2003.

¹³⁷ *Id.*

¹³⁸ Elizabeth Mehren, *\$6.5 Million Settles Bulk of Diocese’s Abuse Cases*, N.Y. Times, May 23, 2003.

Church in Connecticut. The Chief State’s Attorney, Christopher Morano, has supported legislation that “would enable prosecutors, with judicial approval, to compel the production of evidence [and testimony] in complex investigations. Federal prosecutors can issue such subpoenas through grand juries, and about two-dozen other states have given their prosecutors similar authority.”¹³⁹ Although the bill passed in the Senate, it was defeated in the House through the increased lobbying efforts of the Catholic Church.¹⁴⁰ Church officials denied that they opposed the legislation “out of concern it might lead to a state investigation of allegations that church officials ignored years of sexual abuse by priests.” Instead, the church maintained that it opposed the legislation because “it threatens the confidential relationship between clergy and parishioners. And the church says the legislation could result in subpoenas for confidential records of relationships between church social workers and clients.”¹⁴¹ Morano responded to these comments by stating that, “I believe the restrictions laid out in this bill protect the rights of the individual and provide the appropriate balance between those rights and the rights of government to investigate crime...This includes the concerns I’ve heard expressed on behalf of the Catholic Church.”¹⁴² Although the church stuck to its version of why the legislation had to be defeated, an anonymous member of then Governor Rowland’s staff stated that “lawmaker comments he [had] heard suggest[ed] the church want[ed] to avoid a sexual abuse investigation.”¹⁴³

Having been defeated the previous year, Morano was not deterred and asked the state again to grant his office the investigative subpoena power. In March 2004, with “backing by some Senate and House leaders, along with Attorney General Richard Blumenthal,”¹⁴⁴ Morano thought that the legislation would succeed. Unfortunately, Morano thought wrong. Although Connecticut recently went through a huge corruption scandal resulting in a new Governor, the office which most needed this power to remedy such wrongs was left powerless. In Connecticut, “[l]egislative committees and many state officials, including the attorney general, have subpoena powers,” but these offices “are not responsible for investigating alleged criminal conduct.”¹⁴⁵ Therefore, if “Mr. Morano wants to compel testimony under oath, he must appear before a three judge panel and persuade the jurists to authorize the appointment of a one judge grand jury. It’s not the smoothest system, but that’s all Connecticut has until the law is changed.”¹⁴⁶ Yet, Morano is not discouraged in fact when the legislature “convenes in January [2005] Mr. Morano says he will again seek investigative

¹³⁹ Edmund H. Mahony & Lynne Tuohy, *Church Fights Subpoena Power Position Threatens Passage of State’s Measure at Capitol*, The Hartford Courant (Connecticut), June 3, 2003.

¹⁴⁰ Editorial, *Help for Prosecutors*, The Hartford Courant (Connecticut), June 9, 2003.

¹⁴¹ Mahony & Tuohy, *supra* note 70.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Christopher Keating, *Support Grows for Subpoena Power*, The Hartford Courant (Connecticut), Mar. 9, 2004.

¹⁴⁵ Editorial, *Subpoena Power for Prosecutors*, The Hartford Courant (Connecticut), Dec. 13, 2004.

¹⁴⁶ *Id.*

subpoena authority.”¹⁴⁷ Although Connecticut’s situation does not deal specifically with the actions of the Attorney General, the antagonism generated by the presence of this bill to Connecticut’s Catholic Church shows that the work of the *Boston Globe*’s coverage of the clergy sexual abuse scandal as well as the work of the Attorney General of Massachusetts had repercussions far beyond Massachusetts’s borders. It is clear that this legislation would not be desired by the State’s Chief Attorney unless the Connecticut citizenry had some interest in pursuing the allegations of child abuse within the confines of the Church in Connecticut. Thus, Morano and Reilly act with similar motives, the protection of the public interest, yet only one has the power to act upon these motives.

The Church in a New Light: the Impact of the Public, Media & the Massachusetts Attorney General on Recognition and Reform in the Catholic Church

Perhaps no one knew that the events beginning in January 2002 would forever change the way the Catholic Church operated in the United States. As the U.S. Conference of Catholic Bishops elected a new leader, Bishop William S. Skylstad, in November of 2004, a poll of U.S. Catholics showed that “85 percent of those surveyed listed sexual abuse by priests as the most serious problem facing the church.”¹⁴⁸ In addition, the new leader of the U.S. Catholic Bishops at the time of his election was planning to “seek bankruptcy protection in the face of clergy sex-abuse claims” for his diocese.¹⁴⁹ At the time of the Conference, “[t]wo dioceses [had] declared bankruptcy in the face of millions of dollars in clergy sex abuse claims, and a third [planned] to file at the end of [the] month.”¹⁵⁰ Although Bishops were anxious that the bankruptcy of other dioceses could follow from the clergy sex abuse crisis, church leaders “have cleared many hurdles in the sex abuse crisis, which erupted in the Archdiocese of Boston in January 2002 and affected every American diocese.”¹⁵¹ Yet, clearly changes in a system that had accepted and protected sexual abusers will not always go smoothly and it can be expected that although church officials desire a change in order to protect children it will be hard for them to let go of the deference and lack of accountability that helped sexually abusive priests victimize children. In leaving his position as the leader of the U.S. Catholic Bishops, Bishop Wilton D. Gregory, stated that, “When I began my term as your president, none of us could have foreseen the extraordinary challenges that would face the church in this country at the dawn of this new millennium,” and that “over the next seven months, the bishops will review and propose revisions

¹⁴⁷ *Id.*

¹⁴⁸ Editorial, *Church’s lingering scandal*, The San Francisco Chronicle, Nov. 16, 2004.

¹⁴⁹ *Id.*

¹⁵⁰ Rachel Zoll, *Bishops meet amid troubles*, Houston Chronicle, Nov. 15, 2004.

¹⁵¹ *Id.*

to the child protection policies they adopted in Dallas in 2002, and will move forward with a promised study of the ‘causes and context’ of the sexual abuse crisis.”¹⁵²

Upon leaving his leadership position, Bishop Gregory aptly summarized what had happened to the church beginning in January 2002. Bishop Gregory stated, “As a body and as individuals, we have faced a great deal of criticism over the last three years...As always, the most painful criticism is that which has some truth and justice in it.”¹⁵³ The truth and justice that Bishop Gregory views as criticism was brought about through the confluence of the media’s exposure of the clergy sex abuse crisis, the public’s willingness to no longer defer to the actions of their priests and punish those who victimized the vulnerable and the State Attorney General’s ability to investigate thoroughly the allegations of sexual abuse with or without being able to bring criminal indictments in order to disclose to the public the extent of the crisis and show that the State was not a willing participant in allowing the sexual abuse to continue now and in the future. Although some would characterize the media as the public’s watchdog, such a conclusion is inaccurate as the media’s coverage is largely controlled by a determination of which stories will grasp the public’s attention, sell papers and increase “hits” on their websites. There is no doubt that the clergy sex abuse scandal provided the media with an opportunity to fulfill these goals. In fact, the *Boston Globe*’s reporters and editors “won the 2003 Selden Ring Award for Investigative Reporting for their groundbreaking series revealing that the Boston archdiocese routinely hid sexual abuse by Catholic priests. The \$35,000 annual prize recognizes the year’s outstanding work in investigative journalism that led to direct results.”¹⁵⁴ There is no doubt that the work of the *Boston Globe* motivated the Catholic laity and general public to ask the Church to change its horrific practices of concealing and protecting priests accused of sexual abuse. Yet, in addition, the public’s desire to hold these people accountable for their actions could only be expressed by Massachusetts’s Attorney General performing a thorough investigation of the allegations and the possibility of any charges being brought against these church officials. Being attuned to the public sentiment, Reilly acted in the “public’s interest” by investigating a situation that all three actors, the media, the public and state officials, had allowed to last over six decades. Those who criticize Reilly’s actions as that of an official crossing his legal boundaries and interfering with the church must look beyond the narrow explanation of the blurring of church and state lines and understand that the sex abuse crisis was a “manifestation of what can go wrong when leadership, spiritual or otherwise, remains above accountability to the community it serves.”¹⁵⁵

¹⁵² Michael Paulson, *New Head of U.S. Bishops Faces Scrutiny*, *The Boston Globe*, Nov. 15, 2004.

¹⁵³ *Id.*

¹⁵⁴ *Boston Globe Wins 2003 Selden Ring Award for ‘Crisis in the Catholic Church’ Series*, *Business Wire*, Feb. 24, 2003.

¹⁵⁵ Editorial, *Abuse reports mark beginning, not end*, *National Catholic Reporter*, Mar. 12, 2004.

In no way was Reilly's work, as Attorney General, impacted by his Catholic faith. Instead, his investigation and the work of other attorney generals and those entrusted with investigating allegations made against the Church, will seek out those who have abused their power over vulnerable individuals, namely children, and have used that power to shield themselves from criminal prosecution. The Office of Attorney General was formed to protect the interests of the public and thus the removal of those who endanger the public and who may endanger the public in the future are correct actions for the Attorney General to pursue and enforce. There is no doubt that such actions would be deemed acceptable if the institution that they were made against was not a church. Yet, beginning in January 2002, it was seen that deferring to the church facilitated the sexual abuse of children and such a practice could no longer be accepted. The work of the Attorney General of Massachusetts and the work of the other Attorney Generals confronted with this issue is necessary not only to protect the public but to show that actions that endanger the public by institutions as mighty as the Catholic Church will not be allowed. Those who criticize Reilly as launching an investigation to gain good PR, or that he took the meaning of a "creative" AG too far, or that his actions were done for political intentions or due to his Catholic faith, should acknowledge the fact that the office of Attorney General has a prime responsibility to protect the public and it was clear here that the public had been harmed by the actions of those who wore collars and preached to them on how best to live their lives. Those that suggest that the investigation should have been suspended when it was clear that no charges could be brought against church officials do not appreciate the value of the information that was conveyed to the public through the issuance of the report. Without the report, the magnitude of the crisis would be subject to the media's ability to obtain such information. The publication of the report by a state official showed the public and victims that the crisis was not only real but was substantiated by a legitimate legal authority. There will always be individuals who criticize Reilly's actions but it is clear that what began in Boston in January of 2002 had ramifications that surpassed the borders of Massachusetts and it would not be surprising that even the frail pope has heard the name of Thomas F. Reilly and the work he has done to change the way the Church operates today.