

IN THE SUPREME COURT OF PENNSYLVANIA

Docket Nos. 75, 77-92, 84-89, 106 WM 2018

IN RE: FORTIETH STATEWIDE INVESTIGATING
GRAND JURY

AMICUS CURIAE BRIEF OF TODD FREY

On petition from an Order of the Honorable Norman A.
Krumenacker, III, entered June 5, 2018

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I. Statement of Interest

Mr. Frey is a resident and citizen of the Commonwealth of Pennsylvania, residing in Lancaster County. During the 1980s, Mr. Frey was victim of childhood sexual abuse perpetrated upon him in the Diocese of Harrisburg by Father Guy Marsico. When Mr. Frey told the Diocese about his being abused, the Diocese did not report the abuse to legal authorities. Members and employees of the Diocese told him to stay quiet. They silenced Mr. Frey rather than take care of him.

During his life, Mr. Frey has suffered enormously from the actions of Father Marsico and the Diocese. Unfortunately the statutes of limitations on pursuing criminal or civil actions expired long ago. Eventually, Mr. Frey had the opportunity to give testimony before the Fortieth Statewide Investigating Grand Jury. Mr. Frey found testifying to be validating and important—proof that law enforcement finally was taking seriously what had been done to him (and to so many others).

In 2018, the grand jury submitted an extensive report to its supervising judge, the Honorable Norman Krumenacker, III, who authorized the public release of the report. This prompted petitions² from various clergy identified in the report who sought to block the report's release.

These petitions involve the interplay between the supervising judge's statutory authority to publicly release the report and the constitutional right to reputation protected by Article I, Section 1 of the Pennsylvania Constitution. In July 2018, this Court filed an opinion addressing foundational issues, authorizing the release of a

redacted version of the grand jury report, and directing oral argument on the remaining issues. Given the Court's opinion, Mr. Frey recognizes that the Court remains focused on how to respect an individual's right to reputation within the context of this investigation. He appreciates that his experience and concerns are not directly germane to the Court's continuing analysis. Nevertheless, Mr. Frey respectfully seeks to remind the Court of a victim's perspective, which should not be lost while the Court performs its important work.¹

II. Argument

During his visit to Philadelphia in 2015, Pope Francis spoke about the need for honest appraisal of the Catholic Church's role in child sex abuse. His words resonate for anyone concerned about the trauma of child sex abuse perpetrated by members of the Catholic clergy. They highlight the importance of not keeping secrets:

For those who were abused by a member of the clergy, I am deeply sorry for the times when you or your family spoke out, to report the abuse, but you were not heard or believed. Please know that the Holy Father hears you and believes you . . . I pledge to you that we will follow the path of truth wherever it may lead.²

¹ No one other than the *amicus curiae*, its members or counsel and her law firm paid in whole or in part for the preparation of the *amicus curiae* brief or authored in whole or in part the *amicus curiae* brief.

² Pope Francis' Address to Victims of Sexual Abuse, St. Charles Borromeo Seminary, Philadelphia, Sunday, September 27, 2015 (attached as Appendix "A").

Continued on following page

I continue to be ashamed that persons charged with the tender care of those little ones abused them and caused them grave harm. I deeply regret this. God weeps. The crimes and sins of sexual abuse of minors may no longer be kept secret.³

Mr. Frey was one of those many “little ones” of whom Pope Francis spoke. He was a shy and reticent child of a devout Catholic family in York County. He contemplated pursuing the priesthood. He found company and friendship with the priest at the parish grade school he attended. That priest was Father Guy Marsico. His parents were loyal members of the parish. His parents not only permitted but encouraged this friendship. Mr. Frey felt honored by the priest’s attention. But when Mr. Frey was only 13 years old, Father Marsico did more than give him attention. He used his social power and maturity to begin molesting the boy. He engaged the boy in genital fondling and oral sex. He made the boy share a bed with him. The betrayal of friendship and morality was total and complete.

When Mr. Frey told his parish school counselor, he was told to keep his mouth shut. When Mr. Frey told his family, they contacted the Diocese. But the Diocese did not contact law enforcement. It did nothing at all. When Mr. Frey eventually reported the abuse to the district attorney’s office, he was told that nothing could be done. The message to Mr. Frey was that nobody would help. Other victims have similar stories.

³ Pope Francis’ Address to Meeting with Bishops Taking Part in the World Meeting of Families, St. Charles Borromeo Seminary, Philadelphia, Sunday, September 27, 2015 (attached as Appendix “B”).

Over time, clergy abuse has become recognized as a serious issue. The grand jury was constituted. Mr. Frey was asked to give testimony to the grand jury. This contribution has provided meaningful validation for Mr. Frey. The statute of limitations may protect his abuser from criminal prosecution or civil liability. But the opportunity to testify indicated that law enforcement finally took seriously the devastating issue of clergy sex abuse and recognized that what happened to him was a crime. The grand jury report provides an opportunity for Mr. Frey to learn the truth of what happened to him. It provides an opportunity for the public to gain awareness of the problem of clergy abuse, which was a rampant criminal activity within the Commonwealth, causing massive and permanent injury to individuals, families, and entire communities. That must never happen again.

Like the Pope, Mr. Frey asks that the crimes committed against him and against other victims across this Commonwealth no longer be shrouded in secrecy. He asks that the “path of truth be pursued.” The Fortieth Statewide Investigating Grand Jury walked that path. The report “is the culmination of two years of investigation into [six] Dioceses related to allegations of child sexual abuse, failure to make a mandatory report, acts endangering the welfare of children, and obstruction of justice by individuals associated with the Roman Catholic Church, local public officials, and community leaders.” *See* Supervising Judge Opinion and Order entered June 5, 2018. As a victim and witness, Mr. Frey has an intense interest in the report’s unredacted

dissemination. Other victims and the public likewise share an intense interest in the report's unredacted release—so that truth can be known.

Mr. Frey is mindful that Pennsylvania guarantees a right to “reputation” under Article I, Section 1 of the Pennsylvania Constitution. He requests that while the Court considers “reputation” in a constitutional sense, the Court also considers the general reputational concerns of people like himself—people who were abused, who were humiliated when they attempted to speak up, and who suffered on both accounts. A grand jury report that tells the unvarnished truth is enormously important. It restores the victims’ reputation and credibility. It validates their telling of an experience that nobody wanted to believe. It holds the potential to change what people think about victims and their stories. Like many victims, Mr. Frey has a significant reputational interest in the grand jury report. At a minimum, the public should know the identity of all who affected Mr. Frey directly.

It is ironic how petitioners clamor for due process while wrapping themselves in the cloth of victimhood. Many real victims would love to provide those who harmed them with full due process in a civil or criminal trial. This is often impossible because of the statute of limitations, leaving only this grand jury report to inform the public and ensure that the sexual abuse of minors no longer remains secret.

III. Conclusion

The Court should release the grand jury report without redaction.

Respectfully submitted,

_____/s/ Charles L. Becker

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Dated: August 14, 2018

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APPENDIX "A"



The Holy See

APOSTOLIC JOURNEY OF HIS HOLINESS POPE FRANCIS
TO CUBA, TO THE UNITED STATES OF AMERICA
AND VISIT TO THE UNITED NATIONS HEADQUARTERS
(19-28 SEPTEMBER 2015)

MEETING WITH VICTIMS OF SEXUAL ABUSE

ADDRESS OF THE HOLY FATHER

St. Charles Borromeo Seminary, Philadelphia
Sunday, 27 September 2015

[Multimedia]

My dearest brothers and sisters in Christ, I am grateful for this opportunity to meet you, I am blessed by your presence. Thank you for coming here today.

Words cannot fully express my sorrow for the abuse you suffered. You are precious children of God who should always expect our protection, our care and our love. I am profoundly sorry that your innocence was violated by those who you trusted. In some cases the trust was betrayed by members of your own family, in other cases by priests who carry a sacred responsibility for the care of soul. In all circumstances, the betrayal was a terrible violation of human dignity.

For those who were abused by a member of the clergy, I am deeply sorry for the times when you or your family spoke out, to report the abuse, but you were not heard or believed. Please know that the Holy Father hears you and believes you. I deeply regret that some bishops failed in their responsibility to protect children. It is very disturbing to know that in some cases bishops even were abusers. I pledge to you that we will follow the path of truth wherever it may lead. Clergy and bishops will be held accountable when they abuse or fail to protect children.

We are gathered here in Philadelphia to celebrate God's gift of family life. Within our family of faith and our human families, the sins and crimes of sexual abuse of children must no longer be held in secret and in shame. As we anticipate the Jubilee Year of Mercy, your presence, so generously

given despite the anger and pain you have experienced, reveals the merciful heart of Christ. Your stories of survival, each unique and compelling, are powerful signs of the hope that comes from the Lord's promise to be with us always.

It is good to know that you have brought family members and friends with you today. I am grateful for their compassionate support and pray that many people of the Church will respond to the call to accompany those who have suffered abuse. May the Door of Mercy be opened wide in our dioceses, our parishes, our homes and our hearts, to receive those who were abused and to seek the path to forgiveness by trusting in the Lord. We promise to support your continued healing and to always be vigilant to protect the children of today and tomorrow.

When the disciples who walked with Jesus on the road to Emmaus recognized that He was the Risen Lord, they asked Jesus to stay with them. Like those disciples, I humbly beg you and all survivors of abuse to stay with us, to stay with the Church, and that together, as pilgrims on the journey of faith, we might find our way to the Father.

APPENDIX “B”



The Holy See

APOSTOLIC JOURNEY OF HIS HOLINESS POPE FRANCIS
TO CUBA, TO THE UNITED STATES OF AMERICA
AND VISIT TO THE UNITED NATIONS HEADQUARTERS
(19-28 SEPTEMBER 2015)

MEETING WITH BISHOPS TAKING PART IN THE WORLD MEETING OF FAMILIES

ADDRESS OF THE HOLY FATHER

St. Charles Borromeo Seminary, Chapel of Saint Martin, Philadelphia
Sunday, 27 September 2015

[Multimedia]

Dear Brother Bishops,

Good morning. I am deeply pained by the stories, the sufferings and the pain of minors who were sexually abused by priests. I continue to be ashamed that persons charged with the tender care of those little ones abused them and caused them grave harm. I deeply regret this. God weeps. The crimes and sins of sexual abuse of minors may no longer be kept secret; I commit myself to ensuring that the Church makes every effort to protect minors and I promise that those responsible will be held to account. Survivors of abuse have become true heralds of hope and ministers of mercy; humbly we owe our gratitude to each of them and to their families for their great courage in shedding the light of Christ on the evil sexual abuse of minors. I say this because I have just met with a group of persons abused as children, who are helped and accompanied here in Philadelphia with particular care by Archbishop Chaput, and we felt that I should communicate this to you.

I am happy to be able to share these moments of pastoral reflection with you, amid the joyful celebrations for the World Meeting of Families. I am speaking in Spanish because they told me that you all know Spanish.

For the Church, the family is not first and foremost a cause for concern, but rather the joyous

confirmation of God's blessing upon the masterpiece of creation. Every day, all over the world, the Church can rejoice in the Lord's gift of so many families who, even amid difficult trials, remain faithful to their promises and keep the faith!

I would say that the foremost pastoral challenge of our changing times is to move decisively towards recognizing this gift. For all the obstacles we see before us, gratitude and appreciation should prevail over concerns and complaints. The family is the fundamental locus of the covenant between the Church and God's creation, with that creation which God blessed on the last day with a family. Without the family, not even the Church would exist. Nor could she be what she is called to be, namely "a sign and instrument of communion with God and of the unity of the entire human race" (*Lumen Gentium*, 1).

Needless to say, our understanding, shaped by the interplay of ecclesial faith and the conjugal experience of sacramental grace, must not lead us to disregard the unprecedented changes taking place in contemporary society, with their social, cultural – and, sadly, also legal – effects on family bonds. These changes affect all of us, believers and non-believers alike. Christians are not "immune" to the changes of their times. This concrete world, with all its many problems and possibilities, is where we must live, believe and proclaim.

Until recently, we lived in a social context where the similarities between the civil institution of marriage and the Christian sacrament were considerable and shared. The two were interrelated and mutually supportive. This is no longer the case. To describe our situation today, I would use two familiar images: our neighborhood stores and our large supermarkets.

There was a time when one neighborhood store had everything one needed for personal and family life. The products may not have been cleverly displayed, or offered much choice, but there was a personal bond between the shopkeeper and his customers. Business was done on the basis of trust, people knew one another, they were all neighbors. They trusted one another. They built up trust. These stores were often simply known as "the local market".

Then a different kind of store grew up: the supermarket. Huge spaces with a great selection of merchandise. The world seems to have become one of these great supermarkets; our culture has become more and more competitive. Business is no longer conducted on the basis of trust; others can no longer be trusted. There are no longer close personal relationships. Today's culture seems to encourage people not to bond with anything or anyone, not to trust. The most important thing nowadays seems to be follow the latest trend or activity. This is even true of religion. Today consumption seems to determine what is important. Consuming relationships, consuming friendships, consuming religions, consuming, consuming... Whatever the cost or consequences. A consumption which does not favor bonding, a consumption which has little to do with human relationships. Social bonds are a mere "means" for the satisfaction of "my needs". The important thing is no longer our neighbor, with his or her familiar face, story and personality.

The result is a culture which discards everything that is no longer “useful” or “satisfying” for the tastes of the consumer. We have turned our society into a huge multicultural showcase tied only to the tastes of certain “consumers”, while so many others only “eat the crumbs which fall from their masters’ table” (*Mt 15:27*).

This causes great harm; it greatly wounds our culture. I dare say that at the root of so many contemporary situations is a kind of impoverishment born of a widespread and radical sense of loneliness. Running after the latest fad, accumulating “friends” on one of the social networks, we get caught up in what contemporary society has to offer. Loneliness with fear of commitment in a limitless effort to feel recognized.

Should we blame our young people for having grown up in this kind of society? Should we condemn them for living in this kind of a world? Should they hear their pastors saying that “it was all better back then”, “the world is falling apart and if things go on this way, who knows where we will end up?” It makes me think of an Argentine tango! No, I do not think that this is the way. As shepherds following in the footsteps of the Good Shepherd, we are asked to seek out, to accompany, to lift up, to bind up the wounds of our time. To look at things realistically, with the eyes of one who feels called to action, to pastoral conversion. The world today demands this pastoral conversion on our part. “It is vitally important for the Church today to go forth and preach the Gospel to all: to all places, on all occasions, without hesitation, reluctance or fear. The joy of the Gospel is for all people: no one can be excluded” (*Evangelii Gaudium*, 23). The Gospel is not a product to be consumed; it is not a part of this culture of consumption.

We would be mistaken, however, to see this “culture” of the present world as mere indifference towards marriage and the family, as pure and simple selfishness. Are today’s young people hopelessly timid, weak, inconsistent? We must not fall into this trap. Many young people, in the context of this culture of discouragement, have yielded to a form of unconscious acquiescence. They are afraid, deep down, paralyzed before the beautiful, noble and truly necessary challenges. Many put off marriage while waiting for ideal conditions, when everything can be perfect. Meanwhile, life goes on, without really being lived to the full. For knowledge of life’s true pleasures only comes as the fruit of a long-term, generous investment of our intelligence, enthusiasm and passion.

Addressing Congress, a few days ago, I said that we are living in a culture which pressures some young people not to start a family because they lack the material means to do so, and others because they are so well off that they are happy as they are. That is the temptation, not to start a family.

As pastors, we bishops are called to collect our energies and to rebuild enthusiasm for making families correspond ever more fully to the blessing of God which they are! We need to invest our energies not so much in rehearsing the problems of the world around us and the merits of

Christianity, but in extending a sincere invitation to young people to be brave and to opt for marriage and the family. In Buenos Aires, many women used to complain about their children who were 30, 32 or 34 years old and still single: "I don't know what to do" – "Well, stop ironing their shirts!" Young people have to be encouraged to take this risk, but it is a risk of fruitfulness and life.

Here too, we need a bit of holy *parrhesia* on the part of bishops. "Why aren't you married?" "Yes, I have a fiancée, but we don't know... maybe yes, maybe no... We're saving some money for the party, for this or that..." The holy *parrhesia* to accompany them and make them grow towards the commitment of marriage.

A Christianity which "does" little in practice, while incessantly "explaining" its teachings, is dangerously unbalanced. I would even say that it is stuck in a vicious circle. A pastor must show that the "Gospel of the family" is truly "good news" in a world where self-concern seems to reign supreme! We are not speaking about some romantic dream: the perseverance which is called for in having a family and raising it transforms the world and human history. Families transform the world and history.

A pastor serenely yet passionately proclaims the word of God. He encourages believers to aim high. He will enable his brothers and sisters to hear and experience God's promise, which can expand their experience of motherhood and fatherhood within the horizon of a new "familiarity" with God (*Mk 3:31-35*).

A pastor watches over the dreams, the lives and the growth of his flock. This "watchfulness" is not the result of talking but of shepherding. Only one capable of standing "in the midst of" the flock can be watchful, not someone who is afraid of questions, afraid of contact and accompaniment. A pastor keeps watch first and foremost with prayer, supporting the faith of his people and instilling confidence in the Lord, in his presence. A pastor remains vigilant by helping people to lift their gaze at times of discouragement, frustration and failure. We might well ask whether in our pastoral ministry we are ready to "waste" time with families. Whether we are ready to be present to them, sharing their difficulties and joys.

Naturally, experiencing the spirit of this joyful familiarity with God, and then spreading its powerful evangelical fruitfulness, has to be the primary feature of our lifestyle as bishops: a lifestyle of prayer and preaching the Gospel (*Acts 6:4*). I have always been struck by how, in the early days of the Church, the Hellenists complained that their widows and orphans were not being well cared for. The apostles, of course, weren't able to handle this themselves, so they got together and came up with deacons. The Holy Spirit inspired them to create deacons and when Peter announced the decision, he explained: "We are going to choose seven men to take care of this; for our part, we have two responsibilities: prayer and preaching". What is the first job of bishops? To pray. The second job goes along with this: to preach. We are helped by this dogmatic definition. Unless I am wrong, Cardinal Müller helps us because he defines what is the role of the bishop.

The bishop is charged to be a pastor, but to be a pastor first and foremost by his prayer and preaching, because everything else follows, if there is time.

By our own humble Christian apprenticeship in the familial virtues of God's people, we will become more and more like fathers and mothers (as did Saint Paul: cf. *1 Th 2:7,11*), and less like people who have simply learned to live without a family. Lack of contact with families makes us people who learn to live without a family, and this is not good. Our ideal is not to live without love! A good pastor renounces the love of a family precisely in order to focus all his energies, and the grace of his particular vocation, on the evangelical blessing of the love of men and women who carry forward God's plan of creation, beginning with those who are lost, abandoned, wounded, broken, downtrodden and deprived of their dignity. This total surrender to God's *agape* is certainly not a vocation lacking in tenderness and affection! We need but look to Jesus to understand this (cf. *Mt 19:12*). The mission of a good pastor, in the style of God – and only God can authorize this, not our own presumption! – imitates in every way and for all people the Son's love for the Father. This is reflected in the tenderness with which a pastor devotes himself to the loving care of the men and women of our human family.

For the eyes of faith, this is a most valuable sign. Our ministry needs to deepen the covenant between the Church and the family. I repeat this: to deepen the covenant between the Church and the family. Otherwise it becomes arid, and the human family will grow irremediably distant, by our own fault, from God's joyful good news, and will go to the latest supermarket to buy whatever product suits them then and there.

If we prove capable of the demanding task of reflecting God's love, cultivating infinite patience and serenity as we strive to sow its seeds in the frequently crooked furrows in which we are called to plant – for very often we really do have to sow in crooked furrows –, then even a Samaritan woman with five “non-husbands” will discover that she is capable of giving witness. And for every rich young man who with sadness feels that he has to calmly keep considering the matter, an older publican will come down from the tree and give fourfold to the poor, to whom, before that moment, he had never even given a thought.

My brothers, may God grant us this gift of a renewed closeness between the family and the Church. Families need it, the Church needs it, and we pastors need it.

The family is our ally, our window to the world; the family is the proof of an irrevocable blessing of God destined for all the children who in every age are born into this difficult yet beautiful creation which God has asked us to serve! Thank you.

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