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CENTER FOR JUSTICE &  
DEMOCRACY  
\*\*NEWS\*\*

Dear Friend,

This edition of Impact deals with a disturbing subject matter – abuse, particularly of children and the elderly. As tragic as these stories are, it is heartening to know that the civil justice system can provide some measure of accountability, compensation and justice for these most innocent victims.

Interestingly, we often hear “tort reform” groups lamenting the fact that in many schools today, liability concerns have caused teachers and principals to terminate physical contact with students. These groups also say that we need more laws to limit the liability of school officials. Of course, while the vast majority of teachers and principals would never engage in or condone inappropriate conduct with students, the amount of abuse evident in schools today suggests that immunity laws for school officials is the wrong way to go. Further limiting the liability and responsibility of those in charge could only further endanger students and lead to more such incidents.

Hopefully, by explaining the problem as we try to do here, more families will become aware of options for legal action for abuse victims. At the Center for Justice & Democracy, we’ll continue doing our best to help educate and advocate on their behalf.

Sincerely,  
Joanne Doroshow  
Executive Director

## IN THIS ISSUE: ABUSE

### CHILD SEXUAL ABUSE AND INSTITUTIONAL SECRECY

The Los Angeles Unified School District is in disarray. Earlier this year, the entire staff of the Miramonte Elementary School was replaced. This followed sickening allegations about Mark Henry Berndt, a teacher at Miramonte for more than 30 years, who allegedly had been blindfolding and gagging children, feeding them a substance investigators say was semen, running cockroaches over their faces, and photographing them. These children were almost all from poor Latino immigrant families, many undocumented. Berndt, who has pled not-guilty, sits in jail awaiting the next hearing. Meanwhile, another LA teacher, Martin Springer, has been charged committing lewd acts upon a child and is free on bail.

As disturbing as this is, LA is hardly alone. Sexual victimization of children in institutional settings is a serious, pervasive and underestimated problem. This fact was recently confirmed in a 2011 landmark study



by researchers at John Jay College of Criminal Justice, who analyzed available data about sexual abuse of minors in schools, churches, child care settings and other organizations where adults are involved in close relationships with children.

Unfortunately, history shows that the institutions themselves are often guilty of perpetuating the problem. Time and again, organizations entrusted with children maintain a culture of silence when allegations

(continued on page 2)

### ELDER ABUSE AND NURSING HOMES

Seventy nine-year-old Frances Tanner suffered from mild dementia but was otherwise healthy, spirited and mobile when she moved into Colonial Healthcare nursing home in March 2005. Seven months later, the retired public servant, who had worked for the FBI, Internal Revenue Service and other agencies, was dead from an infected bedsore.

Tanner’s daughter filed a lawsuit against the Auburn, CA nursing home and its parent company, Horizon West Healthcare, alleging elder abuse. At trial, jurors learned that Tanner had fallen and fractured her hip yet it took eight days before it was diagnosed and a bedsore was discovered. Documents and testimony revealed that Colonial was

plagued by chronic understaffing, inadequate care and substandard monitoring, which left residents, including Tanner, exposed to harm. For example, evidence showed that the same day Tanner fell, Colonial signed off on a Department of Health “deficiency citation” for staffing below the required 3.2 nursing hours per patient per day; moreover, the nursing home only had one licensed nurse on duty for over 40 Alzheimer’s and dementia patients. Other evidence revealed that Colonial had a history of problems with state regulators, with Tanner’s case being the fourth patient death resulting in citation in recent years. Additional testimony exposed a culture of corporate greed at Horizon.

(continued on page 3)

of child sexual abuse arise, focusing their response on protecting the institution rather than helping the victim or safeguarding future victims. The government's unwillingness to criminally prosecute organizations that permit sexual abuse has only allowed the violence to continue.

For many victims of child sex abuse, who suffer lifelong adverse health, social and emotional consequences, civil litigation is often the only way they are able to achieve some form of compensation and recovery. The costs of such abuse on victims, their families and society are enormous. Survivors and their families face financial burdens, like medical and mental health care bills, but also experience trauma, pain, suffering and lost quality of life.

In addition to monetary damages, the tort system gives child sexual abuse victims the opportunity to secure a sense of personal justice. Civil trials can offer survivors a public forum to tell their story, lifting a veil of secrecy that warns other potential victims and alerts society to widespread institutional failures, prompting withdrawal of public support for that negligent organization.

Just as important, civil lawsuits can effect changes in specific institutional practices and signal to similar groups that inaction on child sex abuse will not be tolerated. As the following examples show, survivors often turn to the civil courts for justice when institutions refuse to police themselves and knowingly place children at risk of sexual victimization. The suits against LA have already begun.

### **Catholic Church**

Since the mid-1980s, there have been thousands of clergy sexual abuse lawsuits across the country. Such litigation has uncovered most of what we know about sexual victimization of children in the Catholic Church. As Albany Law School Professor Timothy Lytton explained in the February 2007 *Connecticut Law Review*: "Prior to the filing of lawsuits in the 1980s, local media report-

ing of sexual abuse by clergy was scant and infrequent and there was no national media coverage of the issue. Prosecutions were rare and public discussion and policy debate non-existent. Litigation was the primary force in attracting attention to the problem, shaping perceptions of it, and making it a policy priority within both the Church and state governments...clergy sexual abuse litigation has made it possible for child sexual abuse victims to hold one of the largest, richest, and most powerful institutions in America publicly accountable and has forced reluctant Church and government officials to adopt sensible policies to address a widespread social problem." (see box on p. 4)

### **Boys Scouts of America (BSA)**

In April 2010, an Oregon jury awarded \$19.9 million in damages, \$18.5 million of which were punitive, to Kerry Lewis who had been sexually abused by an assistant troop leader over two years in the early 1980s. Evidence showed that BSA had allowed the man to continue working with children after he'd admitted to molesting seventeen boys. The jury also had access to 1,200 of BSA's reported 6,000 "perversion files," internal documents detailing claims of sexual abuse by troop leaders and volunteers that the Scouts had maintained at its national office for more than 70 years. Though BSA had been sued dozens of times over sex abuse, most cases settled out of court, which kept the files confidential. Lewis's civil lawsuit marked the first time in 20 years that the Scouts were forced to submit their "perversion" files to the court. From those documents, the jury learned that BSA had classified 1,600 individuals between 1965 and 1985 as "unfit" to work with children, the majority of them on account of "perversion."

### **Penn State University/Second Mile**

In November 2011, "John Doe A" filed the first civil suit against Penn State and The Second Mile charity, alleging, among other things, child abuse, negligent supervision, intentional infliction of emotional distress and conspiracy

to endanger children. According to the complaint, "John Doe A" was 10 years old when he met Jerry Sandusky, then-PSU assistant football coach and founder of the Second Mile, a charity dedicated to helping children with troubled families like "John Doe A." The victim, now 29, claims that Sandusky sexually abused him "over one hundred times" between 1992 and 1996 "within Pennsylvania and outside Pennsylvania; in facilities of Penn State, particularly the football coaches' locker room; at times within Philadelphia County; at facilities out of state connected with a Penn State bowl game; and at the Sandusky home," threatening to harm "John Doe A" and his family if he told anyone about the abuse. The lawsuit also alleges that officials at Penn State and Second Mile repeatedly breached their duty to protect children from sexual victimization by Sandusky. In a statement, "John Doe A" explained that he turned to the civil justice system "because I don't want other kids to be hurt and abused by Jerry Sandusky or anybody like Penn State to allow people

(continued on page 3)



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## **IMPACT**

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like him to do it – rape kids. ... Now that I have told and done something about it I am feeling better and going to get help and work with the police. I want other people who have been hurt to know they can come forward and get help and help protect others in the future.” The case is pending.

### USA Swimming

In August 2010, former Olympic hopeful Jancy Thompson filed a lawsuit against the sport’s national governing body, alleging that she had been sexually

victimized by her former coach – a registered USA Swimming coach member – over a five-year period since she was 15. “What I’ve gone through has been absolute hell,” Thompson told *ABC News*. “I was robbed of a normal childhood and never performed to my full potential. ... I hope that I can help prevent future swimmers from having to go through what I went through.” According to Thompson’s complaint, USA Swimming knew her coach had a history of sexually abusing his swimmers yet still allowed him to coach. Thompson also

argues that the organization condoned “an ongoing, chronic, systemic and pervasive epidemic of sexual abuse and molestation of underage swimmers by their swim coaches occurring throughout the United States for the past 20 years.” In announcing her lawsuit at a news conference, Thompson said, “I am here today in hopes that USA Swimming will retain new leadership and clean up its program – get rid of abusive swim coaches and create a safe environment for young swimmers.” The case is pending.

### ELDER ABUSE AND NURSING HOMES

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In May 2010, a unanimous jury awarded over \$29 million in damages, \$28 million of which were punitive. Trial Judge Roland Candee upheld the verdict, citing “overwhelming” and “devastatingly powerful” evidence in the trial, which he called “a classic demonstration of how well the jury system works.” As Judge Candee explained, the jury clearly intended to “discourage future wrongful conduct” in handing down its punitive damages verdict.

When nursing homes injure or kill vulnerable residents like Frances Tanner, the civil justice system is often the most effective avenue to seek redress for dangerous care. Tort suits can compensate victims and their families for injury and suffering, penalize homes that willfully or recklessly endanger health and safety, deter future misconduct by those institutions and signal to the entire nursing home industry that such malfeasance will not be tolerated, causing industry-wide reforms.

Not surprisingly, the nursing home industry and its allies have tried to limit the legal rights of residents killed or hurt by nursing home abuse and neglect. One tactic has been the use of mandatory arbitration agreements, where nursing homes require residents or their families to sign away their right to a jury trial for any future negligent acts as a condition of admittance to the facility.

Another strategy involves enactment of federal and state “tort reforms,” laws that make it more difficult or impossible for victims and their families to hold dangerous nursing homes accountable in court. For example, in 2001, the Florida legislature enacted a heightened evidentiary standard for victims seeking



punitive damages, also capping those awards. In 2002, Utah limited non-economic damages against nursing homes to \$250,000; Texas imposed the same cap the following year. More recently, in September 2011, a new law went into effect in Tennessee that set a \$750,000 cap on pain and suffering claims and limited punitive damages to twice the amount of compensatory damages or \$500,000, whichever is greater.

Other states are attempting to follow suit in limiting victims’ rights. In January 2012, Pennsylvania’s House of Representatives approved legislation that would cap punitive damages for injured nursing home residents. Similarly, under Kentucky HB 361, elder abuse victims and their families would have to submit all nursing homes claims to a

three-physician screening panel before being allowed to go to court.

Clearly, limiting rights of abuse and neglect victims is the wrong way to go given the state of patient safety in nursing homes today. According to an October 2011 University of California (UC) analysis of data maintained by the Centers for Medicare and Medicaid Services in cooperation with state agencies, about 146,000 deficiencies were issued to nursing homes for violations of federal regulations in 2010, indicating many quality issues in the nation’s nursing homes. Also, “23 percent of the nation’s nursing facilities received deficiencies for poor quality of care that caused actual harm or jeopardy to residents.” Moreover, “In 2010, 43 percent of nursing homes failed to provide adequate infection control and 43 percent failed to ensure a safe environment for residents to prevent accidents.”

In another 2011 UC study, researchers found that, “The nation’s largest for-profit nursing homes deliver significantly lower quality of care because they typically have fewer staff nurses than non-profit and government-owned nursing homes.” Moreover, a 2010 report by professors at the University of Pittsburgh found approximately 135 adverse drug events per year in an average-size nursing home (*i.e.*, 105 beds) or 2 million events a year among all U.S. nursing home residents.



## ABUSIVE HAZING

According to Drs. Elizabeth Allan and Mary Madden, Lead Researchers of the National Study on Student Hazing, “hazing refers to any activity expected of someone joining a group (or to maintain full status in a group) that humiliates, degrades or risks emotional and/or physical harm, regardless of the person’s willingness to participate.”

Unfortunately, abusive hazing rituals run rampant at our nation’s high schools and colleges. The case of Robert Champion illustrates.

On the night of November 19, 2011, authorities found Robert Champion unresponsive aboard a charter bus carrying members of FAMU’s famed Marching 100 band after a football game. The drum major later died at a nearby hospital. An autopsy revealed that Champion had suffered trauma blows to his body and died from shock caused by severe bleeding; the case was ruled a homicide. Soon after his death, Champion’s parents announced they would be pursuing a lawsuit because, “We want to eradicate a culture of hazing so this doesn’t happen again. ...Hazing is a culture of, ‘Don’t ask, don’t tell.’ The family’s message today is: ‘Please tell.’”

In February 2012, the Champions filed a lawsuit against the bus company, its owner and the driver of the bus where the hazing took place. The family alleges that Robert, a vocal opponent of hazing, was subjected to two types of violent rituals before he died: “Crossing Bus C” where “pledges run from the front door of the bus to the back, down the center aisle, while initiated members of the ‘Bus C posse’ launch punches, slaps, kicks. Should the ‘pledge’ fall to the bus floor... he is then dragged back to the front of the bus to start over”; and the “Hot Seat” where “a pillow case or other object is placed over the victim’s head, preventing oxygen flow to the nose and mouth. The victim is asked questions by the hazer. If the victim answers a question correctly the object is lifted to allow oxygen. During this time, the victim is punched, slapped, kicked or hit.” According to the lawsuit, bus company managers knew FAMU band members regularly held such hazing rituals on buses after football games but did nothing to stop them, choosing instead to: 1) constantly assign the same driver to “Bus C” because she was “familiar with the hazing rituals and would allow it”; 2) ignore driver complaints about hazing; and 3) tell drivers to ignore the hazing

because “FAMU was paying for it and could do what they want.” The family also plans to sue the university but must wait six months before filing under state law.

There have been other hazing cases, as well. In November 2011, the parents of 15-year-old Jeffrey Dixon Jr. filed a lawsuit against the Picayune School District, Dixon’s baseball coach and several players after a pre-game hazing ritual put their son in the hospital. In August 2008, seven teenagers, mostly underclassmen, were attacked or raped with broomsticks by juniors and seniors as part of a hazing ritual at a school football team training camp. The victims filed a lawsuit against six former players who took part in the assaults, their parents, former football coaches, Las Vegas City Schools and school administrators, as well as the owners of the campground where the violence occurred. In September 2011, the case settled for \$5.25 million. And in June 2011, Marie Lourdes Andre filed a wrongful death lawsuit against Cornell University’s SAE fraternity chapter, 20 former SAE brothers and pledge members after her son, George, died during an alcohol-related hazing ritual.

## NOTABLE CASES AGAINST THE CATHOLIC CHURCH

*Diocese of Lafayette* (1986). Scott Gastal was seven years old when he became the victim of Rev. Gilbert Gauthe. For over a year, Gauthe sexually abused Scott and threatened to kill his parents if he reported it to anyone. Gastal’s parents refused out-of-court settlement offers and went to trial, where Scott testified in open court about the abuse and jurors heard how the church harbored a known pedophile for ten years, who, among other things, forced altar boys into group sex, photographed the episodes and showed the pictures to the boys. On February 7, 1986, the jury awarded the Gastal family \$1.25 million. When asked in a December 2009 *60 Minutes* interview why he went to court, Scott said in an interview, “I tried to put a stop to it cause I feel that the Church was gonna just try to cover all of it up, act like nothing happened and just move him on down.”

*Archdiocese of Boston* (2002). Thousands of pages of church documents, depositions of church officials and other discovery materials compiled in 84 civil lawsuits filed by child sex abuse victims and their families against the Archdiocese exposed the Church’s role in covering up serial abuse by Rev. John J.

Geoghan. According to the documents, a succession of Bishops and Cardinals knew Geoghan had been molesting hundreds of children and failed to report it or warn parishioners, choosing instead to shuffle him through six parishes in 34 years where he had access to children. As the Associated Press reported in December 2009, “waves of lawsuits led to massive settlements, including \$660 million settlement in 2007 with more than 500 alleged victims in the Archdiocese of Los Angeles and an \$85 million settlement in 2003 with more than 550 victims in the Archdiocese of Boston.”

*Bridgeport Diocese* (2009). Despite attempts to keep them confidential, the Diocese was forced to make public more than 12,000 pages of documents from 23 civil lawsuits filed against priests accused of sexually abusing children. The papers – which included testimony, depositions, affidavits and motions sealed in 2001 after the Diocese reached settlements with victims who were molested in the 1960s, ’70s and ’80s – detailed how the Church repeatedly assigned known pedophile priests to positions where they abused children again.