

## Victims caught up in Milwaukee's 'shell game'

Jason Berry | Jan. 31, 2012



Peter Isely of the Survivors Network of those Abused by Priests points to a picture of former Milwaukee Archbishop Rembert Weakland during a news conference April 6, 2010, in Milwaukee. (AP/Dinesh Ramde)

Dead Catholics have a vested interest in reducing settlements to clergy abuse survivors in Milwaukee, thanks to a shift of \$55.6 million on the church balance sheets by then-Archbishop Timothy Dolan in 2008.

Dolan's move in the twilight of his seven-year tenure in Milwaukee has emerged as a major issue in the archdiocese's bankruptcy, which his successor, Archbishop Jerome ListECKI, filed last February. One expert who has done extensive research on diocesan financial statements has described the move as "a shell game."

ListECKI approved Chapter 11 protection from creditors in order to reduce the settlement claims of sexual victims of priests from incidents that occurred long before the tenure of either ListECKI or Dolan, who currently is the archbishop of New York as well as a newly named cardinal.

In contrast to the clamor of victims, the 500,000 souls spread across 1,000 acres of sacred soil in Milwaukee are silent. "The Cemetery Care Claimants include deceased persons with no direct voice in these bankruptcy proceedings ... [but] a straightforward expectation -- that the graves, crypts and mausoleums will be maintained forever," the church asserted in a motion filed Nov. 26.

This novel argument -- as far as *NCR* could determine, no other diocese has used it -- pits the dead against the living in a quest for money, lots of it.

When the archdiocese filed for Chapter 11 protection, it halted the discovery phase -- taking depositions and finding evidence -- in lawsuits brought by abuse survivors. Bankruptcy law allows the "estate" -- in this case the archdiocese -- to negotiate for payment based on assets. The abuse survivors, as plaintiffs, became creditors of the estate.

"Incredibly, the archbishop's announcement left out the most important reason they filed for bankruptcy: to delay the legal process so they don't have to reveal the names of the priest-predators and the church officials

who covered up the priest-predators' crimes," the plaintiff attorney, Jeff Anderson, said at the time.

"It is interesting that this action comes on the precipice of the taking of depositions of church leaders who have the most to hide," he said.

While that is a claim often heard when the church decides to seek bankruptcy -- that it is willing to take this drastic step rather than subject its archives and leaders to scrutiny -- in this case the church is attempting to save its assets, too, by shuffling money to an account that neither the courts nor plaintiffs can touch. The church is trying to shield a major asset, \$55.6 million, as a secure trust for perpetual care at cemeteries. Dolan shifted the funds in 2008 from one account to another on church balance sheets as litigation escalated.

When a diocese takes Chapter 11 relief, its operations continue, while debt-claimants joust over access to funds. The exact number of survivors admitted as creditors won't be known until a court-mandated Feb. 1 deadline passes. Attorney Mike Finnegan with Anderson's law firm in St. Paul, Minn., told *NCR* the number would likely reach 200.

The archdiocese, meanwhile, still operates its various services and ministries with a \$25 million annual budget. When bankruptcy concludes and settlements are paid, the financial life of the church will go on, if on a tighter budget.

The situation is a far cry from 1995 when the Wisconsin Supreme Court, in a ruling known as the *Pritzloff* decision, barred all litigation against Catholic dioceses for clergy abuse caused by supervisory negligence. No other state gave the church unique immunity from litigation. Overnight, cases in Wisconsin lower courts were dismissed.

Anderson subsequently brought a case trying to overturn *Pritzloff*. He not only lost, but had to pay a \$40,000 court fine for filing the case.

"Wisconsin was a shut-out for clergy survivors," Anderson told *NCR*. "We could not get a case in the door."

A decade passed before the door cracked open. A 2002 California law gave victims whose cases were past the statute of limitations a one-year window to file suit. As attorneys filed close to 1,000 cases against California dioceses, two serial predators who had transferred with good recommendations from the Milwaukee archdiocese were defendants in 10 cases. California courts ruled that the Milwaukee archdiocese was responsible for part of those claims, and the archdiocese paid \$8.25 million.

Three years later, Anderson filed several cases in Wisconsin, accusing Milwaukee and other dioceses of fraud (as opposed to supervisory negligence) for failure to alert Catholics if church officials had assigned a pedophile to their parish. Although *Pritzloff* is still the law, the high court in 2007 gave standing to the fraud cases, which opened the floodgates.

In a Feb. 11, 2011, hearing for the debtors to gain insight on the assets, Anderson questioned the archdiocesan chief financial officer, John Marek.

"After the Wisconsin Supreme Court came down with a decision [favorable to victim-plaintiffs] on July 11 of '07," Anderson stated, "there appears to be over \$55 million transferred to the fund in '08. Are you aware of that?"

Marek called it "a unique, distinct fund that has always been held separately, held in trust. ... Those monies were moved into the Perpetual Care Trust that had been formed."

*Q:* And what accounts were the funds held in before creation of the trust?

*A:* In the income care fund.

*Q:* Under the control of the archbishop?

*A:* Well, ultimately, yeah, I guess.

*Q:* Why isn't it listed on these [archdiocesan financial statement] schedules?

*A:* Because we don't own the trust.

Marek was referring to the Beneficial Interest in Cemetery Perpetual Care Trust, a pivotal issue in the proceedings.

*NCR* provided a copy of the hearing transcript to Jack Ruhl, a professor of accountancy at Western Michigan University who has done extensive research on diocesan financial statements. Ruhl is also a 1978 graduate of Worsham College of Mortuary Science in Wheeling, Ill., and was a licensed funeral director in Michigan for several years before earning his doctorate in accountancy at Case Western Reserve University in Cleveland.

Referring to the transcript, Ruhl told *NCR*: "When Marek says, 'We don't own the trust', I would ask: Then why does the trust appear as an asset on the archdiocesan balance sheet? The definition of an asset is something that provides future economic benefit. When the archdiocese classified the [cemetery] trust account on their balance sheet as an asset, they acknowledged that the trust provides future benefit. The things we laypeople call assets -- our homes, cars, investment funds -- means that we own them, and to say otherwise in this case is misleading."

On the 2007 archdiocesan balance sheet, Ruhl explained, the asset account with the largest balance, at \$59.9 million, has a specific title: "Assets designated for future care of cemeteries and mausoleums, primarily cash and investments."

In contrast, the 2007 balance sheet shows an asset account called "Beneficial Interest in Cemetery Perpetual Care Trust" with a zero balance.

"In other words, they zeroed out one account and transferred most of the funds to a new account," Ruhl explained. "From an accounting standpoint, all Dolan did was rename the assets. It was a shell game."

### **Isely's odyssey**

Bankruptcy is the latest turn in the odyssey of Peter Isely, 51, a Wisconsin native son with a master of divinity degree from Harvard University. As Midwest director of the Survivors Network of those Abused by Priests (SNAP), Isely has relentlessly challenged three successive archbishops -- Rembert Weakland, Dolan and now Listecky -- to identify clergy predators and do right by the victims. For years, however, the *Pritzloff* decision foreclosed any chance at civil redress for the dozens of victims Isely got to know after going public with his own story (see sidebar).

Isely is not a plaintiff; he draws a salary of less than \$50,000 from SNAP. But with the bankruptcy under way, at whatever level the settlements finally pay, the moral agenda Isely has pushed on the church has, in a very real sense, prevailed.

An activist to his marrow, Isely is married to his college girlfriend; they have a teenage son. Roving the city, operating out of a cluttered car, coffee shops and eateries on the hoof, Isely with his BlackBerry and laptop has been a catalyst in media coverage, often countering church officials' accounts.

In April 2002, *The Washington Post* reported that the archdiocese shredded internal documents on victims and perpetrators in 1999 with the agreement of its insurance companies. In June 2002, Dolan left St. Louis to succeed Weakland as archbishop of Milwaukee. Weakland had resigned that May after ABC News reported that he had paid \$450,000 from church funds in a settlement with a former lover, Paul Marcoux. Dolan, the gregarious, glad-handing Midwesterner, stood out in high relief from Weakland, the Benedictine prelate who maintained a rather detached approach to victims and who was harboring the secret of his homosexual affair.

Dolan met with Isely early and often, and with survivors in emotion-fraught sessions. As Anderson filed lawsuits alleging fraud, Project Benjamin, a Weakland-designed archdiocesan therapy program to reconcile victims and church, became Dolan's inherited baggage.

'Victims contacting Project Benjamin had been told, 'You can't sue the church in Wisconsin, so you're not going to get any money,' Isely said. 'The treatment was church-managed, terminated at will despite recommendations of [therapeutic] providers.' A part-time director of Project Benjamin conceded it was flawed. A *Milwaukee Journal Sentinel* editorial called for the archdiocese to replace it. Dolan folded Project Benjamin, and eventually started a different therapy program.

Isely intensified their dialogue, pushing for a structured mediation, using as a template the group settlement Anderson had forged in September 2002 for victims of Benedictines at St. John's University in Collegeville, Minn. But with five lawsuits pending in 2002, Milwaukee archdiocesan attorney Matt Flynn told Anderson that his clients could only expect therapy costs. Anderson told the press: 'He said, 'You're going to lose anyway so we'll throw a crumb to your clients if you drop these cases.' '

On Dec. 20, 2002, Dolan sent SNAP members a letter:

I was accused at a press conference of ignoring [Anderson's invitation to negotiate], and charged by Mr. Anderson of 'throwing crumbs.'

I have a sacred duty to help victims, but I also have a sacred duty to protect the patrimony of the archdiocese, which is not mine, but the people's, who have entrusted it to me to be used for the extensive ministries of the church in teaching, serving and sanctifying.

Whatever Flynn's actual words to Anderson, the ensuing antler-dance could only have come because the church attorney was confident in the shield that *Pritzloff* provided. But Dolan conceded to his own weakness in a handwritten letter to Isely on Dec. 22.

You have especially inspired me with your own witness to faith, your own return to the church, and your constant reference to the soul of those who have suffered. ... Once, you told me that your wife was so apprehensive that you would be again disappointed because 'Dolan would let you down.' She cautioned you not to put your trust in me. She is a very wise woman, Peter. I am afraid I will let you down. Listen to her: do not put your trust in me. You often speak eloquently about your own imperfection and sin. I'm in the same boat. I am imperfect, sinful, struggling, clumsy. I have learned not to trust myself.

But as Isely kept communicating with Dolan, the prelate leaned toward a negotiated settlement. Victims'

advocates kept pressure on the church by pushing the state legislature to pass a bill that would open the statute of limitations, which the church fought and defeated. Dolan was dealing with another albatross from Weakland: the \$450,000 settlement Weakland had paid to then-theology student Marcoux, with whom he had had a homosexual affair. Isely argued that each child-abuse survivor deserved at least half as much, \$225,000. Isely wanted the church to identify all perpetrators and parishes where they had lived; guarantee counseling in perpetuity to those needing it; and mediate with victims of all Wisconsin dioceses.

Dolan began hinting at a bankruptcy filing as early as 2006. After the state Supreme Court gave Anderson a green light on lawsuits based on fraud, Dolan saw that *Pritzloff* was a porous shield, and transferred the \$55.6 million into the cemetery account for perpetual care.

When ListECKI became archbishop in 2009, he stuck with Dolan's posture of trying to seek a structured negotiation in which the archdiocese would provide therapy, but the two sides were far apart on financial remuneration. The many California cases, meanwhile, settled for an average of \$1.2 million per plaintiff, but the costs soared in a grinding five-year litigation ordeal prolonged by Los Angeles Cardinal Roger Mahony's refusal to release personnel files damaging to himself.

The Milwaukee mediation response was reasonable on extending therapy, but balked at a payment average of 50 percent of the Marcoux settlement.

Although Dolan inherited a disaster from Weakland, his approach avoided a realistic financial formula. Isely has since blasted ListECKI's recent proposal of a therapy fund for failure to be financially realistic, given that many survivors blocked from suing since 1995 are well into their 50s or older. By the time Dolan shuffled the \$55.6 million into a trust for the cemeteries, the containment strategy, which had lost the *Pritzloff* shield, was crumbling.

### **Exempt from regulation**

It helped that church cemeteries were unregulated by the state.

Most states have regulatory oversight of cemeteries, to make sure they maintain sufficient reserves for upkeep, but dioceses, as religious organizations, are spared such regulation in Wisconsin and other states.

"Here in Michigan our erstwhile archbishop, Cardinal Adam Maida, basically raided the Detroit archdiocesan cemetery funds to help build the Pope John Paul II Center in Washington D.C.," author and mortuary director Thomas Lynch of Milford told *NCR*.

Maida "removed tens of millions of dollars from the endowment care funds of [Detroit] diocesan cemeteries," Lynch wrote in a July 21, 2010, Huffington Post commentary.

"The archdiocese isn't bankrupt," Lynch told *NCR*, "but the notion of this archdiocese funding the John Paul II Center in Washington, D.C., while closing schools and parishes, has offended a few good people." In the recent \$22 million sale of the center to the Knights of Columbus, the Detroit archdiocese lost a reported \$34 million of the \$54 million it lent in building the complex on The Catholic University of America campus (*NCR*, Aug. 19).

Many states have public regulatory offices that oversee cemeteries, but churches are often exempt under the constitutional freedom of religion clause, as in Michigan and Wisconsin.

Lynch, a prominent essayist and poet whose books include *The Undertaking: Life Studies from a Dismal Trade*, is a second-generation mortuary director. He views Dolan's creation of the cemetery trust, and Maida's withdrawal of funds for another purpose, as opposite faces of the same coin.

It strikes me as ironic that the Milwaukee archbishop [Dolan] was trying to claim the sacred status of the funds, protecting the grounds of the many deceased Catholics, while his brother bishop across Lake Michigan felt no compunction about taking out millions. I daresay there are similarities in mismanagement that have wreaked havoc on the Catholic church. You find abuse or deceit in every occupational group, but few have an upper level like the church so willing to hide it.

Isely last saw Dolan on Good Friday 2009; the archbishop was about to leave for New York. Isely went to services. By Isely's telling, as Dolan emerged from the cathedral, Isely happened to be first in line. He put both hands on the archbishop's shoulders, and said: "I really wish you the best of luck in New York."

"Well, Peter, I'm going to need a lot of luck in New York, 'cause I sure didn't get much of it here."

Isely withdrew as Dolan was engulfed by well-wishers.

[Jason Berry is author of *Render Unto Rome: The Secret Life of Money in the Catholic Church* (Crown.)]

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