



4-1-1986

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#### Recommended Citation

Nielsen, John T. (1986) "Response of John T. Nielsen," *Issues in Religion and Psychotherapy*. Vol. 12 : No. 1 , Article 6.

Available at: <https://scholarsarchive.byu.edu/irp/vol12/iss1/6>

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## RESPONSE OF JOHN T. NIELSEN

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John T. Nielsen, JD

I am grateful to be here with our traveling show. We have gone through this before. We had a fascinating experience about two or three months ago, being on a similar panel with the Salt Lake County Commission of Youth. Represented on the panel, other than those of us who are members of the LDS faith, were priests, ministers, and other clergy from virtually every major denomination represented in Salt Lake Valley. I can tell you that the problem we struggle with in our church is no more prevalent than in any of the other faiths. Brother Poelman has already indicated to you the strictures of the Catholic church regarding the violation of the priest-penitent privilege. Nothing quite as stringent can happen in our faith, but it is a problem that is common in religious circles and is being circulated with great currency among the various denominations in the United States.

Let me briefly summarize with you my personal background in this area. I am presently the Utah State Commissioner of Public Safety. That job is law enforcement related. Previous to that, and for the last ten years, I have been chief prosecutor in the Salt Lake County Attorney's Office. During the course of those years, I have been involved on many, many occasions with the problem we deal with here today—that of child abuse.

In the early 1970s, when I was first involved with police work and prosecution, I had a lot of exposure to the investigation and subsequent prosecution of these cases. In the days before it was fashionable to think of victims' rights and to think of the trauma a child suffers on the witness stand being interrogated by aggressive defense attorneys, the child had to confront the accused, who was often his or her own father or a very close relative. In those days it was an extremely difficult proposition. I am happy to report to you today that child abuse investigation and prosecution have been made perhaps a bit more tolerable

by sensitive legislators who recognized the problems inherent in child victimization and afforded some relief to our little ones who have experienced such horrible trauma as a result of these crimes.

In the Salt Lake County Attorney's Office where I practice, we had a very forward-looking program of child abuse investigation and prosecution, with emphasis on assisting these children to get through the process as easily as they could, by inflicting the least amount of trauma as they proceeded through the system. I was involved intimately in the investigation, the recovery of the bodies, and the subsequent prosecution of Arthur Gary Bishop. Those of you who are not from the state of Utah may not know that this involved the arrest and prosecution of a young man, a returned missionary incidentally, who confessed to the murder and homosexual contact of five young boys. It is a case that I suppose will affect me for the rest of my life. There are scenes and words that I have seen and heard that I will never be able to erase from my mind.

At any rate, I think I have learned a few things as a result of those experiences, and I would like to share them briefly with you here today. Let me just set the stage, first of all, by explaining that what we are talking about with regard to child abuse is not just child sexual abuse. Child abuse is not limited to that at all. There are many kinds: physical abuse (the beating and mistreatment of children other than sexual abuse); sexual abuse (both nonfamilial and incestual) of children; emotional abuse (which can be every bit as devastating as actual physical abuse); and, certainly, child neglect and abandonment which, unfortunately, is very prevalent in our society and which Judge Matheson sees in juvenile court far more frequently than he would like to, I'm sure.

The child victim, in my experience as a prosecutor and investigator, is by far the most vulnerable of all victims, not only because of age but also because of the emotional problems the child has. The child is confronted with one who is an authority figure, one the child generally trusts and in many cases has a strong emotional attachment to. A child can be extremely difficult to communicate with. While a child may be loquacious and talkative in an initial interview with police, once confronted by the different personality of a prosecutor or a counselor (and most assuredly in the court), the child may simply not be capable of describing the incident further. One of the most graphic demonstrations of that, and I think many of you might have seen the clip of this on television, was the little child from Utah who was kidnapped in Coronado, California. They allowed a certain number of courtroom cameras, and as the child was asked by the prosecutor to identify her

abductor and to describe the incident, she was simply incapable of doing that; she could only cry and could not communicate.

The child is frequently confronted with terrible conflicts. Here is the child's father or trusted confidante or a loved uncle, and he or she is suddenly thrust into the posture of having to harm that person, as he or she may see it. From an evidentiary standpoint in many child abuse cases, direct evidence is frequently missing. The incident of abuse is sometimes reported days, weeks, or months after the actual occurrence. There is no physical evidence. The prosecutor and investigator have to rely upon a hearsay statement or simply the statement and word of the child.

Many times the perpetrator is a prominent individual—if not prominent, certainly one of generally understood upstanding character . . . a good church man, someone who is revered as a fine father and example in the community. That in and of itself makes it difficult for the jury to believe the child. The perpetrator is generally in a position of power or authority over the child and uses that authority to make the child submit. The perpetrator almost always has serious emotional, psychological, or mental problems. The affliction called pedophilia is, in the minds of many psychologists, incurable, with no successful intervention that can be brought to bear. He will always have a preference for children and will, in fact, ply his particular preference on children irrespective of the amount of intervention, including threat or incarceration. It is the opinion of many that those who can be so classified should be removed from society and locked up to keep them away from our children. Many of those individuals progress to more serious behavior (I have seen this as a prosecutor) from mere fondling to experimentation, to more aggressiveness and boldness, and, as in the case of Arthur Gary Bishop, eventually to homicide. In summary, what we generally see in these cases is a very difficult investigation and prosecution, given the nature of the crime and the evidence before us. Certainly the saddest part of all are lives shattered, forever devastated by the experience.

Now to the point that we are talking about today. Occasionally these situations, difficult as they are already to the investigator and the prosecutor, are complicated by the efforts of well-meaning clergy who try to handle the problem without professional help. There have been instances where these cases have gone for years unreported, where there have been clergymen who have encouraged noncooperation by witnesses, and who have encouraged nondisclosure. Before I came here today, I was telling one of my deputy commissioners what I was going to talk about and he responded, "You have hit a subject that makes my blood boil." Now, my deputy is a former sheriff, former bishop's

counselor, and former stake high councilor, but he sat me down and regaled me for an hour with horror stories of his experience with bishops and stake presidents. I have had personal experience that I will briefly relate. In one particular case of incestual behavior, the bishop attempted to handle it entirely by himself, and before someone else reported it, the offender had literally gone through every child in the family. The bishop thought he had cured the problem but was never aware that all he had done was perpetrate the evil.

In another situation a 12-year-old girl was having regular sexual relations with the man for whom she was babysitting. Through a youth interview she made a confession to her bishop, and the bishop told her not to tell her parents. The parents allowed her to continue to babysit for this same individual, who continued to abuse her.

In another situation a member of the clergy had actively encouraged witnesses to a particular crime not to cooperate with the police and prosecution.

In one situation in which I was involved, a letter addressed to me personally by a bishop, on church stationery, ordered me in no uncertain terms to quit harassing his parishioner in the investigation of, not a sexual abuse case, but a very serious charge of fraud.

These are some graphic examples. I would like to think, and I do believe, that they are truly exceptions; but you can imagine the consternation of the law enforcement community as they have confronted such obstructions.

What this all means, I suppose, is that we have got to come to some accommodation between the legitimate needs of the Church and the need to protect the victim (almost always a child and almost always innocent) from further abuse. I think most prosecutors realize the very kinds of things that Lloyd Poelman has pointed out to you, that there are some compelling policy reasons for the privilege. The argument of the prosecutor and the law enforcement officer is that the privilege is in fact testimonial. It does not prevent the reporting. The attorney general has so ruled (there are some divergences of opinion), but if in fact that is the case, would a policy requiring bishops to report discourage voluntary confession? I don't think there is any question that would be the result. There is no question also that the present privilege, obstructive as it may be to certain investigative techniques, does encourage the disclosure of child abuse that would perhaps not be disclosed or discovered otherwise. Not only does it allow the bishop to work with the perpetrator but also to take some action to protect the child victim. Without the ability of that person to go to his bishop or stake president to confess, believing that the communication is inviolate,

incidents of abuse may not be discovered. It is better to know, perhaps without the ability to prosecute, than it is not to know.

I am not sure that we can ever come to a complete accommodation between the need and the legal requirement to report the legitimate ends and the needs of the Church. I think, however, that there are some things that can be and need to be done. I have been involved in priesthood leadership meetings now for 20 years, as a counselor in two bishoprics, elder's quorum president, a high priest leader, and stake high councilor. Frankly, I am tired of going through, chapter by chapter, the Aaronic Priesthood guide book. I think it's time that we realize the need for some substance on how to better help Church leaders in those priesthood leadership meetings. We need to teach the bishops how to recognize the symptoms of child abuse; how to conduct good youth interviews, which can be the most fruitful way to discover these kinds of problems; and how to deal with kids, with people. We need to teach them the psychology of interviewing, the psychology of people, particularly children; the problems of the victim; and the recognition that incestual relationships, unlike any of the others, present a particularly difficult problem. In this regard, that is the area where we really have our most difficult problem. Most other examples of child abuse, neglect, abandonment, and that sort of thing can be readily discernible by anybody who knows the symptoms, can be reported by anybody, and should be. But it is the incestual case where the bishop generally becomes involved, in a confidential communication. I think there must be an absolute recognition that the welfare of the child is first; that the child, if there are such problems, must be protected, either by his or her removal from the situation or, preferably, by removal of the offender. I think parents have a right to know of problems which endanger their child. I think spouses have a right to know if in fact their spouse is involved in this kind of abuse with their children. Now granted, all of this may fly in the face of the privilege, but we are talking about the weighing of the equities here and, in my view, the welfare of the child may far transcend both. I believe eternally the privilege to keep inviolate under any circumstances the substance of that confessional conversation. I applaud what has been done by the Church so far. I have had the privilege of being involved with the Brethren in suggesting ways that this problem can be handled, and much of what appears in the child abuse pamphlet are matters that we have discussed and brought to their attention. I am grateful that the Church is taking steps in recognizing that this is a major problem in our society and in the Church—one deserving of our most urgent attention.

*John T. Nielson is Commissioner of Public Safety for the state of Utah.*