

Then-Archbishop John Nienstedt, right, addresses the media alongside then-Auxiliary Bishop Lee Piche at a 2015 news conference announcing that the Archdiocese of St. Paul and Minneapolis had filed for Chapter 11 Reorganization. (CNS/The Catholic Spirit/Dave Hrbacek)

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The Catholic Church is in serious and deepening crisis, primarily as a result of grave sins and failed leadership involving clergy sexual misconduct. This tragedy is most recently exemplified by the alleged abusive, long-standing behavior of former Cardinal Theodore McCarrick. In order for the church in the United States to determine and learn from how it failed to address McCarrick's decades of alleged misconduct, new guidelines and procedures must be established and implemented for investigating him and any high-ranking church leader.

For the last five years, the St. Paul-Minneapolis Archdiocese has grappled with this challenge, having had to investigate its former Archbishop John Nienstedt for alleged personal sexual misconduct and failed leadership involving abuse by other clergy.

Many painful lessons were learned from that investigation, which was prematurely terminated and never resumed. Egregious clergy abuse by an archdiocesan priest and the failed leadership that permitted that abuse to occur ultimately led to criminal charges being filed against the archdiocese and Nienstedt's abrupt resignation. Those lessons should be examined and heeded by every American cardinal, archbishop and bishop to avoid their repetition elsewhere.

I write as a lifelong, faithful Catholic who was raised by devout parents and educated in parochial schools for 12 years and benefited from a Jesuit college education; I also raised four children in the Catholic faith. For 20 years, I served as a federal prosecutor in Minnesota, specializing in white collar crime, and supervising hundreds of investigations of alleged misconduct, abuse of power, and/or concealment of wrongdoing by business leaders, government officials, lawyers and other professionals. For the past 10 years, I have taught at the University of St. Thomas School of Law in Minneapolis, starting with ethical leadership courses and more recently, teaching courses on how to conduct investigations.

Based on my many years of supervising and teaching how to do complex investigations, and having closely followed the investigation of Nienstedt and conduct related to it, I have identified 10 of the most important lessons to be learned from the initial success and then ultimate failures surrounding that investigation.

10. Choose the best, most fair and most impartial investigators at the outset and stick with them.

After careful consideration, the St. Paul-Minneapolis Archdiocese selected the Greene Espel law firm in Minneapolis to conduct an internal investigation into various allegations of misconduct by Nienstedt involving seminarians and others. This highly-respected law firm assigned two of its senior, most-experienced attorneys to conduct the investigation.

(Full disclosure: One of those attorneys, Matthew Forsgren, has taught the internal investigation portion of my investigations course, and I have hosted the other attorney, David Wallace-Jackson, as a guest evaluator for my investigations course exercises.)

In less than 10 weeks, the Greene Espel attorneys gathered substantial evidence of alleged misconduct by Nienstedt occurring over many years. As described by Fr. Daniel Griffith, a lawyer and then the St. Paul-Minneapolis Archdiocese's delegate for safe environment, this included 10 sworn statements of alleged sexual misconduct, sexual harassment and reprisals in response to the rejection of unwelcome advances, all involving Nienstedt.

- *Read Fr. Daniel Griffith's memo from July 7, 2014, about the Nienstedt investigation*

(Full disclosure: Griffith and I both are on the faculty of the University of St. Thomas School of Law and we have worked together for several years seeking to use restorative justice practices to help bring healing to all those harmed by the scourge of clergy sexual abuse, particularly victim/survivors.)

These well-documented revelations (and the likelihood of more to come) obviously so disconcerted Nienstedt and others, including his long-time acquaintance, the former papal nuncio Archbishop Carlo Maria Viganò, that they acted to ensure that the Greene Espel investigation would be first curtailed and then prematurely ended. (These actions were extensively documented by Griffith at the time and his July 7, 2014, memo should be required reading for any church leader.) Through their improper intervention, a credible independent investigation was so compromised that it could not be completed. This disastrous development still haunts the St. Paul-Minneapolis Archdiocese.

Related: Viganò's role in Nienstedt case scrutinized anew with bishop's statement

So, what is the first lesson? Retain the best, most-experienced investigators available, make sure that they are given a mandate to investigate thoroughly and

without fear or favor, and then stay true to that mandate.

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9. Identify the investigation's goals/purpose and parameters as clearly as possible and then honor the investigation's independence at all times.

Again, the St. Paul-Minneapolis Archdiocese initially took the correct steps in identifying the investigation's overall purpose of discovering the truth or falsity of the allegations involving Nienstedt and "to follow the facts wherever they may lead." This included the critical question of whether Nienstedt had engaged in a questionable social relationship with Fr. Curtis Wehmeyer, an archdiocesan priest who Nienstedt had appointed as the pastor of a parish where Wehmeyer later sexually abused two minor children. This was the conduct for which the archdiocese was later criminally charged.

The Greene Espel attorneys adhered to the investigation's purpose from February 2014 to mid-April 2014 and produced the previously-mentioned affidavits from victim/witnesses. However, following a Washington, D.C., meeting attended only by Nienstedt and Viganò, Viganò (with the possible involvement of others) then ordered the St. Paul-Minneapolis Archdiocese and Greene Espel attorneys to "narrow the focus of their investigation to the questions of whether a crime or a grave delict has been committed by Archbishop Nienstedt."

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In fact, as described later, after Viganò intervened, the scope, standard and the lawyers involved in the investigation all changed — in favor of Nienstedt. This type of rank interference in a supposed independent investigation represents a significant abuse of power and could rightly be seen as the start of a cover-up.

The second lesson is that, when someone in authority in an organization tries to cause it to deviate from essential guidelines for conducting a proper investigation, they must be confronted and stopped.

> Regardless what church traditions and canon law procedures may have applied in the past, the days of invoking church secrecy and relying on insular self-governance are numbered if the church is to have any hope of regaining the trust that has been lost, much less withstand the coming storm of future investigations and legal actions.
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8. Appoint lay persons to participate in and oversee any investigation of church leaders.

The Nienstedt investigation was overseen by Auxiliary Bishop Lee Piche, who served under Nienstedt, and who had no investigative experience. In April 2014, Piche and Auxiliary Bishop Andrew Cozzens sought the resignation of Nienstedt, first by approaching him and then traveling to see Viganò.

While we are not privy to the communications that took place, we do know that they resulted in concerted actions being taken to interfere with and end the Greene Espel investigation, with Piche and Cozzens standing by powerlessly. There remains much that we do not know about all who were involved in ordering these actions. Did Viganò act on his own to thwart and derail the investigation, or was someone else encouraging or directing his efforts?

These types of questions should not be addressed solely through inquiry by other clergy. Regardless what church traditions and canon law procedures may have applied in the past, the days of invoking church secrecy and relying on insular self-governance are numbered if the church is to have any hope of regaining the trust that has been lost, much less withstand the coming storm of future investigations and legal actions. At this juncture, any reliable and credible investigation of church leaders must be conducted with lay participation and oversight.

The lesson here is that lay involvement is absolutely critical. Any credible future investigation of the church's leadership hierarchy must have experienced, competent lay persons conducting, and ideally overseeing, such investigations if its findings are to be viewed as independent and trustworthy. No investigation of a corporation's executives would ever be viewed as reliable or credible if one of the executives under investigation was involved in directing it. High-ranking church officials should be treated no differently in dealing with potential conflicts of interest

or interference from those with a stake in the outcome.



Auxiliary Bishop Andrew Cozzens of St. Paul and Minneapolis, pictured in April 2018, said in an Aug. 31, 2018, statement that the Catholic Church "desperately needs an independent structure, led by experienced lay personnel, to investigate and review allegations made against bishops, archbishops and cardinals." (CNS/The Catholic Spirit/Dianne Towalski)

7. Communicate the need for, and if necessary require, the cooperation of all involved.

Any investigation of high-ranking church officials by anyone, much less someone not wearing a collar, faces initial hurdles from many clergy and some laity who instinctively hesitate and are concerned about saying anything negative about a church leader, particularly when it is their superior.

In the Nienstedt investigation, Griffith assisted the Greene Espel attorneys by contacting potential witnesses in advance to encourage their cooperation by letting

them know that the Greene Espel attorneys were working on behalf of the archdiocese and needed important information that only they might know. A qualified pledge of confidentiality typically accompanies such requests to encourage complete candor. Given that 11 victim/witnesses ultimately provided sworn affidavits to the Greene Espel attorneys, this approach worked at first.

However, once Nienstedt reportedly informed Viganò that the Greene Espel attorneys wanted to interview a Swiss guardsman regarding alleged sexual misconduct with Nienstedt, Viganò (and possibly others) then acted to prevent this line of inquiry by restricting the investigation's scope and calling for its quick end.

Any thorough investigation of alleged abuse and misconduct involving McCarrick obviously will require interviews with cardinals and other high-ranking church officials, probably on both sides of the Atlantic. No cardinal or archbishop should be exempt from such inquiry, and their full cooperation with investigators should be mandated.

6. Be vigilant for efforts to guide or restrict or undermine the investigation, and resist them.

From the beginning of the Nienstedt investigation, the archbishop's personal criminal defense lawyer attempted to influence and interfere with the investigation, demanding the names of victim/witnesses and later harshly criticizing the investigating attorneys for what they had unearthed and documented. Any credible investigation must remain insulated from improper attempts to influence its outcome.

As noted above, Nienstedt apparently enlisted Viganò to curtail and force the premature termination of the Greene Espel investigation. Although Piche and Cozzens initially resisted these improper efforts by Viganò (and Nienstedt), they eventually acquiesced to Viganò's assertion of his greater authority and permitted the Greene Espel investigation to wither and die.

But worse was yet to come. Nienstedt somehow influenced Piche to conduct "an investigation of the Greene Espel investigation" by having the St. Paul-Minneapolis Archdiocese hire Piche's personal criminal defense attorney (who had long worked closely with Nienstedt's personal criminal defense attorney) to conduct further "investigation." The archdiocese, which spent more than $100,000 to pay for this effort, has refused to disclose anything that was learned, possibly because it

represented a highly questionable and unsuccessful attempt on Nienstedt's behalf to exonerate him. One can only speculate how much this included efforts to challenge, and thus intimidate, victim witnesses who had shown the courage to come forward to tell the sworn truth. It is hard to believe that Piche acted alone in this matter, without direction or counsel from others. Any church official or attorney who permitted potential tampering with an investigation by persons with an obvious conflict of interest should be called upon to answer for that conduct.

Any thorough investigation of McCarrick may well involve and possibly implicate top church leaders who were aware, or should have been aware, of his alleged misconduct. There may be efforts by some of those leaders to influence who gets interviewed and by whom, in what order, subject to various promises and understandings, and dictating who can be present. The lay persons conducting and overseeing the investigation must be given the clear authority and guarantee of independence to be able to conduct the investigation free from improper influence or restrictions.



In June 2015, Pope Francis appointed Coadjutor Archbishop Bernard Hebda of Newark, New Jersey, pictured in 2013, to be apostolic administrator of the Archdiocese of St. Paul and Minneapolis. The appointment came after he accepted the resignations of Archbishop John Nienstedt and Auxiliary Bishop Lee Piche. (CNS/Gregory A. Shemitz)

5. Follow every legitimate lead to find the truth wherever it exists.

In Greene Espel's investigation of Nienstedt, as in any investigation, some leads were harder to pursue than others due to witness availability, geographic and time constraints, and other barriers. Every investigator must prioritize any investigation's efforts to provide the most thorough, balanced report that circumstances permit. But when the Greene Espel investigation was prematurely ended, there still existed more than 20 leads that had not been pursued. This is failing-grade material, calling into question the usefulness or reliability of any investigation so incomplete. My experience has been that sometimes the less prominent leads provide key, breakthrough information.

Given McCarrick's long tenure as a church leader, it is quite possible that, in addition to what has been already alleged, claims of further misconduct involving other individuals will come to light. All such allegations deserve attention and, where deemed appropriate, a full investigation. An attitude of deliberately ignoring such claims because "we already have enough (or too much) to investigate" represents willful blindness and is dangerous to entertain. Let me give one example why.

4. Avoid the perils of willful blindness when confronted with any alleged wrongdoing.

After the St. Paul-Minneapolis Archdiocese ended any further investigation of Nienstedt, the Ramsey County Attorney's Office in St. Paul, Minnesota, conducted their own wide-wide-ranging investigation of the archdiocese, including allegations of personal misconduct by Nienstedt, that led to the criminal charges against the archdiocese. In December 2015, they learned of an incident where Nienstedt, at a 2005 world youth conference in Germany, allegedly took two unaccompanied teenage boys to his hotel room after a rainstorm and had them undress completely in his presence, after he had allegedly undressed in their presence, all while he was a bishop in New Ulm, Minnesota.

- *Read the Ramsey County Attorney's Office affidavit from March 21, 2016*

It recently has been revealed that, after the St. Paul-Minneapolis Archdiocese learned of these allegations, it forwarded this information to the office of the papal nuncio for investigation sometime in 2016.

- *Read Archbishop Bernard Hebda's statement from Dec. 14, 2018*

Thus, it appears that, for more than two years, the papal nuncio or other church officials have done nothing to resolve, much less investigate, this alleged misconduct with minors, through what can only be described as willful blindness.

Willful blindness to clergy misconduct can take many forms. It always leads to risks of greater harm. For much of the last three years, Nienstedt has been engaged in public ministry in California. Has anyone monitored whether he has had contact with minors and seminarians during that time?

Similarly, going forward, as investigators learn of church leaders who are suspected of deliberately ignoring or turning a blind eye to misconduct by McCarrick, how will that be handled by the church? When any such claims are substantiated, how will these findings be communicated to church leaders and other clergy and laity? Having such difficult but necessary communications are what transparency and accountability ultimately are all about.

3. Exercise courage and dedication to the truth in the face of adversity.

Cozzens stated in the summer of 2018 that the Nienstedt investigation was "doomed to fail," describing a series of hurdles that he and Piche faced and could not overcome.

- *Read Bishop Andrew Cozzens' statement regarding the review board for bishops from Aug. 31, 2018*

While these two bishops deserve to be commended for their initial courage in confronting Nienstedt, it cannot be ignored that they later stepped back from pursuing the truth and surrendered the moral high ground. In short, they allowed the Nienstedt investigation to fail as a result of the actions of Viganò, Nienstedt and possibly others. That investigation was not doomed, but rather, it was caused to fail.

Undoubtedly, similar tests of adversity will confront those who investigate McCarrick and others. They will need the full support of all who care about the future of the church to overcome those challenges to the integrity of their work. This should include clear direction from Pope Francis to all those appointed to oversee and undertake these necessary investigations that, as Francis said Sept. 27, 2015, in Philadelphia: "We must follow the path of truth wherever it may lead."

2. Make as full disclosure as possible of the investigation's findings in order for everyone to learn from past errors so that they are not repeated in the future.

The St. Paul-Minneapolis Archdiocese has resisted calls for disclosure of the Greene Espel investigation and the questionable follow-up investigation, claiming legal privileges and a concern for the privacy of victim/witnesses. This has led to lingering doubts and mistrust in archdiocesan leadership among too many faithful Catholics.

- *Read the open letter to Archbishop Bernard Hebda from young adults and other members of the St. Paul-Minneapolis Archdiocese from Sept. 10, 2018*

The faithful question how the church can restore trust without transparency and accountability. If true healing and restoration is to occur, legal privileges must be waived and some significant disclosures must take place, with appropriate redactions of personal identities of victim/witnesses and identifying information to preserve pledges of confidentiality.

Any future investigation of McCarrick and other church leaders will present similar transparency challenges. It is never easy to disclose personal or institutional failures, but such candor and honesty is essential for any good to result from any prior misconduct or misjudgment. The truth will eventually come out, and it is far better to be revealing the truth on one's own terms and timetable than by someone else's agenda, leak, subpoena or lawsuit.

1. Act on what is known and follow-up on what remains unresolved.

On Dec. 14, 2018, Archbishop Bernard Hebda of the St. Paul-Minneapolis Archdiocese made several long-awaited and welcome announcements regarding bishop accountability, including calling for a "lay-led mechanism" for investigating allegations made against bishops, creation of a regional or national independent review board to resolve those allegations, and clarifying that Nienstedt "would not

be free to exercise public ministry" in the archdiocese until all open allegations against him had been resolved. These are important steps in the right direction, worthy of commendation and support.

It was disappointing that Hebda did not announce disclosure of any aspects of the prior Nienstedt investigations. Instead, he only "publicly commit[ed] to transmit the entire 2014 Archdiocesan investigation to whatever national or regional review board is created."

This will be viewed by too many as another example of committing to transparency without acting on it. And it simply delays yet again for the St. Paul-Minneapolis Archdiocese the pursuit of accountability, closure and healing. We can only hope and pray that some further public disclosure is forthcoming, lay-led review boards are created soon, and that one of them makes resolution of the Nienstedt investigation a top priority.

As the current and future investigations of the church inevitably will show, the days of reckoning are coming. This is true not just for those who engaged in misconduct, but for all who condoned or were complicit in covering up that misconduct, or deliberately ignoring it. There must be true accountability for every such individual and genuine transparency about those outcomes.

But whatever that number of transgressors may be, we must not lose sight of the key reality that the vast majority of church clergy have been and remain faithful, caring ministers of the Word who deserve our total support and gratitude. As such, we must approach any investigation of clergy with the utmost care and integrity because there is so much at stake — the ability to proclaim the Gospel with credibility, the healing of the Catholic communion, and the new life that awaits us if we follow the path of light and truth.

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