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Law professor: Philadelphia jury has much to consider in sex abuse trial

by Brian Roewe



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Msgr. William Lynn exits the courthouse in Philadelphia May 24 for lunch recess on his second day on the witness stand. Lynn faces two counts of child endangerment and one count of conspiracy for his role in an alleged cover-up of clergy sex abuse. (CNS photo/Tim Shaffer, Reuters)

ANALYSIS

With the case now in its hands, the jury continues to deliberate the existence of a conspiracy to cover up priest sex abuse in the Philadelphia archdiocese.

On Tuesday, the seven women and five men of the jury began their third day (and second full day) of sifting through evidence and weighing the testimony they heard over the course of 11 weeks inside a Philadelphia Common Pleas courtroom.

Their task? To determine whether Msgr. William J. Lynn, secretary of clergy for the archdiocese from 1992 to 2004, participated in a conspiracy of covering up abuse and endangered the welfare of children by recommending priests with known histories of sexual abuse to assignments that would further place them in contact with children.

Fr. James J. Brennan, 48, is also accused of child endangerment and sexually assaulting a 14-year-old boy at his apartment in 1996. Brennan originally faced a conspiracy charge at the trial's beginning, but

Common Pleas Court Judge M. Teresa Sarmina dismissed the charge after ruling the prosecution failed to prove a conspiracy between him and Lynn.

A decision from the jury on both defendants could come as early as this week.

One observer of the landmark trial said to convince a jury of a conspiracy, the prosecution had to paint a picture of the players involved in a shared activity that was both a pattern and practice.

"When you charge someone with conspiracy, you need to be able to paint a picture for the jury of the players and the shared activity," said Marci Hamilton, the Paul R. Verkuil Chair in Public Law at the Cardozo School of Law at New York's Yeshiva University and counsel in many clergy sex abuse cases.

"The law is not that only the person who was in charge of the conspiracy is liable. In fact, it's everybody who took a substantial step to aid the conspiracy," she said. "So, the question for the jury is, were [Lynn's] actions and the way that he fulfilled the orders of [Cardinal Anthony J. Bevilacqua], was that a substantial step to conspiracy to endanger children?"

Hamilton, who attended the trial at least once a week as well as the closing arguments, said the 2005 and 2011 grand jury reports formed the foundation for presenting "a very clear picture of the shared activity of covering up abuse" in the archdiocese and endangering children repeatedly by placing suspected priests in contact with children.

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In the pretrial phase, Sarmina ruled that the prosecution could present evidence from 22 past cases of alleged abuse to build its own case of conspiracy, along with testimony regarding Brennan and former priest Edward Avery. Once a co-defendant in the trial, Avery pleaded guilty four days before the trial began to charges of conspiracy and sexual assault of a 10-year-old altar boy during the 1998-99 school year. He was sentenced to two-and-a-half to five years in prison.

With so much in the grand jury reports from which to draw, the prosecution faced the risk that it might present too much evidence and overwhelm the jury, or, as Hamilton put it, "lose the forest for the trees."

"[The prosecution] did a nice job of highlighting the evidence that was needed to show that this was a pattern, this was the practice. It's not just that either Avery or Brennan were odd incidents, it's actually this was the way things were done," she said.

Of the 60-plus witnesses brought forward, Hamilton said the testimony involving Fr. Nicholas Cudemo was particularly effective for the prosecution. Cudemo was identified on the 1994 list Lynn compiled of 35 active priests diagnosed as pedophiles.

During the trial, a nun currently working in the archdiocese testified that the now-retired priest had molested her and her sister and raped her cousin repeatedly.

"At the end of [the nun's testimony], the DA said, 'Well, what should have Msgr. Lynn have done?' And her answer was, 'Well, he should have said he wouldn't take the task of creating a list or covering up the abuse, or he could have quit.' That was a pretty impressive moment in the whole series of prosecution's witnesses," Hamilton said.

For the defense, a key moment in the trial came when Lynn, 61, decided to take the stand. The decision

didn't help his case, Hamilton said, but rather opened him up to three days of questioning from the prosecution, which sought to reinforce facts it had attempted to establish in the trial's previous 10 weeks.

Lynn's testimony was often inconsistent with what he had said in the grand jury report, and reflected a man more concerned with the church than children, Hamilton said.

"The one reason you have a defendant testify is you hope that the jury maybe will form an attachment with them, maybe want to rule in their favor because they like them. In the end, he did not come across as likeable person, and he also didn't come across as a very trustworthy person," she said.

As for Brennan, his lawyer, William Brennan, of no relation to his client, used his closing statement to first highlight the evidence accusing his client of abuse, then refute it by questioning the believability of the testifiers, a strategy Hamilton thought fell short.

"By the end of his closing, if you hadn't attended any other part of the trial, you would have thought that one, there's no question that Brennan abuses children ... and two, it's very hard to believe that the prosecution would put on a handful of liars for one defendant," she said.

Despite her critiques of both defenses, Hamilton said neither side necessarily missed opportunities to defend their clients, but instead faced a large hurdle in the prosecution's flood of evidence.

"I think if you had had less comprehensive grand jury report[s], it might have been a different trial," she said.

Outside the courtroom walls, the impact of the trial has had a broader effect, even absent a verdict, said Hamilton, who lives in the Philadelphia area. The news coverage of the trial, she said, led many people to revisit stories in the grand jury reports often overlooked at their first release, leaving many disgusted with what they read.

"I do think there's been a really significant shift in Philadelphia toward the archdiocese, a negative shift toward the archdiocese that we didn't see just with the publication of those comprehensive reports. So the one thing the trial did, if nothing else, is public education."

As of Tuesday afternoon, informal reader polls at Philly.com showed more than three-fourths of more than 1,000 voters believe Brennan guilty of all charges. In contrast, 51 percent of the 2,500-plus weighing in believe Lynn guilty of both conspiracy and child endangerment.

As for what an actual guilty verdict for Lynn and Brennan might mean to Philadelphia Catholics, Hamilton said it could represent an opportunity for a new start.

"There's a feeling if the judicial system can get some justice out of this, then maybe there's a chance of going in a better direction," she said.

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