IN RE SPECIAL	IN THE CIRCUIT COURT
INVESTIGATION	FOR BALTIMORE CITY
NO. CID 18-2673	Case No. Misc. 1144

MEMORANDUM OPINION AND ORDER

In 2019 the Attorney General began investigating allegations of child sexual abuse within the Archdiocese of Baltimore. The investigation included interviews with witnesses, victims, and alleged abusers, as well as the review of court records in prior civil and criminal proceedings. The investigation also included documents obtained via subpoena from the Archdiocese. Because the Office of the Attorney General[1] (OAG) did not have the authority to issue subpoenas in criminal cases until 2022 (with the passage of Md. Code Ann., State Gov. Art. § 6-603) the two subpoenas issued in this case were issued by a Baltimore City grand jury in the course of its regular operations.

Ultimately the Attorney General's investigation resulted in a voluminous document, the "Attorney General's Report on Child Sexual Abuse in the Archdiocese of Baltimore." (Hereinafter "the Report.") However, because some fraction of the Report was derived from the records obtained by grand jury subpoenas, the Attorney General sought the court's permission under Maryland Rule 4-642 to lift the secrecy that applies generically to all grand jury proceedings.

[1] The court will use the term "Attorney General" and "Office of the Attorney General" somewhat interchangeably throughout. The Attorney General is the person who is seeking the public release of previously redacted information. Individual attorneys working for the Office of the Attorney General conducted the investigation, wrote the Report, and appeared on behalf of the Attorney General in the proceedings before this court. The current Attorney General was not in office when the Report was written and when the initial request to disclose was made.

In order to prevent disclosure before engaging in the Rule 4-642 review process, the court initially placed all proceedings under seal and required all pleadings in this matter to be filed directly with the grand jury judge. After a preliminary hearing wherein the Office of the Attorney General, the Archdiocese, various victims of abuse, and lawyers representing certain Archdiocesan officials and other interested parties had the opportunity to be heard, the court authorized the release of a document which redacted from public view the identities of living individuals discovered primarily from the subpoenaed documents who were accused of abuse and not previously publicly identified by the Archdiocese itself, or those who were in some fashion presented as having assisted in enabling or hiding such abuse. *See* Order and Memorandum of Feb. 24, 2023.

Pursuant to the February order, the OAG, after working with the Archdiocese, presented a set of proposed redactions to the court. The court added its own redactions, and ultimately authorized the release of a redacted document on April 4, 2023. The identities of 46 individuals were masked in that document.

Concomitantly, the Office of the Attorney General sent notices to the individuals whose names were redacted, advising them that they were named in the document, that they had the right to oppose the Attorney General's request to release an unredacted version of the report, and that they could retain counsel to represent them if they chose. Many of the redacted individuals noted formal opposition to the Attorney General's request; all were given the opportunity to be heard, either directly or through counsel, during two days of hearings conducted on July 5 and 6, 2023.

What is now before the court is whether the Attorney General can show a sufficient "particularized need" to name any of the individuals whose identities are currently redacted in the Report. Some of the interested parties have raised a preliminary question, however: Does the Attorney General have the authority to release a report accusing people of misconduct after a criminal investigation that does not result in any criminal charges?[2]

I. THE AUTHORITY TO ISSUE THE REPORT.

Both the unique nature of this investigation and Report, and the need to simultaneously take both a narrow and broad view of the questions before the court, present themselves in a question raised by some of the redacted individuals: whether the Office of the Attorney General has any authority to issue a report at all following a criminal investigation that does not result in any indictment.

Counsel for some of the redacted individuals point out, quite accurately, that under ordinary circumstances a prosecutor is not entitled to make public comment about individuals investigated for crimes but not indicted. Md. Rule of Professional Conduct 3.8; ABA Criminal Justice Standard 3-1.10. If the Office of the Attorney General investigated an individual on suspicion of child sexual abuse and determined that there was insufficient evidence to seek an indictment, it ordinarily would be improper for the Office to nonetheless issue a report accusing the target of child sexual abuse.

Maryland Rule of Professional Conduct 3.8(e) states:

> The prosecutor in a criminal case shall . . . except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law

[2] One individual was criminally charged as a result of the investigation; the person was not named in the Report, and ultimately was acquitted of all charges after a bench trial in the Circuit Court for Baltimore County.

> enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 19-303.6 (3.6) or this Rule.

In addition, Rule 3.6 prohibits attorneys from making statements "that will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

Here, there is no "accused" and the extent to which the Attorney General is acting as a "prosecutor" is somewhat hazy. For example, the Report includes a chapter on Father Robert Duerr, who died in 1982; the Report discloses allegations of abuse which occurred in 1952 and 1953, to an unknown victim. (Report at Pg. 115). The allegation was reported by the Archdiocese to the appropriate authorities in 2002, and the Archdiocese listed Duerr as a credibly accused abuser in 2019. Plainly the Office of the Attorney General had no intention of pursuing criminal charges against a dead man for conduct occurring 70 years ago. And aside from the litigation over the release of the Report, there is no "adjudicative proceeding" arising from the investigation (with the sole exception noted in footnote 2, above).

Nor was the primary target of the investigation any individual. The investigation was into the conduct of the Archdiocese over a period of decades. It would have been obvious from the start that few, if any, indictments would result from this investigation, given the passage of time and the various changes to the relevant criminal statutes over the years. While a single indictment did arise from the investigation, the target of the Attorney General's investigation was the Archdiocese itself, not any specific individual.

In the introduction to the Report, the authors state: "Unfortunately, most of the abusers and those who concealed their wrongdoing are dead and no longer subject to prosecution. While stories of this abuse have been documented by victims, advocacy groups, investigative journalists, and others, we hope to make public for the first time the enormous scope and scale of abuse and concealment perpetrated by the Archdiocese of Baltimore. While it may be too late for the victims to see criminal justice served, we hope that exposing the Archdiocese's transgressions to the fullest extent possible will bring some measure of accountability." This Report does seem to "inform the public of the nature and extent" of the Attorney General's actions and serve the purpose of explaining both what happened in the Archdiocese, and why no additional criminal charges have been filed.

This is not, in short, an ordinary investigation into an allegation of criminal wrongdoing. Almost every incident and allegation documented in the report took place more than 20 years ago. The focus of the Report is on the action (and inaction) of the Archdiocese, not on the evidentiary strength of the accusations against any one individual.

Accordingly, it is inaccurate to characterize the Report as an unethical pronouncement by a prosecutor on a criminal case. The one indictment which did arise from the investigation is not discussed in the Report and the accused in that case is not included in the list of accused abusers in the report. Maryland Rules 19-303.8 and 19-303.6 are inapplicable in this instance.

Counsel for 15 of the redacted parties notes, correctly, that this is not a grand jury report. (Doc. 77 at 13). It is unclear whether a grand jury would have had the authority to issue such a report. Absent some specific statutory authority to the contrary, Maryland grand juries have long been assumed to

have only the power to indict, not report. *See In re Rep. of Grand Jury of Baltimore City*, 152 Md. App. 616 (1927) (abolishing common-law distinction between presentment and indictment).[3]

It does not follow, however, that the Office of the Attorney General does not have the authority to issue such a report, even if some of the material was developed from grand jury subpoenas. Article V, Section 3 of the Maryland Constitution states that the Attorney General shall

> [i]nvestigate, commence, and prosecute or defend any civil or criminal suit or action or category of such suits or actions in any of the Federal Courts or in any Court of this State, or before administrative agencies and quasi legislative bodies, on the part of the State or in which the State may be interested, which the General Assembly by law or joint resolution, or the Governor, shall have directed or shall direct to be investigated, commenced and prosecuted or defended."

Md. Const. Art. V, § 3 (2023). The letter of direction from the Governor authorized the Attorney General "to undertake investigations and prosecutions into allegations of criminality" including, but not limited to, "crimes involving child abuse and neglect, abuse and neglect of vulnerable adults, financial exploitation of a vulnerable adult, human trafficking, child pornography . . . [and] conspiracy to commit any such crime, as well as crimes

[3] More recently, the Appellate Court of Maryland suggested that grand juries may indeed have the power to do something other than indict. *Holloman v. Mosby*, 253 Md. App. 1 (2021), *cert. denied*, 477 Md. 391 (2022). Examining what it defined as the "common-law" right of citizens to present material directly to a grand jury if the prosecutor declined to prosecute and a Baltimore City judge refused to order an investigation, the court held that such material could be presented at the request of any citizen after exhausting other remedies. Although in the 19th century the Court of Appeals once held that a grand jury can theoretically issue an indictment without a presentation from a prosecutor, *Blaney v. State*, 74 Md. 153 (1891), only duly appointed prosecutors can bring a criminal case to trial. *Murphy v. Yates*, 276 Md. 475, 489–90 (1975) (legislation cannot eliminate prosecutor's Constitutional discretion over prosecutions); *Lopez-Sanchez v. State*, 388 Md. 214, 224 (2005) ("Public prosecution [is] the sole method of enforcing this State's criminal law"). It may be the case that the *Holloman* Court envisioned some sort of public report or statement from the grand jury, as might be the case if the grand jury had been directed to investigate an issue by statute or by a Baltimore City judge under Section 8-417 of the Courts article. *See In re Grand Jury January, 1969*, 315 F. Supp. 662 (1970) (indictment issued by grand jury without agreement of prosecutor constituted a "presentment" that could be made public.)

that might be discovered or otherwise come to your attention during your handling of any such matter." The letter further authorized the Office of the Attorney General "to use all necessary subpoena powers, to present to an appropriate grand jury any evidence and testimony considered necessary to carry out this authorization and directive, and to act with the full powers, rights and privileges possessed by a State's Attorney." Thus, under the direction of the Governor, and pursuant to his Constitutional authority, the Attorney General began its investigation.

In its introduction to the Report, the Office of the Attorney General describes its work as a "Grand Jury investigation into the Archdiocese of Baltimore, examining criminal allegations of child sexual abuse . . . [and] efforts by the leadership of the Catholic Church to hide abuse." (Report at 1). The term "grand jury investigation" is somewhat misleading; as noted above, while a grand jury was used to issue two subpoenas *duces tecum* to the Archdiocese, no witnesses were presented to the grand jury and no grand jury testimony was taken. Rather, investigators and attorneys interviewed hundreds of victims and witnesses, including a number of the individuals whose identities were later redacted from the interim Report. The Report includes not just information obtained from the subpoenas, but also the results of the interviews and investigatory work performed by the Office of the Attorney General, and information gathered from court files and media reports. It does appear, however, that the primary thrust of the investigation was into the behavior of the Archdiocese itself, and not any particular individual or act of abuse – although that may have not been clear to the investigators when they first began their work.

Inherent in the authority to investigate is the authority to record and report the results of that investigation. And when doing so will not violate any

other statute or rule, nothing prohibits the Attorney General from releasing the results to the public. The Attorney General, for example, has the authority to issue press releases warning consumers of unfair or unjust behavior under the Consumer Protection Act, even when charges against the alleged offender are still pending. *Consumer Prot. Div. Off. of Atty. Gen. v. Consumer Pub. Co.*, 304 Md. 731, 764 (1985). This is so even when the disclosure causes reputational damage to parties who have not been found guilty of anything. *Id.*, *citing F.T.C. v. Cinderella Career & Finishing Sch., Inc.*, 404 F.2d 1308, 1316 (D.C. Cir. 1968). The authority of the Attorney General in *Consumer Pub. Co.* was granted by the Legislature as a part of the Consumer Protection Act. Here, the court finds, the authority was granted by the Governor. This is a distinction which makes no difference under Art. V of the Maryland Constitution. The court finds that the Attorney General had the legal and constitutional authority to undertake this investigation and the legal and constitutional authority to issue a report on the results of its investigation under the circumstances presented here.

II. THE MOTION TO DISCLOSE REDACTED INFORMATION.

A. Preliminary points and caveats.

In discussing disclosure, there are some general points and caveats that the court must underscore.

First, the Report produced by the Office of the Attorney General is not an indictment. It is not the finding of any judicial officer. There has been no trial, no cross-examination of witnesses, no complete and unbiased presentation of evidence and arguments by all interested parties. This court is neither endorsing nor refuting the specifics contained within the Report. It is not the court's report; it is the Report of the Attorney General.

Second, the fact that an individual's name was redacted in the interim Report is in no way meant to serve as a judicial determination that this person engaged in any form of misconduct, let alone any criminal act. The OAG and the court applied the standards of redaction broadly and liberally, choosing to err on the side of nondisclosure whenever there was any question as to whether an individual in the Report might be subject to criticism, fairly or not, for his or her conduct as described in the Report. Some of the individuals whose names were redacted were simply doing their jobs, as best they could, under trying circumstances.

Third, one of the difficulties presented by this case is distinguishing between the acts of organizations and the acts of individuals. As the OAG noted repeatedly, organizations are composed of individuals, and each person functioning with an organization is nonetheless responsible for his or her own actions. On the other hand, each person functioning within an organization is constrained by the rules, mores, culture, and hierarchy of that organization. Every individual named (and unnamed) in the Report had to make choices on a daily basis as to whether he or she would remain a part of the Archdiocese and try to operate within the context of that organization, or would remove himself or herself from the organization entirely. That is a difficult enough choice to make for the lay employees of the Archdiocese; it is an exponentially more difficult choice for the clergy. It is easy for an outsider to criticize the acts of a stranger, undertaken decades earlier, who was at the time simply doing what he felt the law and his vocation required.

The disclosures already made have, predictably, triggered a rush to judgment. Sympathy for the victims and horror at the violence, abuse, and betrayal detailed in the Report is an instinctive and entirely natural response. But that response must be tempered by the fact that there was more to these

cases than any single Report properly can describe. And while the anger and pain of the victims and their families is entirely justified, an undifferentiated fury aimed at the Church and all of the people in the Report is not. Some of the people in the Report were simply making difficult decisions under difficult circumstances. None of us have led such blameless lives as to be beyond all criticism. But guilt-by-association is never fair.

At some point, it became overwhelmingly obvious that what the Archdiocese had been doing about this problem was insufficient. Whether the change came from within, or was the result of external pressure, or some combination of the two, the fact remains that the large majority of the conduct described in the Report took place prior to the year 2003. One might reasonably argue that officials within the Church in general and the Baltimore Archdiocese in particular should have responded much earlier and more forcefully to the problem of clerical sex abuse and exploitation. But when considering the issues raised in this case, the court has attempted to avoid the pitfalls of hindsight and assess the arguments for and against the identification of various individuals in a way that attempts to take all perspectives into account.

B. <u>The legal standards</u>

Although empowered to create a report based on the investigation, the Attorney General nonetheless is presented with a formidable obstacle to presenting the results of the investigation to the public. Grand jury proceedings are secret, and in Maryland, "[r]ecords obtained by grand jury subpoena are subject to Maryland Rule 4-642, which pertains to grand jury secrecy and provides extensive protection against unauthorized disclosure." *In re Special Investigation Misc. 1064*, 478 Md. 528, 585–86 (2021). (Hereinafter

"*Misc. 1064*"). Thus, because the Report includes documents obtained by grand jury subpoena, some information within the Report is presumptively secret. The proper exercise of this court's discretionary authority to determine what, if any, information is disclosed requires weighing a number of factors.

On its most basic level, disclosure is governed by Md. Rule 4-642, but that describes only the process for seeking disclosure, not what standards the court should apply when ruling on the request. The Supreme Court of Maryland has noted that Fed. Rule Crim. Pro. 6(e) and Maryland Rule 4-642 share similar language, but with one key distinction. "As a practical matter the two rules are apart in only one respect. The federal rule requires that disclosure be "preliminarily or in connection with a judicial proceeding." The Maryland Rule does not have this requirement." *In re Crim. Investigation No. 437 in Cir. Ct. for Baltimore City*, 316 Md. 66, 81 (1989) (hereinafter *"No. 437"*). Thus, while the authority to authorize disclosure is broader in Maryland, Maryland courts have frequently turned to the decisions of federal courts when addressing questions of grand jury secrecy.

With those similarities in mind, the Supreme Court of Maryland distilled and adopted the federal *Douglas Oil* standard when applying the Maryland rule: " 'Parties seeking grand jury transcripts under Rule 6(e) must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.'" *No. 437*, 316 Md. App. at 84, *quoting Douglas Oil v. Petrol Stops Northwest*, 441 US 211, 222 (1979).

Maryland has extended the right to review grand jury materials to defendants in criminal trials, *Jones v. State*, 297 Md. 7 (1983), and also to

defendants in suppression hearings, *Martinez v. State*, 309 Md. 124 (1987), and also to people searching for evidence in support of post-conviction claims. *Causion v. State*, 209 Md. App. 391 (1997). It also has upheld the right to review grand juror materials for a group of citizens searching for evidence in support of civil claims against the police department. *In re Crim. Investigation No. 51,843 in Cir. Ct. for Prince George's Cnty.*, 119 Md. App. 112, 126 (1998) (emphasizing that the weighing of factors ultimately was reserved to the discretion of the hearing judge.) (Hereinafter "*No. 51,843*.")

As noted, Maryland's rule – unlike the federal rule – does not require that the request for documents be a part of another judicial proceeding. Citing No. 51,843 and No. 437 as examples, the Appellate Court of Maryland has rejected the suggestion that any such limitation applies in Maryland. "[T]here is nothing in Rule 4–642(d) that suggests that a grand jury's records cannot be disclosed for purposes not directly related to criminal proceedings stemming from indictments issued by the grand jury. In fact, the law is to the contrary." *Causion*, 209 Md. App. at 399–400.

The *No. 437* opinion quoted with approval from *United States v. Sells Engineering*, 463 U.S. at 418 (1983): " 'The *Douglas Oil* standard is a highly flexible one, adaptable to different circumstances and sensitive to the fact that the requirements of secrecy are greater in some situations than in others. . . . The standard itself accommodates any relevant considerations that weigh for or against disclosure in a given case.' " 316 Md. at 87.

In *No. 437*, the Supreme Court set forth a roadmap for judges to follow when determining whether a particularized need has been shown.

> In the light of all we have discussed concerning the grand jury process, we approach the determination whether the trial court

erred in ordering disclosure and authorizing the letter of transmittal with the following givens:

1) Secrecy is inherent in the grand jury system.

2) The general rule of secrecy may be breached by an order of court pursuant to Md. Rule 4–642(c).

3) Disclosure of grand jury proceedings *vel non* is within the sound discretion of the trial judge.

The trial judge is to be guided by the following principles in the exercise of his discretion:

a) The party seeking disclosure by an order of court must show a particularized need for breaching the general rule of secrecy.

b) The standard for the particularized need requirement is:

i) the material sought to be disclosed is needed to avoid a possible injustice; and

ii) the need for disclosure is greater than the need for continued secrecy; and

iii) the request to disclose covers only materials so needed.

The standard for the particularized need requirement involves a balancing. The standard is a criterion of degree; it accommodates any relevant considerations that weigh for or against disclosure in a given case. Generally, among the considerations which may be placed on the scale are

1) the need to protect the unindicted individual from disclosure;

2) the grand jury has concluded its operations;

3) the particularized need requirement applies to civil governmental agencies as well as to private parties;

4) the materials sought for disclosure are rationally related to the civil proceedings contemplated;

5) the materials sought may be available through ordinary discovery or other routine avenues of investigation;

6) disclosure will save time and expense;

7) no indictments were returned as a result of the grand jury's investigation.

None of these considerations, in itself, is usually sufficient to show that there is or is not a particularized need for disclosure. But each consideration, balanced with other considerations, may weigh for or against disclosure. The weight afforded by the consideration depends upon the particular circumstances. The bottom line is that disclosure is appropriate only in those cases where the need for it outweighs the public interest in secrecy.

No. 437, 316 Md. at 100–01 (1989)

Quoting *No. 437* and *No. 51,843*, the *Causion* Court summarized the applicable standard as follows:

Because the rule does not offer or suggest a standard for the trial court to follow when deciding to issue a disclosure order, the Court of Appeals has filled this void by holding that when a court order for disclosure is requested, there must be a strong showing of a 'particularized need' before disclosure is permitted. More specifically, to obtain court-ordered disclosure of grand jury material, the moving party has the burden to prove the following:

1) the material they seek is needed to avoid a possible injustice; and

2) the need for disclosure is greater than the need for continued secrecy; and

3) their request is structured to cover only material so needed.

209 Md. App. at 403 (*mut. mut.*)

C. The arguments of the parties

The OAG and the affected parties (at least those affected parties who responded) make very specific arguments unique to each individual whose name remains redacted. The court has considered all of these arguments. Both the OAG and the responding parties also make some general arguments that

apply with greater or lesser force to all of the instances of redaction, which the court will attempt to summarize below.

The OAG argues that the "particularized need" in this case is not a particularized need to name any one individual, but a particularized need to release a full and complete Report that is "transparent" to the public and the victims. Disclosure of the entire report is necessary to protect "children and the entire community," and the public interest in healing, accountability, and transparency provide a basis for disclosure. (Doc. 1 at 11-12). "Publicly airing the transgressions of the Church is critical to holding people and institutions accountable and improving the way sexual abuse allegations are handled going forward." (Doc. 1 at 11). The OAG notes that the Archdiocese, through its churches, schools, hospitals, and other civic endeavors, plays a role in the lives of countless Marylanders, Catholic and non-Catholic alike. Disclosure, the OAG argues, "is important to hold the Church accountable, validate survivors, and improve the response to sexual abuse allegations going forward. Keeping this information secret hampers those goals. Perpetuating the secrecy that historically surrounded sacerdotal sex abuse would create an injustice both for survivors of abuse and children currently in the Church." (Doc. 1 at 23). "Transparency not only holds perpetrators and their accomplices accountable, it also provides validation and support for survivors and increases public safety going forward." (Doc. 1 at 25-26.) The OAG points out that there is no longer any ongoing grand jury activity, that some (but not all) of the individuals whose names were redacted have nonetheless been identified in the news media, and that "special circumstances" should apply when applied to a disclosure addressing primarily historical occurrences in an area of great public concern. Moreover, the OAG argues, the reasons for secrecy are either non-existent or greatly attenuated; the grand jury is no longer considering the case, the

information at issue is contained in third-party documents, and as there are no further indictments expected, there is no risk of either witnesses being intimidated or suspects fleeing the jurisdiction. Of those individuals not identified in the media, most played innocuous or ephemeral roles and should have little fear of public opprobrium or unfair criticism if disclosed.

The responses of the various redacted parties have a common theme. In addition to individualized reasons why each does not wish to be identified, some variant of the same argument was put forth in opposition to the Attorney General's request: what would be lost by redacting this specific name from the document? What public interest would be served in putting this name into the document? If the general history and abuses are disclosed, what further need is served by attaching this one individual to a particular passage (or passages) in the Report? And how could whatever marginal benefit represented by the inclusion of one more name possibly outweigh the presumption of secrecy, especially given the incendiary nature of the accusations?

It is claimed, for example, that substituting a specific name for the words "Official A" in the redacted Report would not advance any of the Attorney General's stated interests in transparency, healing, or justice, because the public already has access to the story presented by the Report. Adding Official A's name would be, in a sense, gratuitous. The same could be said of any other individual whose name is currently not included in the report.

The respondents also argue, in various ways, that they are unfairly maligned by the Report, either because they deny the truth of the accusations the Report recounts, or because they contend that the Report itself misrepresents their actual roles. These arguments will be addressed in more detail below, but as a general matter, the court is in the role of determining

whether the Attorney General has shown a particularized need to publicize this information. The court is not in the role of assessing the factual, contextual, or tonal fairness of the contents of the Report. Certainly the Attorney General will have difficulty establishing a particularized need to publish an abject falsehood against an unindicted individual. Toward that end, the court has considered the specific allegations that the claims are false and/or presented in an unflattering light. The Report includes uncorroborated claims, a fact that is apparent from the Report itself. Other complaints about the contents of the Report relate more to the omission of certain mitigating details or context than the assertion of direct falsehoods. The parties argue, therefore, that the Attorney General can show no "particularized need" to disclose information that is uncorroborated or incomplete.

These arguments, and others made by the parties in their written submissions and arguments before the court, were all taken into account by the court when considering the Attorney General's motion. Although the parties may disagree, in none of the cases is the correct answer obvious.

D. The application of the factors

This court already determined, in its February 24, 2023 Order, that the interest of disclosure, transparency, and public justice outweighed the relatively scant interest in secrecy when considering information relating to people who were either deceased or whose names had already been publicly released by the Archdiocese. While many of the same interests in disclosure remain with regard to the remaining information, the arguments in favor of continued secrecy are stronger when applied to information regarding people who are alive and who have not previously been identified.

It is the case that some of the individuals whose identities were redacted are, in a strictly legal sense, not guilty of anything other than doing their jobs. Counsel for some of the interested parties pointed out, for example, that prior to 1993, it was unclear whether mandatory reporting requirements for child abuse applied in cases where the victim was no longer a child. Some of the accusations that Archdiocese officials were called to address were made anonymously and were essentially uncorroborated, or were made under circumstances where at least arguably the accusation was shielded by clerical privilege. The drafters of the Report, moreover, made editorial decisions about which information to include and which to omit, toward the goal of presenting a particular narrative about abuse within the Archdiocese. These decisions necessarily shape the message being communicated to the public.

The court has considered all of these arguments. The court further has considered all of the various relevant factors as listed by the Court of Appeals in *No. 437* and other grand jury secrecy cases, and has considered the relevant federal caselaw as well. While the court will list several factors specifically, the omission of any particular point of consideration should not be construed to mean the court has ignored it entirely; rather, the court has, consistent with the guidance of the appellate courts, weighed different factors differently consistent with the specific circumstances of this case.

1. A "particularized" need for disclosure

In this case, a hyperfocus on individual trees threatens to hide an entire forest. The Office of the Attorney General has offered up both generalized and individualized arguments regarding the people whose names remain redacted in this Report. The court will first address the general arguments.

The Report makes it clear that for nearly a century, the Archdiocese of Baltimore has struggled with the abuse and sexual exploitation of children and young adult parishioners. This abuse has largely been at the hands of religious leaders. In far too many cases, the abuse was addressed not with prompt and decisive action to protect the alleged victim, but rather by delay, secrecy, and the protection of the alleged abuser. It is tempting to ascribe this to "the Archdiocese," without calling attention to the choices and actions of dozens of individuals over the decades who, collectively, constitute the Archdiocese.

To be clear: the Archdiocese did not sexually exploit children. Individuals did. The Archdiocese did not fail to report abuse. Individuals did. The Archdiocese did not transfer alleged abusers to positions where they could abuse again. Individuals did. These individual actions may not have been crimes at the time they were committed; indeed, they may not be crimes now. And in some instances, the individuals involved are able to justify their actions and argue with some force that their conduct was both lawful and proper. Nonetheless, the collective effect of these actions by these individuals led to the sexual abuse and exploitation of an uncountable number of children and young adults for the better part of the 20th century.

The Attorney General must demonstrate a particularized need to name individuals in a "Report on Child Sexual Abuse in the Archdiocese of Baltimore." The court finds that it has done so. The Report details a crisis at least seven decades in the making, with hundreds of individual victims, scores of alleged perpetrators, and an institutional hierarchy that was at best unable and at worst unwilling to undertake effective responses to allegations of abuse for most of the 20th century. The crisis was the result of thousands of discrete choices and actions – or inactions – on the part of hundreds of individuals. There is a strong public policy interest in bringing these choices and actions

into public view. The interest is not in putting anyone in jail, at this point; the events at issue occurred so long ago that this does not seem plausible. But there is an interest in exposing what happened, to help ensure that it does not happen again. There is an interest in exposing how it happened, so that the public in general and public policy makers in particular can decide what, if any, actions need to be taken to prevent similar occurrences in the Archdiocese and other institutions accustomed to a culture of respect, deference, hierarchy, and the lack of accountability that is often a part of such institutions.

Among the stories of abuse disclosed in the Report, the case of Father Gerald Tragesser highlights the problems of secrecy in protecting abusers.

In 1958 Father Gerald Tragesser began sexually abusing a 13-year-old child. His abuse continued for two years, when it was discovered by the child's parents. The State's Attorney for Baltimore County initiated criminal proceedings after the parents complained to lay authorities.

No trial was ever held. The Archdiocese wrote to the chief judge of the Circuit Court for Baltimore County, promising that Father Tragesser would be sent to a program in New Mexico for the "correction and treatment of priests" and would never return to Maryland. (Report at 410.) The judge, the Hon. John Gontrum, agreed, and the matter never proceeded to any public hearing.[4]

In correspondence with the head of the New Mexico treatment program, Baltimore Archbishop Francis Patrick Keogh wrote that Tragesser became "seriously involved with a young girl, approximately fourteen years of age[.]" The victim of Tragesser's abuse was sent to a "school of correction," according to Archbishop Keogh, who went on to complain that the girl's parents – "one of

[4] The elected State's Attorney at the time was Frank Newell III. The court includes his name here in the interest of transparency and accountability. It seems difficult to imagine that the matter was resolved the way it was resolved without the consent and cooperation of the State's Attorney.

whom is a non-Catholic" – reported the matter to "Civil Authorities." However, Keogh wrote, "through the existence of some excellent Catholic laymen the trial was conducted in a private way in the chambers of the Chief Judge of the Circuit Court for Baltimore County."

Keogh also complained that "[t]he parents of the girl in question were violently pressing charges and demanding an open public trial." and that "in her endeavor to see that the Priest was punished, the mother of the girl even went so far as to contact one of the newspapers and reveal the entire story to a reporter. . . . Only prolonged and extremely careful negotiations and the happy influence of a highly placed newspaper man prevented the entire scandal from becoming public knowledge," Keogh wrote.

One would hope that in 2023, such a case would be handled differently. Nonetheless, it is episodes such as this that the court must consider when balancing the need for secrecy over these proceedings with the public interest in transparency. *See* Md. Rule 16-904 ("Judicial records are presumed to be open to the public for inspection.") The hundreds of victims documented in the Report were abused due, at least in part, to a lack of transparency that allowed their abusers to find other victims. That same lack of transparency then compounded the injury to the victims by reinforcing the notion that the victims themselves were somehow to blame or had something to be ashamed of.

Another case revealed in the Report involved the serial abuse of children across the country by Father Laurence Brett. According to the Report, from 1962 to 1964, Brett raped multiple children in Connecticut. He was sent to treatment in New Mexico, and told to "feign hepatitis" if asked about the reasons for his departure. He would later be accused of raping children in Santa Fe. After his treatment in New Mexico, Father Brett went to California,

where he was again accused of raping children, this time in Sacramento. He moved to Pasadena, Maryland, and was granted priestly faculties by the Archdiocese. Eventually he was assigned as the chaplain at Calvert Hall High School – where he was again accused of raping at least four children between 1969 and 1973. He was then given a series of other clerical assignments, eventually returning to Connecticut. In the early 1990s, additional victims of Brett's abuse started coming forward, recounting abuse at Brett's hands nearly everywhere Brett had ever lived.

Had there been a direct and meaningful response to Brett's misconduct when it was first reported, many future victims would have been spared. The church authorities in four different states might well have believed that their responses, each time, was the correct, legal, and proper thing to do. And without any knowledge of the requirements of Connecticut child abuse laws in the early 1960s, the court will assume that this is indeed the case – that time after time after time, Brett's abuse was covered up and at least indirectly enabled by Catholic Church officials acting legally and consistent with their roles in the Church, as they saw them. Nonetheless, the net effect was the victimization of multiple people at the hands of a single abusive priest. Had there been the equivalent of this Report made public in Connecticut in 1964, Father Brett's serial abuse of children would have been stopped early.

The Report is large in scope, spanning eight decades, naming 156 accused abusers, telling the stories of hundreds of victims, and relating the actions of countless other involved parties. The report recounts numerous instances of victims being silenced or sidelined; of back-room deals absolving alleged abusers of public accountability; of private agreements between judges, prosecutors, and church officials. This court found that it was very much "necessary" that the July 5 and 6 proceedings not join the long list of closed

proceedings wherein anonymous religious and legal authorities ruled on critical issues behind closed doors. It was necessary and in the interest of justice for these representatives of the broader community of victims to be present at the proceedings so that they could for once be present when the fates of abusers, their victims, and their enablers were being discussed.

For similar reasons, the court finds a particularized need for the disclosure requested by the Attorney General in this case. While the court is constrained by Rule 4-642 and the various factors that must be considered when determining whether public disclosure is allowable in each individual case, the court nonetheless has been granted the discretion to weigh those factors and to make the requisite factual determinations. The court finds that the requirement for showing particularized need has been met.

Moreover, the requested disclosure is limited. The Attorney General is not seeking to release the documents received via subpoena. And it has rewritten portions of the Report to omit mentioning the names of many individuals in peripheral roles. What it seeks to release are the names of 46 individuals whose identities were gleaned from a mixture of sources, including the subpoenas.

In reaching this decision, the court has also taken into account other factors, on a case-by-case basis. These include:

1. The need to protect the unindicted individual from disclosure.

This is a strong consideration in favor of maintaining secrecy of the remaining living, still-unnamed individuals in the Report.[5] Virtually every

[5] When it attempted to serve notice on the 46 individuals whose names were redacted, the Office of the Attorney General discovered that at least two of those people were deceased and therefore could have been identified under the court's February Order.

name still redacted in the document remains unindicted, and likely never will be indicted for reasons explained in the Report itself. The court has given serious consideration to this fact. These are individuals whose names would not ordinarily be publicized by the filing of an indictment, and who will not have the opportunity to compel the State to prove their guilt beyond a reasonable doubt at a public trial. And in the cases of many individuals not accused of abuse themselves, their conduct did not violate any criminal law such that an indictment would ever have been proper.

At the same time, as mentioned above, the very nature of the behavior detailed in the Report was designed to prevent any timely public disclosure of conduct, policies, and individual decisions that led to recurring patterns of child sexual abuse throughout the Archdiocese. At least some of the individuals whose names remain unredacted undertook efforts to ensure that they could never be indicted, by working to hide their conduct from any public scrutiny.

2. The grand jury has concluded its operations.

This is a significant factor in favor of lifting the veil of secrecy. The greatest need for grand jury secrecy is when the grand jury is still in the midst of its investigation. The grand juries that issued these subpoenas are no longer sitting. No witnesses will refuse to come forward; the investigation is concluded. No defendant will flee; the investigation is concluded. However, the court is mindful of the fact that current and future grand jurors may be skeptical of a court's assurances of secrecy if, in a highly publicized case such as this one, the promise of secrecy is lightly set aside. *See No. 437*, 316 Md. at 86 ("[T]the interests in grand jury secrecy, although reduced, are not eliminated merely because the grand jury has ended its activities.")

3. The materials sought for disclosure are rationally related to the civil proceedings contemplated.

The Attorney General's request is not made in the context of contemplated civil proceedings. This factor applies more directly when, for example, the Attorney General has decided to use civil rather than criminal enforcement of a consumer protection or antitrust law. However, it is also the case that the legislature has recently passed legislation that may open the door to civil suits from sexual abuse victims described in the Report. An unredacted version of the Report may steer potential civil litigants toward witnesses in their cases.

4. The materials sought may be available through ordinary discovery or other routine avenues of investigation.

This court is not in a position to opine about any claims of privilege that the Archdiocese might assert in response to civil discovery requests for the documents that formed the basis of the current action. But it does appear that at least some of them would be available to civil litigants, thus reducing (but by no means eliminating) the assertions of secrecy. This factor appears to be more significant in the circumstances described in (3), above, where the government has switched from criminal to civil action against the same parties for essentially the same conduct. But to the extent that it applies under circumstances where no such government action is contemplated, this factor weighs lightly in favor of the petitioner.

5. Disclosure will save time and expense.

This is another factor that appears to apply more heavily in cases where the requested release of information is for the benefit of a government agency engaged in some sort of civil enforcement action. But as noted above, the release of an unredacted report would be of some assistance to potential civil

litigants in general, as it would help identify potential witnesses and narrow discovery requests. For the same reason, release could even be of some minor benefit to the Archdiocese, as a presumptive defendant in these future actions. To the extent that future civil litigation is likely, this is another factor that weighs lightly in favor of the petitioner.

6. No indictments were returned as a result of the grand jury's investigation.

This is not an instance where the disclosed information will be made public in a criminal proceeding, and subjected to challenge and testing in a public trial. In that regard, this factor weighs against disclosure. But at the same time, this is not an instance where public disclosure will deprive a defendant of due process. It does not appear that there will ever be any indictments or criminal proceedings related to the matters disclosed in this Report.

7. Additional factors.

As *No. 437* indicated, the court may consider "any relevant considerations" in addition to the ones detailed in the decisions. Other considerations are plainly relevant in this case.

(a) <u>The nature of the investigation.</u>

This is not an investigation into a specific individual or a specific criminal act. The matters detailed in this case are primarily historical. The large majority of the incidents detailed in the Report occurred in the prior century. Because the Maryland rule is not as constrained as the federal rule regarding the "court proceedings" requirement, Maryland courts have not had occasion to address their authority to order disclosure in such "historical" situations. In the federal system, however, courts have wrestled with

circumstances similar to the ones presented here, usually in the context of requests to disclose information of historical interest from grand juries whose worked had concluded years or even decades in the past. The fact that some federal circuits have felt compelled to craft "inherent authority" and/or "special circumstances" jurisprudence in such cases is strong indication that the sound interpretation of the disclosure rule requires flexibility to circumstances. *See In re Petition for Order Directing Release of Records*, 27 F.4th 84 (2022) (assuming, but not deciding, that the courts have "inherent authority" to release grand jury materials outside the confines of Federal Rule 6(e); *see also In re Petition of Craig for Order Directing Release of Grand Jury Minutes*, 131 F.3d 99 (2d Cir. 1997) (no abuse of discretion in refusing to release transcripts from 1948 grand jury proceeding under "special circumstances"); *Carlson v. United States*, 837 F.3d 753 (7th Cir. 2016) (no abuse of discretion in releasing transcript of 1942 grand jury proceedings; historical value was one valid "special circumstance."). There is a federal circuit split on this issue, and recently, the Supreme Court of the United States declined an opportunity to address the question. *Pitch, et al., v. United States of America*, 953 F.3d 1226 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 624 (2020). *See also* Jose M. Espinosa, *An Essential Preliminary: The Grand Jury, Its Cloak of Secrecy, and the Misconceived Inherent Authority to Release Grand Jury Materials*, 77 U. MIA L. Rev. 920 (2023) (arguing against "inherent authority" but for an "historical records" amendment to Rule 6(e)). When a number of federal circuits have gone beyond the federal rule to authorize disclosure in certain cases, and when the Maryland rule does not contain the very limitation that the federal courts are struggling to address with this doctrine, the extent to which this is an historical document or otherwise subject to "special circumstances" is a relevant consideration.

(b) The nature of the documents.

Another relevant consideration is the fact that the material at issue is not the work of the grand jury itself. Third-party documents obtained by a grand jury subpoena are distinguishable from witness lists, transcripts, and notes or documents created by the grand jury. As the OAG has noted, various courts disagree as to whether documents presented to a grand jury are protected by the same secrecy provisions as witness testimony. *See generally* Andrea M. Nervi, *FRCP 6(e) and the Disclosure of Documents Reviewed by A Grand Jury*, 57 U. Chi. L. Rev. 221 (1990) (addressing the question "Are documents 'matters occurring before the grand jury' to which the rule's secrecy requirements apply?") The most commonly applied test in such scenarios, as described in *U.S. v. Dynavac*, 6 F.3d 1407, 1413 (9th Cir. 1993), is the "effect" test: "whether disclosure of a particular requested item will reveal some secret aspect of the inner workings of the grand jury."

The application of secrecy rules to documents hinges on the interpretation of the phrase "matters occurring before the grand jury." Both the Maryland and federal rule on disclosure limits the application of the rule to such matters. As Nervi, *supra*, notes, "On the one hand, it can be read broadly by focusing on the word 'matters,' which suggests the drafters were concerned about a whole range of potentially revealing items, not just transcripts or the identity of witnesses. Alternatively, it can be read narrowly by focusing on the verb 'occurring,' which suggests events that—unlike documents—actually take place before the grand jury." 57 U. Chi. L. Rev. at 226. As was also the case with attempts at amending Federal Rule 6(e) to include provisions for historical records, attempts at amending Rule 6(e) to clarify the handling of subpoenaed documents have not been successful.

To be sure, the Supreme Court of Maryland has declared that "records obtained by grand jury subpoena are subject to Maryland Rule 4-642, which pertains to grand jury secrecy and provides extensive protection against unauthorized disclosure." *Misc. 1064*, 478 Md. at 585–86. Nonetheless, at least in the federal system, many courts have applied an "effect" test described above for determining how to assess the interest in secrecy in grand jury documents. "In the sheer number of opinions advocating it, the "effect" test dominates in the federal courts." Nervi, *supra*, 57 U. Chi. L. Rev. 221 at 233.

In this case, there is no chance that disclosure of the documents would in any way reveal "some secret aspect" of the grand jury's work, because the entirety of the grand jury's work (relating to this case) was issuing two subpoenas. There were no live witnesses and there was no testimony. The one person who was ultimately indicted – by a different grand jury -- is not mentioned in the report at all. Thus, while presumptively secret under *Misc. 1064*, the fact that disclosure would not compromise or disclose any grand jury operations is a factor to be considered when determining whether the Attorney General has shown a particularized need for disclosure.

(c) <u>The nature of the accusations.</u>

The allegations in this Report are among the most potentially reputation-destroying accusations that can be made. Some of the accusations are uncorroborated and anonymous. One of the individuals identified in the document reported receiving death threats over social media for simply having been affiliated with the Archdiocese when it developed the standards and policies seemingly employed to good effect since 2003; this person fears more personal attacks, and the threat of losing current employment (not with the Archdiocese). Another person, who played a fairly ephemeral and innocuous

role in internal operations of the Archdiocese, worried that "the curious" will track her down and find her if her name is released, and thinks of herself as "collateral damage" of the Archdiocese's behavior.

This weighs against release. Outside of the ten accused abusers whose names were not previously listed (one of whom has since been added to the "credibly accused" list), most of the information disclosed about the other redacted individuals does not rise to the level of criminal conduct – but some of it certainly will cause some public opprobrium to be leveled at some of the affected individuals.

(d) The prior identifications.

Another factor is that some, but not all, of the individuals whose names were redacted have been tentatively identified in the media. Grand jury material can lose its presumptive secrecy once publicly disclosed, regardless of the court's actions. "[W]hen once-secret grand jury material becomes 'sufficiently widely known,' it may 'lose its character as Rule 6(e) material.'" *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007), *quoting In re Oliver North*, 16 F.3d 1234, 1245. (D.C. Cir. 1994).

Between the April release of the redacted report and the July hearings, various news outlets issued stories purporting to identify 15 of the redacted individuals. With a few isolated exceptions – wherein the parties themselves confirmed their identities to the media – there was no acknowledgment from the various participants in the proceeding as to whether the media reports were accurate or not. Nonetheless, for those individuals who have been correctly identified in media reports, the interest in continued secrecy is greatly reduced. That does not apply, however, to those who have not yet been identified.

E. Holdings:

The court is satisfied that the Attorney General has made a strong preliminary showing of particularized need for the disclosure of the names in the Report. The interests of accountability, public justice, public policy, and transparency are all forwarded by disclosure of this information. Addressing the specific arguments responsive arguments presented on behalf of the individuals whose names were redacted from the interim Report, the court has reached the following conclusion.

1. The five senior officials.

The redacted Report named five senior Archdiocesan officials and referred to them as Officials A-E. This was done because their names appear with frequency and generally with central roles in the events surrounding multiple accused abusers.

While the court has considered each of their cases individually, the arguments for and against the unmasking of their identities are similar. The Office of the Attorney General has taken the position that all of these disclosures are necessary to further the specific interests in having a full and fair accounting of the legacy of abuse and cover-up within the Archdiocese. Noting that "the secrecy rule is not designed for the protection of witnesses, but for that of grand jurors and in furtherance of public justice," Doc. 50. at 13, quoting *No. 437*, 316 Md. at 77, the OAG argues that with regard to Officials A-E, "[t]he secrecy of the conduct described in the Report, and the efforts undertaken over decades to keep it that way, form a substantial part of the very injustice that the Attorney General has sought to combat by publishing the Report." Doc. 50 at 12-13. "The story of the Archdiocese's action and inaction in response to child sexual abuse during the relevant time period is a

story of the actions and failures to act of these men. . . There is a strong public interest in the accountability entailed by a release of the Report with their names unredacted." Doc. 51 at 2-3. The OAG further notes that the identities of at least some of these men have been disclosed in the press since the publication of the redacted document.

In response, these officials (through counsel) point to what they consider to be inaccuracies or misleading insinuations in the Report and argue that there is no public justice interest in publishing false or misleading reports of their actions. For example, Official A asserts that the Report mischaracterizes his actions concerning David Smith (Report at pg. 365). Official B argues that he properly investigated and reported actionable reports of abuse that he learned of, and that the Report mischaracterizes his actions in those cases. Officials C and E complain that prior to 1993, it was unclear if there was a legal requirement to report the abuse of children to the authorities if the victim was an adult by the time the allegation was made. And Official D contends that the Report is misleading when it suggests that he was aware of any actionable information concerning Father Thomas Bauernfeind in 1975. (Report at 36). The officials argue that to the extent that the Attorney General urges public justice and accountability as the basis for disclosure, that interest is nullified by a report with these and other inaccuracies and biases.

In addition to what they characterize as inaccurate or misleading representations in the Report, these respondents also argue that no benefit is served by gratuitously attaching their names to the Report. With the release of the redacted Report, the public has been fully advised as to the nature and scope of the problems the Archdiocese dealt with, and how the Archdiocese responded. There can be no "particularized need," they argue, to include their

names in the Report, especially when the nature of their involvement is open to contention.

Having considered these and the other arguments presented in writing and at the hearings, and applying the various factors mentioned above, the court is authorizing the release of the names of Officials A-E. The Attorney General has articulated a compelling, particularized need to release an unredacted report and to specifically identify the senior officials responsible for so many of the critical decisions that, in some instances, brought clerical misconduct to the attention of the relevant authorities – and in other instances, help ensure that abuse allegations were silenced and accused abusers shuffled off to treatment and/or reassignment, where they were able to abuse again.

The fact that the officials dispute the Attorney General's interpretation of the evidence, and can point to instances where they believe material was misconstrued or taken out of context, underscores that this issue is far more complex than a simplistic "abusers vs. victims" narrative can fairly encompass. But ultimately this is an argument for more transparency, not less. To the extent that these officials contend that their behavior was blameless, or at least justified under the circumstances, they are free to press that claim in a public manner. To continue to hide their identities does not advance that interest in public discourse; just the opposite. It allows the most negative possible inferences to be drawn, while continuing to shroud this troubling history in secrecy.

2. The ten accused abusers

The report identified ten individuals as accused abusers who were not previously named in the Archdiocese's list of credibly accused abusers. While the list of identified abusers is alphabetical in the Report, the ten previously

undisclosed accused abusers are listed at the end of the Report, in part to help protect their identities; they are listed in the redacted Report at alleged abusers #147 through #156. (One, #155, has since been added to that list and is therefore now publicly identified from sources other than the subpoenaed documents. The other nine have been tentatively identified in the press.)

In every instance, the OAG contends that the interest in public disclosure, accountability, and justice constitutes a particularized need to identify accused abusers known to the Archdiocese and not publicly identified hitherto. The OAG also makes specific arguments to rebut the responses of some of the alleged abusers.

Individual #147.

Accused abuser #147 contends that the accusations against him are false and defamatory. He further argues that they are based on "hearsay" and not "admissible evidence." He contends that to the extent that the Report alleges misconduct and cover-up on the part of the Archdiocese, there is no public interest in identifying him, since he did not engage in the cover-up of the allegations against him. He further notes that the accusations against him were referred to Baltimore City prosecutors in 1987 (some 10 to 12 years after the alleged abuse), and there was no official action taken against him. He asserts a Constitutional liberty interest to his reputation and avers that it would therefore be unconstitutional for the State to release a report accusing him of child abuse.

In rebuttal, the OAG argues that Individual #147 has been tentatively identified in the press already; that his constitutional claim has no merit (citing *Paul v. Davis*, 424 U.S. 693 (1976)); and that most of the information in the Report concerning this individual did not come about as the result of the

grand jury subpoena, but rather as a result of interviews with the alleged victim(s) in the case.

The accusation against #147 is only that – an accusation. However, there is a particularized need to identify alleged abusers who were able to operate within the framework of the Archdiocese. Disclosure of #147's identity is not a finding of guilt. But he was indeed accused, investigated, and even referred to the State's Attorney's Office. For whatever reason, he was not included on the list of credibly accused abusers by the Archdiocese. The complaint that there was no "admissible" evidence presented in the Report seems to miss the point entirely. This is not a trial. The rules of evidence do not apply. Similarly, the Constitutional objection to disclosure is without merit. While some states have an explicit state constitutional right to reputation (*see*, *e.g.*, *In re: Fortieth Statewide Investigating Grand Jury*, 647 Pa. 489, 190 A.3d 560 2018) – Maryland does not. And as the OAG notes, there is no federal Constitutional right at stake here. "[T]he interest in reputation asserted in this case is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." *Paul*, 424 U.S. at 712.

This person's name may be included in the public version of the Report.

Individual #148.

The person listed as accused abuser #148 has been shown to be deceased. For the reasons set forth in the court's earlier order, his name may be included in the public version of the Report.

Individual #149

Alleged abuser #149 could not be located to be notified. However, if she is still alive, she would be over 100 years of age. The court is satisfied that her

name may be included in the public version of the Report for the reasons set forth in the court's February order.

Individual #150

Accused abuser #150 responded to the notice and retained counsel, who reviewed the Report entries specific to him. According to the Report, he was (in 2009) the subject of a single complaint of misconduct, alleged to have occurred in 1976. This individual did not respond to the OAG's renewed motion to publish his name, and withdrew his request to participate in the hearings. The court is satisfied that the Attorney General has set forth a particularized need to reveal the information in the Report concerning this person's identity. His name may be included in the public version of the Report.

Individual #151

Accused abuser #151 was notified by the Office of the Attorney General but failed to respond. He has been tentatively identified in the press by name. The Office of the Attorney General has set forth a particularized need to disclose his name in its report. The public policy and public justice goals of disclosure and transparency favor disclosure. While there are factors weighing against disclosure, the court has determined that the need for disclosure overcomes those factors and will authorized the identification of this individual by name in the public version of the Report.

Individual #152

The accused abuser listed as #152 has opposed the release of his name, arguing that the accusation is based on a single, uncorroborated allegation. The OAG argues, in rebuttal, that there are two accusations, that the Archdiocese has suspended #152's faculties pending further investigation, and

that #152 has been tentatively identified in the press already. Therefore, the OAG asserts, the particularized need for transparency and accountability are not overcome by #152's arguments against disclosure.

An accusation is only an accusation. An accusation of misconduct allegedly occurring decades earlier, as in this case, is very difficult to prove – or refute. The court is sympathetic to the fact that Individual #152, like many of the ten accused abusers, faces public opprobrium due to accusations regarding long-ago conduct – accusations that, once made in a public setting, will tarnish his reputation even if they cannot be legally proven.

Nonetheless, the interest in a full disclosure of this systemic problem within the Archdiocese is very strong. The Report makes it plain that these are only accusations, and that the accusations arise from long-ago conduct. The interest in disclosure outweighs the reasons for maintaining secrecy. The name of Individual #152 may be released in the public version of the Report.

Individual #153

The person listed as #153 has responded to the Attorney General's motion by noting that he appears in the Report because of an accusation by a single individual, regarding conduct alleged to have occurred decades ago. As with the other alleged abusers, he is in the position of having to address public claims of misconduct without the forum of a public trial to refute the accusations. Moreover, he argues, the inclusion of his name after having been redacted earlier creates the possibility that the accusations will now carry some additional indicia of reliability because authorizing the release of his name will somehow lend the court's official imprimatur to the accusations in the Report.

The OAG's rebuttal points out that this individual already has been tentatively named in the media and that the particularized interest in full disclosure outweighs the individual's request for anonymity.

As the court has noted above, this court's decisions in favor of public disclosure are in no way endorsements of the allegations, any more than its earlier order for redactions constituted a repudiation of the allegations. It does seem from the Report that the Archdiocese did, at one point, characterize the allegations as "credible," and yet has not thus far added #153 to its list of credibly accused abusers. Having considered the various factors, the court authorizes the public disclosure of the name of Individual #153 in the Report.

Individual #154

The OAG and the Archdiocese reported being unable to locate Individual #154. However, according to press reports, this individual confirmed his identity as #154 to newspaper reports, who were able to locate him. Lee O. Sanderlin & Maya Lora, "Baltimore Sun identifies 2 priests, one Catholic, one Episcopal, accused of abusing high school students," Balt. Sun (May 25, 2023), 2023 WLNR 18233068. According to the newspaper report, while acknowledging that he was the person identified as Individual #154, he denied the allegations against him.

If the newspaper report is correct, it seems likely that this individual has forsaken any claim to further anonymity. But because he has not been given notice and an opportunity to respond, the court will not authorize the publication of Individual #154's name at this time. [6]

[6] If the OAG properly notifies Individual #154, the Attorney General may renew his motion with regard to that individual; the motion to disclose this person's identity is denied without prejudice.

Individual #155

The person listed as Individual #155 has, since the release of the redacted Report, been added to the Archdiocese's list of credibly accused abusers. He was also tentatively named in media reports after the release of the redacted Report. For the reasons set forth in the February order, the public release of this individual's name is authorized.

Individual #156

The accused person identified as Individual #156 appeared without an attorney at the July 6 hearing. He was tentatively identified in newspaper reports published after the release of the redacted Report. This individual argued that the request to reveal his name should be rejected, because the accusation was false and made in an attempt for financial gain. He indicated that he was unaware that the accusation against him had been reported to authorities in 2003.

The OAG argued that this person should be identified for the same reason the other alleged abusers should be identified – because a complete report of the scope and scale of the abuse crisis requires full transparency, because secrecy and nondisclosure helped create the lack of accountability which prevented meaningful, timely responses in the past, and because the continued anonymity of abusers and church officials simply compound the problem. Moreover, given that this individual has been tentatively identified (and has apparently confirmed his identity to the press, while denying the accusations), this individual's interest in continued grand jury secrecy is outweighed by the need for disclosure.

As with the other alleged abusers who deny the truth of the allegations, this court is not charged with confirming or disproving the claims made by the

victims. This court is charged with determining whether the Attorney General has shown that the presumption of secrecy surrounding grand jury proceedings should be lifted in favor of publication of this information. The Report makes it clear that it is reporting accusations against Individual #156, as well as the Archdiocese's response – which was to report the accusations when they were received (nearly 30 years after the alleged abuse). The publication of this individual's name advances the Attorney General's identified need for public justice, accountability, and transparency. It does not constitute an affirmation of the accusations within the Report any more than the prior redaction of the name constituted a rejection of those accusations. The court authorizes the inclusion of this individual's name in the public copy of the Report.

3. The 31 other named, unaccused individuals

Most of the remaining individuals played relatively minor roles in the events described in the Report. In many instances, their conduct appears to be innocuous. Nonetheless, several individuals in this category opposed any efforts at publishing their names for fear of "guilt by association."

As the court has attempted to make clear, none of the individuals named in the report have been found guilty of anything. Moreover, the worst that can be said of some of the individuals named in the Report is that he or she played a role in the Archdiocese that led to him or her having to handle files and complaints pertaining to accused abusers. The fact that an individual's name was redacted was a function of Maryland law regarding grand jury documents; it was in no way a finding by the court that any of these people engaged in any improper conduct. When considering the motions to disclose their names, the court has attempted to consider the potential effects on the livelihoods and reputations of the named individuals.

Several individuals were placed on notice of the proceeding and did not file written oppositions to the Attorney General's motions, nor did they present argument at the hearings held on the Attorney General's motions. In some instances, they informed the court that they did not oppose disclosure. For the reasons discussed above, the court finds that the Attorney General has presented a particularized need for disclosure of the names of these individuals. Upon consideration of the various relevant factors, the court will authorize the disclosure of the following names:

The individual first identified on pg. 68

The individual first identified on pg. 72

The individual first identified on pg. 117

The individual first identified on pg. 158

The individual first identified on pg. 161

The individual first identified on pg. 196

The individual first identified on pg. 197

The individual first identified on pg. 294

The individual first identified on pg. 329

The individual first identified on pg. 414[7]

In a supplemental filing with the court, the Office of the Attorney General advised the court that two of the individuals whose names were redacted are deceased. The Attorney General has presented a particularized

[7] The Office of the Attorney General advised the court that this individual, who does not reside in the United States, was placed on notice by sending the notice to email addresses used by this individual in correspondence with the Archdiocese. The OAG has further informed the court that the notice was translated into this person's native language. The court is satisfied that the person has been placed on notice and has failed to respond.

need to divulge the identities of these two individuals, and consideration of the relevant factors weighs in favor of disclosing this information for the reasons set forth in the court's February Order. The court therefore authorizes the disclosure of the names of the following individuals, believed to be deceased:

The individual first identified on pg. 407

The individual first identified on pg. 413

One person could not be notified by the Office of the Attorney General. The OAG informed the court that the Apostolic Nunciature in Washington, D.C., refused to assist the Office in locating and serving notice upon this individual, who apparently does not live in the United States. Having considered the various factors, the court will order the disclosure of this individual's identity notwithstanding the lack of formal notice. This person's role seemed to be limited to receiving a report from the Archdiocese about its efforts to identify alleged abusers. The court authorizes the publication of the name of the individual identified on pg. 79.

The person named on pg. 374 could not be notified. According to the Office of the Attorney General, its investigators spoke with someone who identified herself as this person's spouse and told investigators that he had advanced Alzheimer's disease and would be unable to comprehend the notice. She declined to accept the notice on his behalf.

This person is a doctor to whom a confessed abuser, Father Thomas Smith, was referred for treatment in the 1988. Per the Report, Smith confessed to Archdiocesan officials that he had committed multiple acts of sexual abuse in the 1960s. The doctor's report, however, only mentions one incident involving two children. The doctor determined that there was no need for

continued treatment of Father Smith because the conduct was isolated and occurred nearly 25 years earlier.

The court mentions this particular section in the Report because it highlights the various circumstances and considerations that recur throughout. It is true that the Report could be rewritten to exclude the doctor's name. However, the episode is important because it shows that the Archdiocese had reason to believe that its regular practice of sending alleged abusers to psychiatrists was ineffective. Either Smith minimized his conduct with speaking with the doctor, or the doctor minimized Smith's conduct when reporting back to the Archdiocese; either way, by the time the doctor gave his recommendations, Archdiocesan officials knew or should have known that this was not an accurate portrayal of what Smith had already admitted to them.

The doctor apparently is incapacitated and cannot address, let alone rebut, any negative connotations that can be drawn from the Report. He cannot offer any explanation as to why his recounting of events differs from that which was apparently disclosed to the Archdiocese before he saw Smith. The doctor would have been mandated to report abuse under what is now codified as Section 5-704 of the Family Law Article. Lawyers for the Archdiocese have argued that prior to 1993, its officials did not believe that they were obligated to report accounts of abuse if the alleged victim was an adult by the time the report was made. The doctor cannot, because of his condition, explain if he, too, followed that interpretation of the law in 1988 when he did not report the abuse.

Did the doctor come to that conclusion after consultation with the Archdiocese, or on his own? Was the fact that he shared that interpretation a factor in the Archdiocese referring Smith to him? Were other accused abusers

referred to him? By redacting the doctor's name, the lack of accountability and secrecy surrounding Smith's abusive behavior is furthered and extended. By redacting the doctor's name, those who were harmed by Smith are denied knowledge of how and why their abuse was obscured. By redacting the doctor's name, the decision of Archdiocesan officials to treat Smith in ways that seemed to contradict the Archdiocese's own policies regarding abusive priests remains attributed (at least in part) to nameless, faceless individuals. According to the Report, when additional accusations were levelled against Smith, he was again referred to therapy by Archdiocesan officials. However, after asking to delay his departure, Smith took his own life before that treatment could begin. By redacting the doctor's name, the understanding of this tragic story is diminished.

Having considered the various factors, the court authorizes the release of this individual's name.

The court is denying the Attorney General's motion with regard to the following individuals, who were properly put on notice and opposed the Attorney General's request to reveal their names:

1. The individual named on pg. 160. At the hearing, the Office of the Attorney General agreed to edit the Report to avoid direct mentions of this person's name. The court concurs; the reasons set forth for disclosure by the Attorney General do not appear to apply in this instance.
2. The individual named on pg. 340. This person's name appears in the Report in connection with accusations made against Father Adrian Poletti. However, it appears that this individual heard accusations of misconduct which had occurred more than 50 years

> earlier – and the accuser refused to tell him the name of her alleged abusers. The inclusion of this person's name in the Report does nothing to advance any public understanding of the circumstances surrounding the accusations against Poletti, which are amply detailed elsewhere in the Report. Disclosure does create a risk of divulging the identity of the person who made accusations to this individual in 1999. The Attorney General may edit the report to exclude this person's name.

With regard to the remaining individuals, all of whom opposed the Attorney General's motion either in writing or at the hearing (or, in most instances, both), the court is authorizing the publication of their names for the reasons stated throughout this Memorandum Opinion. Some of the arguments made in opposition to the Attorney General's motion were more compelling than others. However, in every instance, after weighing the various factors, the court has concluded that a particularized need for disclosure exists and that the interests of transparency, justice, accountability, future legislation and legal action, and sound public policy, all outweigh the objections made to the request.

As noted above, each of these individuals has presented individualized arguments against disclosure. [8] Most of the non-abusers mentioned in the Report share a common trait: he was doing what he felt was the right thing to do under the circumstances. The senior officials make the same claim. No

[8] For example, the person first named on pg. 208 argued that he believed that information he received about alleged abused was protected by clerical privilege. This appears to be false, indicating (at a minimum) a training problem within the Archdiocese on this topic. Others argued that the Attorney General did not have the authority or jurisdiction to impose "quasi-criminal punishment" on people who did not live in Maryland. But a report accurately describing someone's actions is not a "quasi-criminal" anything, and to the extent that the individuals dispute the accuracy of the Report, they are free to make public any mitigating or contextual information they feel necessary.

doubt the various Archbishops named in the Report believed that as well. All of them were able to justify their behavior to themselves at the time. But the net effect of all of this rationalization and justification remains the same: abuse continued without accountability. Abusive priests were sent to treatment or to other parts of the country and then returned to positions where they could once again exploit their positions of trust.

Some of the individuals who will be named in the unredacted Report played fairly inconsequential roles in the handling of a single abuser. They argue that there is no particularized need to include their names in the Report, and any marginal positive benefit from pulling back the cloak of institutional anonymity is outweighed by the harm of unfair criticism and unjust characterization of their actions.

The court disagrees. As noted throughout this Memorandum Opinion and the court's earlier orders in this case, there is a particularized need to publish a report that is as transparent and open as possible. To the extent that a given individual's actions were proper and/or insignificant, the potential harm to that person's reputation and livelihood is greatly diminished.

Summary

As a result of the court's Order today, all but three of the individuals whose identities were redacted from the earlier Report will now have his or her name revealed in the Report. The court has already stated, but will state again, that the inclusion of a person's name in the Report is not any sort of judicial determination that this person did anything wrong. It is, rather, simply a finding that the secrecy that ordinarily attends grand jury proceedings should be set aside upon a showing of particularized need – a showing that has been made here. The court is not endorsing the conclusions of the Report by allowing

for the publication of names any more than it was rejecting the conclusions of the Report when it ordered those names redacted in the first place.

Those who interpret either this Order or the Report as tantamount to an indictment of a particular individual are misinterpreting both the Report and the Order. With regard to the accused abusers, in some instances, the accusations may be false. With regard to the various religious and lay people who are now named (some of whom did not work for the Archdiocese of Baltimore), their conduct may have been entirely proper. However, without individualization – without putting names to those who acted or failed to act when confronted with a slow-motion crisis of sexual abuse that revealed itself throughout most of the 20th century and beyond – it becomes impossible to fully understand the scope of what is detailed in the Report. These names are being released because the key to understanding the Report is understanding that this did not happen because of anything "the Archdiocese" did or did not do. It happened because of the choices made by specific individuals at specific times.

Molière wrote: "It is not only what we do, but also what we do not do, for which we are accountable." The Attorney General has offered accountability as a primary basis for setting aside grand jury secrecy and including individual names in the public version of the Report. For the reasons set forth at length in this Memorandum Opinion, the court finds that the need for individualized accountability for both actions and inactions justify disclosure as detailed in this Opinion.

August 16, 2023
Date

_____/s/_____
Robert Taylor, Jr.
Associate Judge
Circuit Court for Baltimore City