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REPORT TO GOVERNOR JOSEPH E. BRENNAN
CONCERNING ALLEGATIONS OF ABUSE
OF STUDENTS AT THE
GOVERNOR BAXTER SCHOOL FOR THE DEAF

JULY 12, 1982

JAMES E. TIERNEY
Attorney General



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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

July 12, 1982

The Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

Attached is the report of the criminal investigation by my office of allegations of physical and sexual abuse of students at the Governor Baxter School for the Deaf.

The report is the result of over 2,000 hours of field investigations and more than 150 field interviews with current and former staff members, students, and the parents of students of the Baxter School. The investigation involved members of several divisions of my office and resulted in the compilation and analysis of a voluminous amount of evidence.

The report clearly must speak for itself. Although it does not present a pleasant view of one of our institutions, the people of Maine have a compelling right to know the findings.

The investigation shows that Commissioner of the Department of Educational and Cultural Services, Harold Reynolds, Jr., acted effectively to deal with the situation at the Baxter School once it was brought to his personal attention. It is my firm conclusion that the conditions which led to this investigation have been eliminated from the Baxter School.

Hon. Joseph E. Brennan
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It is my belief, however, that the Department of Educational and Cultural Services, in previous years, failed to conduct a thorough investigation of alleged wrongdoing at the Baxter School, even though it had in its possession as early as 1976 sufficient information to warrant such investigation. The failure of the Department of Educational and Cultural Services to investigate this situation in 1976 absolutely bars prosecution for most of the incidents outlined in this report because of the expiration of the statute of limitations.

In addition to considerations involving the statute of limitations, deficiencies in current law, in my opinion, have allowed activity which should be criminal to escape prosecution.

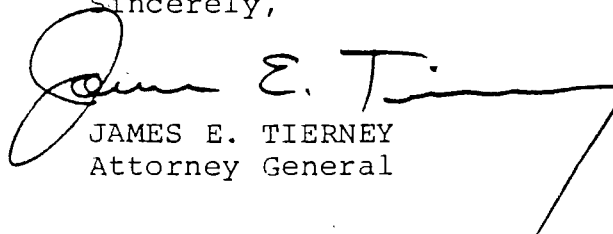
Accordingly, the report does recommend that you seek legislation at the earliest opportunity to amend the Maine Criminal Code to make the type of sexual abuse of students which occurred at the Baxter School illegal.

The report also recommends that you seek legislation to amend the State Personnel Law to provide for the automatic dismissal of any employee who abuses or neglects a child entrusted to the care of a public institution.

Because many of the incidents uncovered by the State investigators were beyond the statute of limitations, and other incidents were not clearly criminal violations under the current language of the Maine Criminal Code, and because of considerations for the emotional well-being of the victims, no criminal indictments will be sought by the State as a result of evidence compiled to date by this office.

I want to take this opportunity to say that this report would not have been possible without the cooperation of many dedicated and forthcoming faculty and staff members of the Baxter School for the Deaf, the current administration of the Department of Educational and Cultural Services, and especially many current and former students of the Baxter School who assisted the investigative team throughout its activities.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET/kc

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I. INTRODUCTION

This report contains the findings and recommendations of the Attorney General concerning allegations of sexual and physical abuse of students at the Governor Baxter School for the Deaf at the hands of certain former staff members. It is the culmination of a formal investigation by the Attorney General commenced on February 3, 1982 at the request of Governor Joseph E. Brennan.

The investigation, conducted in several states, resulted in over 2,000 hours of field investigation and over 150 interviews. Every effort was made to locate and interview every complaining current or former student, every complaining staff member, and every eye witness to any allegedly criminal event.^{1/} Finally, all of the information obtained by the investigators was evaluated to determine whether the alleged conduct had occurred and, if so, whether it could be characterized as criminal. Only allegations that are both supported by credible evidence and serious are included in this report. All findings of the investigative team, however, and the evidence upon which they are based, have been made available to the Commissioner of Educational and Cultural Services for his use in possible disciplinary action.

^{1/} All persons with information on activities at the Baxter School, and especially members of the deaf community, were encouraged to come forward. In every instance, the person was interviewed and the information was recorded regardless of its nature.

The investigation was complicated by factors not normally encountered in criminal investigations. The students' verbal communication and sign language skills varied extensively, creating problems in determining precisely what had occurred. In some cases, it was difficult to evaluate the students' credibility because of emotional and intellectual problems that were not necessarily the product of their deafness. Moreover, because of the closeness of Maine's deaf community, it was difficult to locate sign interpreters who were not associated in some way with the Baxter School. As a result, interpreters, who were necessary even at the preliminary stages, were hired from out-of-state.

As the investigation progressed, the more serious allegations focused on three individuals: Dr. Joseph Youngs, Superintendent of the Baxter School; Dr. Robert Kelly, Director of Academic Affairs; and Mr. Jan Repass, Dean of Students.^{2/} Youngs tendered his resignation prior to the investigation, to be effective on June 30, 1982. Youngs, however, was relieved of his duties by Harold Reynolds, Jr., Commissioner of the Department of Educational and Cultural Services, on February 2, 1982. On the same date, Kelly also was relieved of his duties

^{2/} Allegations against other former or current staff members are not included in this report because they either could not be substantiated or they did not indicate a pattern of abuse.

by Commissioner Reynolds. Kelly resigned on May 21, 1982. Repass was interviewed by investigators on March 2, 1982 and again on March 31, 1982 by representatives of the Department of Educational and Cultural Services. He resigned on April 5, 1982.

II. BACKGROUND OF BAXTER SCHOOL

Originally operated as a part of the Portland school system, the Governor Baxter School for the Deaf was founded in 1876 as the Portland School for the Deaf. Former Governor Percival P. Baxter donated Mackworth Island in Falmouth to the State of Maine in 1943. Later, he was persuaded by deaf persons to help find a new home for the school when it had outgrown its Spring Street location in Portland. In 1953, when the Legislature appropriated monies for the construction of a new school, those monies and funds donated by Governor Baxter were used to construct the school facility on Mackworth Island.

The purpose of the Baxter School is to educate children whose hearing loss is so severe that it prevents or impedes education in a traditional school setting. Classes extend from kindergarten to twelfth grade and include both vocational and academic programs.

Since it was founded, the Baxter School has been administered by the State. 20 M.R.S.A. § 3122(4) (Supp. 1981). Prior to 1972, the State Bureau of Institutions and then the Department of Mental Health and Corrections were the responsible state agencies. Since 1972, the Department of

Educational and Cultural Services has been charged with the administration of the school.

Approximately 70 percent of its 104 students reside at the school. In addition to 33 professionals, there are 79 staff members who maintain the facility or provide services to the students. In the last twenty years, 1202 students have attended the Baxter School and 199 students have completed the program.

III. FINDINGS

A. Sexual Abuse

Baxter School students are physically and psychologically more isolated than other children their age. They are isolated physically because they attend a residential school and they are isolated psychologically by virtue of their hearing impairment. Students at the Baxter School, like all students, are subject to the constant supervision of staff members and are dependent upon them for guidance, discipline, and approval. Indeed, their future success may depend in large part upon their relationships with staff members. The evidence indicates that, in this atmosphere of isolation and dependence, Baxter School students were seriously abused by the behavior of two school officials, Robert Kelly and Jan Repass.

1. Robert Kelly.

Robert Kelly was interviewed in the presence of counsel on May 12, 1982 by Deputy Attorney General James Brannigan concerning allegations that he had engaged in homosexual relationships with several Baxter School students. Although he admitted that he had been involved in homosexual encounters with one former student, he denied that these encounters occurred before the student had graduated. He admitted, however, that on numerous occasions male students had spent the night at his apartment on the grounds of the Baxter School and more recently at his Portland home, after he moved there in 1980.

The following findings are based on Kelly's interview and numerous interviews of both complaining students and independent witnesses. They also are based on attendance records and teacher interviews. These records and interviews show that certain students frequently were summoned from class to either Kelly's office or residence. They also indicate a conspicuous favoritism on the part of Kelly towards these students in the form of gifts, money, and special attention. The evidence indicates that Kelly had homosexual experiences with at least three of these students.

The pertinent facts are provided below, although the names and identifying characteristics of the students have been changed to protect them from any further harm. Additionally,

each incident is identified as occurring before or after 1976 to indicate whether it occurred within the applicable statute of limitations.

a. Steve Johnson^{3/} was a student at the Baxter School prior to 1976. According to Johnson, Kelly, on numerous occasions, invited Johnson to his apartment on the Baxter School grounds to "teach him about sex for the future." Johnson said that he had many homosexual encounters with Kelly, some of which included nude photography. Johnson also told investigators that Kelly threatened him with beatings if he told anyone about their sexual relationship. Nancy Wheeler, another student, once accidentally observed Kelly and Johnson engaged in a homosexual act.

b. Bill Brown graduated from the Baxter School prior to 1976. In response to questions by state investigators, Brown confirmed that Kelly invited him to Kelly's residence on Baxter School grounds when Brown was a 16-year-old freshman so that he could "teach him sex." Brown also said that, prior to graduation, he had approximately 20 homosexual encounters with Kelly, including strip poker,

^{3/} The names of all students are fictional, and any resemblances between these names and names of real persons is coincidental.

bondage, and nude photography. Brown said there was at least one homosexual incident that involved Kelly, Johnson and Brown at the same time. Brown said that Kelly often paid him, claiming to Brown that the money was to insure that Brown didn't talk about these incidents to anyone. Another student, Gary Rice, said that Kelly showed him nude photographs of Brown, and several students reported that Brown told them that he was paid by Kelly for sexual favors.

c. Gary Rice, an off-campus student who graduated since 1976, said that he was first invited to Kelly's residence for dinner when he was a 17-year-old junior. Rice said that Kelly's several homosexual encounters with him included bondage and nude photography.

2. Jan Repass.

Jan Repass, who is deaf, was interviewed by criminal investigators through an interpreter on March 2, 1982, concerning allegations that he had had sexual relations with female Baxter School students. He essentially denied all of the allegations. After the interview, however, he approached one of the complaining students and threatened to end their friendship if she told investigators about his sexual contacts with her. The student reported this event, and Repass was suspended immediately from his position by the interim administrator of the Baxter School. When confronted, Repass admitted in front of four witnesses that not only had he

attempted to interfere with the witness, but also that he had engaged in sexual intimacies on at least one occasion with that student. Threatened with immediate dismissal, Repass resigned his position on April 5, 1982. The Repass interview and student interviews indicate that Repass had or attempted to have sexual relations with female Baxter School students during his employment at the School.

a. Ginger Russell, who graduated from the Baxter School prior to 1976, stated that, beginning when she was a 16-year-old sophomore and continuing for three years, she had a sexual relationship with Repass which included intercourse.

b. Susan Morin, who graduated from the Baxter School prior to 1976, stated that Repass on several occasions during her sophomore and junior years made sexual contact with her while she was in class.

c. Jane Michaud stated that Repass approached her at school on three occasions since 1976 and made sexual contact. She also said that he requested that she have sexual intercourse with him, but she refused.

d. Joyce Cooper stated to investigators that since 1976 she was kissed on occasion by Repass, but she denied that she ever had sexual relations with Repass.

B. Physical Abuse.

It has been recognized historically that teachers and persons with similar responsibilities may use corporal punishment in certain circumstances. In Maine, the Criminal

Code and education law exempt such persons from criminal liability when they use reasonable force to maintain order. 17-A M.R.S.A. § 106 (1981); 20 M.R.S.A. § 918(1) (1981). The exemption from criminal liability, however, is conditioned on the reasonableness of the degree of physical force employed under the circumstances.

The investigation suggests a pattern of excessive force employed by Joseph Youngs and Robert Kelly. It indicates that students were struck, punched, slapped, or kicked by these two individuals over a period of years.

1. Joseph Youngs.

In interviews with investigators, Joseph Youngs denied that he ever struck or punched a Baxter School student. Interviews with student and staff eye witnesses, however, indicate that Youngs struck numerous students during his tenure as Superintendent of the Baxter School. Before these allegations became known, Youngs tendered his resignation on January 26, 1982, effective June 30, 1982. As a result of allegations of physical abuse within his area of responsibility, Youngs was suspended on February 2, 1982.

a. Tony Graham, who has a long history of mental illness, said that he attempted to commit suicide while a student at Baxter School since 1976. He said that the attempt was thwarted by a staff member and Youngs was called. When Youngs arrived, witnesses state that Youngs physically attacked Graham, punching him repeatedly in the face with his fists. Youngs, however, denies ever hitting Graham with his

fists and claims only to have grabbed him to get his attention. After the assault, Graham ran into the hall and began hitting the wall with his fist. Thereafter, Graham calmed down and sat and talked with Youngs. They ended up hugging each other.

Graham said that, on another occasion, he requested a wrench from a janitor at the school to work on his bicycle and that he argued with the janitor after his request was turned down. After Graham was summoned to Youngs' office, Youngs grabbed him, tore the buttons off his shirt, and punched him in the face with a closed fist. No one else was present.

Graham also said that Youngs hit him again since 1976 because Graham struck Graham's girlfriend. A supervising houseparent saw Youngs strike Graham with closed fists, although another eye witness to that incident does not recall seeing Youngs actually strike Graham.

b. Ed Bevins stated that, prior to 1976, he and several other boys were playing tag in the school's corridors. Bevins stepped outside the corridor and hid next to the building by the laundry. Bevins said that Youngs arrived in the area, and, as Bevins started to re-enter the building, Youngs grabbed him by the shoulder and pulled him inside. Bevins stated that Youngs shook him, scolded him, and then struck him on the side of the jaw with his fist. Bevins stated that he started to black out, but did not fall because Youngs was holding him.

c. Jeff Roy said that, sometime since 1976, he ran outdoors and hid under a bridge following an argument with a teacher. Roy said that soon after, Youngs arrived at the bridge in a car and instructed Roy to get into the car. Roy also said that, after being taken to Youngs' office, Youngs closed the door, walked over to him, and stood on his feet. Roy said that Youngs then proceeded to punch him in the head, both with closed fists and open hands until Roy began to cry. Roy said that the beating resulted in several lumps on his head. Roy said that another student, Paula Ferber, felt the lumps on his head, which Ferber confirmed to investigators.

d. Alex Green was struck by Youngs with his fists some time after 1976, according to a student who witnessed the incident. When interviewed, Green stated that Youngs had struck him on the leg with a book but that "I deserved it." Youngs said that he caught Green and a female student coming out of the boys' restroom and may have pushed Green, but denied striking him.

e. Patti Warren said she was slapped several times across the face on one occasion since 1976 when she forgot to say good morning to Youngs in the dining room. Warren said that after she was slapped she was taken to the infirmary where she was examined by a nurse for bruises. No record of any treatment could be found.

f. Jon Franklin said that, when he was a freshman, prior to 1976, he was slapped in the face by Youngs, causing his nose to bleed. Franklin said that he believed that Youngs slapped him because he was late returning to school.

g. Lester Lewis said that he was punched in the stomach by Youngs sometime prior to 1976 for smoking in the boys' restroom.

h. Fred Jones, a student at Baxter School, said that, prior to 1976, Warren Nadeau was stuck in the leg with a pen by Youngs hard enough to cause Nadeau's leg to bleed.

i. Rita Cole, who graduated prior to 1976, provided a written statement to investigators that Youngs had punched her.

2. Robert Kelly

During the course of the May 12, 1982 interview conducted by Deputy Attorney General James Brannigan, Kelly denied ever punching or dragging a student. He could not recall ever kicking a student in the legs and further failed to recall any specifics that could bear upon the following incidents disclosed to criminal investigators. The following evidence collected by investigators, however, is in contrast to Kelly's general denial.

a. Barry Abbott was reading a book in the school library sometime prior to 1976 and had put his feet up on a new stool. Noticing him, Kelly kicked Abbott in the legs

causing him to cry. Two teachers and a student witnessed the incident.

b. According to a teacher at the Baxter School, Linda Kay attempted to run away during the school year sometime prior to 1976. When she was brought back to the school, this teacher witnessed Kelly dragging Kay by the hair back to her room.

c. Tom Marshall attempted to run away sometime since 1976. When he was brought back to the school, a teacher saw Kelly dragging Marshall by the neck back to his room. Marshall could not be located for an interview.

d. Patti Warren was a student at Baxter School sometime after 1976. A school custodian saw Kelly go into the library to locate Warren, who allegedly had made an obscene gesture. The custodian said that, when Kelly found Warren, he grabbed her middle finger and bent it back until Warren screamed. According to the custodian, Kelly also said "that will stop her" and "next time I'll break it off" and then walked out. Warren did not mention this incident to investigators.

e. Peter Black was a student at Baxter prior to 1976. A school custodian saw Kelly grab Black, apparently because Kelly caught Black looking into the girls' bathroom, and slam him into a cement wall so hard that it knocked Black to the floor. Black could not be located for an interview.

f. Nancy Wheeler was a student prior to 1976. Wheeler stated that on one occasion Kelly became angry and struck her with a three-ring notebook because she had seen Kelly and a student, Steve Johnson, involved in a homosexual act. A faculty eye witness to this assault stated that Kelly, obviously angry, struck Wheeler without any apparent provocation.

g. Sandra Josephson, sometime prior to 1976 when she was 13 or 14 years old, temporarily had left her group during a tour in Portland to talk to a student in another group. According to two teachers, Kelly became furious, grabbed Josephson by the nape of the neck, lifted her up off the ground, and marched her back to her own group.

h. Warren Nadeau, a student prior to 1976, was picked up by the hair and completely lifted off the floor by Kelly, according to a houseparent who witnessed the incident. Nadeau could not be located for an interview.

i. Keith Conrad said that one day in 1976 he was punched in the stomach by Kelly.

j. Bob Martin stated that he was walking down the hall with another student, Gary Rice, some time since 1976, when Kelly walked up to Martin and punched him in the stomach, doubling Martin over with pain. When Rice was asked about Kelly striking students, he did not mention this incident.

k. Alice Lundstrom stated that, sometime prior to 1976, Kelly came into the school library and struck her on the head with his hand for not having a pass.

l. Jeff Roy reported that, prior to 1976, he was struck on the head by Kelly for not paying attention in class.

m. Julie Watson, who has left the Baxter School since 1976, remembers that on one occasion Kelly grabbed her by the hair from behind while she was leaving the gymnasium and asked her where she was going.

n. According to student Jim O'Hara, Connie McCarthy, while in a classroom sometime prior to 1976, was grabbed by the hair by Kelly because she and O'Hara were laughing.

o. Rita Cole, in a handwritten statement, said that Kelly punched her when she was about 12 years old, sometime prior to 1976.

p. Lester Lewis said that he and Larry Jones had their heads banged together and their hair pulled by Kelly as punishment sometime prior to 1976. This incident was also confirmed by a teacher who witnessed the incident.

q. Karen O'Reilly graduated from the Baxter School prior to 1976. She said that on one occasion, she was sent to Kelly's office for writing a love letter to her boyfriend, whereupon Kelly grabbed her by the hair and banged her head twice into the wall.

r. Donald Hatch stated that, in 1976, when he was eleven years old, Kelly asked him into his office whereupon Kelly kicked both of Hatch's legs, slapped his face, and slammed his head against the wall. Hatch said that when he complained that Kelly wasn't allowed to abuse him like that, Kelly said, "I'm not worried about that." Hatch also stated that on an unspecified date he was hit on the head by Kelly with a food tray.

s. Ernie Walsh, sometime prior to 1976, was "hit on the butt" with a yard stick for not finishing his homework. Kelly hit him until the stick broke, according to a student who witnessed the incident. Walsh could not be located for an interview.

t. Joe Thompson, a former student at the Baxter School sometime prior to 1976, stated that Kelly once pulled his hair when he was in grade school.

C. Administrative Inaction

1. Failure to Investigate

During the course of this investigation, it was necessary to investigate not only the charges of physical and sexual abuse at the Baxter School, but why these charges had not been investigated previously. Since the statute of limitations now precludes prosecution in many instances, it is necessary to consider the past failure of the Department of Educational and Cultural Services to investigate this matter.

Investigators of the Department of the Attorney General interviewed the following persons: former Commissioner of Educational and Cultural Services, H. Sawin Millett, Jr.; current Commissioner, Harold Reynolds, Jr.; Associate Commissioner, Larry Pineo; and former Director of the Division of School Operations, Beverly Trenholm, about the allegations of physical and sexual abuse at the Baxter School. Additionally, all of the administrative records of the Department, the Baxter School, and these officers, as well as those of Youngs, Kelly, and Repass, were scrutinized by investigators. These interviews and documents establish the following sequence of events.

On June 13, 1975, Susan Nordmann resigned her position as a teacher at the Baxter School. As a partial basis for her resignation, she cited "extreme favoritism toward a few students" and "random physical abuse of others" by "a certain administrator." Her official resignation letter notes that copies of the letter were sent to the Department and to Governor Longley.

Approximately a month later, on July 17, 1975, Youngs wrote to Trenholm about a "confidential problem." In the letter, he described Kelly as undergoing "personality changes" which resulted in his losing his temper with students. He also stated that Kelly had developed an "unusual friendship" with a student, becoming "deeply involved" with him "and his family." Youngs also referred to an unnamed teacher who had resigned because of personal grudges and "superficial reasons."

On October 27, 1975, Youngs again wrote to Trenholm, this time identifying Nordmann by name, and expressing concern that she was "canvassing other persons who have resigned" and parents in order to file a class action suit concerning the educational program at Baxter School. He described the current employees of the School as "dedicated to the program."

In an October 1, 1976 letter to Commissioner Millett, a field representative of Congressman David F. Emery stated that the office had been contacted by Nordmann who had "apparent differences with the school's administration." Emery's representative suggested that a meeting with Nordmann "might be appropriate. . . ." Millett referred the letter to Pineo who then arranged a meeting with Nordmann, also including Trenholm, on October 14, 1976. Neither Pineo nor Trenholm recalls any contact between them and Nordmann prior to the meeting.

At their meeting in Augusta, Nordmann told Pineo and Trenholm that Kelly showed favoritism toward certain male students and that she believed Kelly was a homosexual. A day later she mailed to them a 14-page typed "narrative" dated September 1975, restating her allegations and including allegations of physical abuse by Kelly against several students.

After receiving the "narrative," Pineo and Trenholm took no action other than to ask Nordmann to identify a current Baxter School teacher willing to substantiate her allegations. They told investigators that they saw Nordmann's charges as

unspecific and uncorroborated.^{4/}

On December 2, 1976, another teacher, Dorothy Davis, came forward as a result of Nordmann's efforts and met with Pineo and Trenholm in a Portland motel for a confidential discussion of allegations about the Baxter School. She described incidents of Kelly's use of excessive physical force and contended that Kelly was engaging in homosexual activity with certain male students, especially Bill Brown. Although Pineo and Trenholm had been informed previously by Youngs that Kelly had developed "an unusual friendship" with a particular male student, they did not ask Youngs if this particular male student was Bill Brown, in order to substantiate Davis' charge.

The only action taken by Pineo and Trenholm, after Nordmann found a teacher willing to substantiate the charges, was to ask Nordmann to find a parent willing to substantiate the charges. Nordmann was unable to accomplish this additional task.

Thereafter, Pineo and Trenholm discussed the matters raised by Nordmann, including the allegations against Kelly,

^{4/} Some indirect substantiation had been provided earlier. On April 16, 1976, Gerald Amelotte resigned his position as a teacher at the Baxter School. He sent a letter that day to Youngs stating that he could "no longer work in an environment which I think has incorporated abuse of power to the extent that people, both children and teachers, have been subjected to cruel mental, and, in some cases, physical abuse." This letter was forwarded from Youngs to the personnel office of the Department. There is no indication that Pineo, Trenholm, or Millett saw the letter or that any action was taken as a result of the letter.

separately with Youngs and Commissioner Millett. Millett stated that he was told that there was no substance to the charges.

In 1979, Governor Brennan appointed Commissioner Raynolds to replace Commissioner Millett. During the transition period, neither Pineo nor Millett related any problems or any allegations of abuse at Baxter School to Raynolds. The transition papers confirm this fact. There is no suggestion in these papers of any of the allegations that are the subject of this report. Consequently, no action was taken until October 1981, when similar allegations came to Commissioner Raynolds' attention for the first time from an entirely independent source.

Specifically, on October 30, 1981, Pamela Fogg, who had resigned as a faculty member a year earlier, met with Raynolds to complain about a derogatory letter Youngs had written about her to a potential employer. During the course of her conversation with Raynolds, she said that Baxter School students were being "pushed around" and that she suspected Kelly of having had a homosexual affair with a student seven years before. On the basis of these allegations, Raynolds commenced an administrative review of the Baxter School, resulting in Youngs resignation in January, 1982.

The evidence indicates that, prior to the review of the Baxter School ordered by Commissioner Reynolds, the Department of Educational and Cultural services had failed to investigate adequately any of the allegations raised by Nordmann and Davis. This failure represents an inexcusable abdication of the Department's power and duty to supervise the Baxter School. The principal consequences of this failure were to permit the harmful situation at the Baxter School to continue unabated for several years and, because of the statute of limitations, to preclude prosecution for any crimes occurring before 1976.

2. Failure to Supervise

From 1961 until 1982, Superintendent Youngs was responsible for the day-to-day operation of the Baxter School and the supervision of its staff. As a professional administrator and educator, he was primarily responsible for the atmosphere and environment at the school.

On December 16, 1976, Pineo and Trenholm met with Youngs to discuss allegations made by Nordmann and Davis concerning physical and sexual abuse of students by Kelly at the Baxter School. Although, according to Pineo, Youngs professed surprise at the allegations concerning Kelly, Youngs' letter to Trenholm a year earlier shows his awareness of some problems in

Kelly's relationship with at least one male student.^{5/}

After this meeting, Youngs still took no action to investigate the situation. Subsequently, early in 1977, although the precise date is not known, Pineo and Trenholm met again with Youngs and instructed him to deal with the allegations, including the charges of Kelly's "favoritism" toward certain male students and of his physical abuse of students.

In a responsive letter dated January 7, 1977, Youngs stated that he was "terribly upset" at the various allegations. Admitting that some of them are "cause for alarm," he contended that he had made "every effort to reprimand and to correct any individual who gets out of hand." He continued: "It is not my responsibility to be concerned about the personal lives of my staff. It is my responsibility to be concerned about their professional behavior here at school and I have made this my business." Youngs also summarily dismissed "many of the allegations" as "isolated incidents blown all out of proportion and taken out of context" and based on "second-hand, hearsay information from other former staff members who may be disgruntled." He recommended a "confrontation" between Nordmann and Kelly to sort out the matter. Although Pineo and Trenholm recall that Youngs told them he was taking action on the allegations, the evidence

^{5/} There also is no indication that Youngs took any action to investigate the general charges of physical and mental abuse in Gerald Amelotte's resignation letter of April 16, 1976.

indicates that Youngs took no action except to send Kelly a memorandum instructing him to avoid showing "favoritism" to students.

Youngs' failure to address this situation contributed to the atmosphere of intimidation that this investigation found to permeate the Baxter School. As a result, with the exception of Nordmann, Davis, Amelotte, and Fogg, Baxter School staff members failed to inform responsible authorities about physical or sexual abuse at the Baxter School, and only one did so while still a staff member. With one exception unrelated to this report,^{6/} no teacher or staff member ever made a report about any wrongdoing by any Baxter School staff member to any law enforcement agency or to the Department of Human Services.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Criminal Prosecution

There are at least three major considerations that militate against criminal prosecution in this matter. First, many of the incidents occurred beyond the statute of limitations. Second, under Maine's current criminal statutes,

^{6/} In 1979, a school custodian was reported to have had sexual contact with a female student and the matter was referred to the Falmouth Police Department.

many of the incidents outlined in this report are not clearly criminal. Finally, criminal prosecution would result in serious emotional injury to the victims.

1. Statute of Limitations

Youngs, Kelly and Repass can be prosecuted only for conduct which occurred since May 1, 1976, the effective date of the Maine Criminal Code. 17-A M.R.S.A. §§ 2, 8 (1981).^{1/}

The statute of limitations therefore, absolutely bars prosecution for most of the incidents that occurred. Kelly's conduct, for example, which may be the most reprehensible, is protected almost completely by the statute of limitations. This inability to prosecute such behavior demonstrates the seriousness of the Department of Educational and Cultural Services' failure to investigate in a timely manner the charges surrounding the Baxter School at the time that they originally were made in 1975-76. Ironically, the perpetrators of the events outlined in this report are protected, in part, from prosecution by the inaction in past years of the very persons charged with the administrative oversight of the Baxter School.

^{1/} Youngs, Kelly and Repass could have been prosecuted for any felonies occurring between February 3, 1976 and May 1, 1976 under pre-Criminal Code law. None of the incidents identified by the investigation as occurring during this period, however, can be considered felonies.

2. Statutory Requirements

Although improper, many of the incidents outlined in this report are not necessarily illegal. Under Maine's current criminal laws, it is not per se illegal for faculty and staff members either to have sexual relations with students over a certain age or to discipline students physically. To constitute criminal conduct, additional factors must be present and must be proven beyond a reasonable doubt.

a. Sexual Abuse

In considering possible criminal charges based upon allegations of sexual abuse, only those encounters with students under the age of sixteen could be prosecuted. 17-A M.R.S.A. § 254(1) (1981).^{8/} The most serious penalties are reserved for sexual encounters with individuals under the age of fourteen. 17-A M.R.S.A. §§ 253(1)(B), 255(1)(C) (1981). The State must prove not only that "sexual contact" or a "sexual act," as defined by 17-A M.R.S.A. §§ 251(1)(C), (D) (1981), occurred, but that the student was under the age of sixteen.

b. Physical Abuse

An individual is guilty of assault if he intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another person. 17-A M.R.S.A. § 207 (1981). Since all of the instances of physical contact

^{8/} Although it is illegal for a person "in authority" to engage in sexual acts with an individual "detained in an institution," 17-A M.R.S.A. § 253(2)(E) (1981), no Baxter School student is "detained" as that term is used legally.

described in this report occurred in disciplinary situations, in order to secure criminal convictions, the State would have to prove that there was no justification for the degree of force used in each instance.

The Criminal Code permits a parent, foster parent, guardian or other person acting in a similar capacity to use a reasonable degree of force to prevent, control, or punish misconduct or other disturbing behavior. 17-A M.R.S.A. § 106(1) (1981). Reasonable force is also permitted in some instances to the teachers and staff at the Baxter School. 17-A M.R.S.A. § 106(2) (1981). Therefore, the State would have to prove in each instance that the degree of force used was unreasonably great or that no force was necessary under the circumstances. Further, Maine's criminal Code requires proof about the state of mind of the perpetrator in such cases. 17-A M.R.S.A. § 101(3) (1981).

3. Public Policy Considerations

The responsibility of any prosecutor is to assure that justice is done and that the public interest is served. In evaluating any case for possible prosecution, he must look beyond bald allegations of fact and consider the quantity and quality of the evidence. Criminal charges must be proven beyond a reasonable doubt. A prosecutor must evaluate the credibility of witnesses in a courtroom setting. He must consider the existence or nonexistence of corroborating evidence. He must consider the circumstances showing or

negating criminal intent. Even assuming, however, that a prosecutor is satisfied that criminal charges can be brought, he must weigh considerations of the public interest and in each instance decide whether charges should be brought.

The amount of emotional damage to these young victims resulting from the incidents themselves cannot be calculated. In cases of arguably criminal conduct which could be prosecuted, the consequences of a public trial were discussed with the victim and the victim's family. None wished to pursue a public trial, involving in some instances the admission of sexual encounters, which would only traumatize the victims further. Because the state must protect the innocent as well as pursue the guilty, indictments should not be brought in every case of allegedly criminal conduct.

Because many of the incidents uncovered by the State investigators were beyond the statute of limitations, and other incidents were not clearly criminal violations under the current language of the Maine Criminal Code, and because of consideration for the emotional well-being of the victims, no criminal indictments will be sought.

B. Statutory Changes

Although the sexual encounters between students and staff members at Baxter School did not constitute per se criminal conduct by staff members, they nonetheless were reprehensible. It would be a mistake to dismiss the incidents that occurred at

Baxter School as an anomaly that could not recur at the Baxter School or at any other school. To ensure that such events will in fact not recur, the Maine Criminal Code should be amended to protect a category of persons who, notwithstanding actual "consent," would be classified as victims under the gross sexual misconduct and unlawful sexual contact statutes.

The Maine Criminal Code should be amended to include, in Section 253, the following provision:

A person is guilty of gross sexual misconduct

1. If he engages in a sexual act with another person, not his spouse, and ...

F. The other person is under the age of 19 and is a student enrolled in a secondary school or below and the actor is a teacher or other official having supervisory or disciplinary authority over such a person.

Likewise, the Criminal Code should be amended to include, in Section 255, the following provision:

1. A person is guilty of unlawful sexual contact if he intentionally subjects another person, not his spouse, to any sexual contact, and ...

F. The other person is under the age of 19 and is a student enrolled in a secondary school or below and the actor is a teacher or other official having supervisory or disciplinary authority over such a person.

Maine's personnel law does not categorize the conduct detailed in this report as misconduct that would result in the immediate and automatic discharge of the responsible official. To correct this oversight, Maine's personnel law, 5 M.R.S.A.

§ 678 (1979), should be amended to provide as follows: "An appointing authority shall dismiss an employee who abuses or neglects a child entrusted to the care of any public institution, school, facility or other agency."

V. SUMMARY

This report details the conduct of a few state officials at the Baxter School. Because this report is the result of a criminal investigation, it ignores the positive aspects of the Baxter School. Most teachers and most staff members at the Baxter School were and are competent and caring professionals who would never abuse students. Moreover, hundreds of young, handicapped persons undoubtedly receive an excellent education at the Baxter School. Although the people of the State of Maine will have to draw their own conclusions about the events that occurred at the Baxter School, it is expected that, by implementing the recommendations of the Attorney General, the State of Maine can put this nightmare behind it and provide to all members of Maine's deaf community the services and education that they deserve.