

THE PROBLEM OF SEXUAL MOLESTATION BY  
ROMAN CATHOLIC CLERGY :  
MEETING THE PROBLEM IN A COMPREHENSIVE  
AND RESPONSIBLE MANNER

This confidential document had its remote beginnings in January of 1985 as a result of the consequences of the unfortunate incidents in Louisiana. The three major parts of the final draft were prepared in May of 1985 and this final draft was compiled on June 8-9, 1985 by Mr. F. Ray Mouton, J.D. and Rev. Thomas P. Doyle, O.P.

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FORWARD

This document contains a discussion of an extremely serious situation and a proposal to establish and fund a Special Project to be comprised of a Crisis Control Team and a Policy and Planning Group.

Both the Team and the Group would work under the direct control and supervision of an ad hoc Committee of four Bishops, all of whom have civil law degrees. This Committee of four shall control every aspect of the Special Project, subject to the supervision of a Committee formed out of the National Conference of Catholic Bishops, under whose auspices they shall be appointed, receive authority, and serve.

The Project itself, both the Team and the Group, shall be comprised of professionals and consultants who possess a significant degree of experience and expertise in their given fields. Some of this group of experts from different disciplines shall devote the entirety of their professional endeavor to the Project during its existence. Other experts shall be retained as required. However, a group of professionals shall be working full time on the Project.

It is contemplated that the minimum life of the Special Project shall be five years. It is believed that following the completion of that term, it would be beneficial to retain some of the elements of the Project in place as opposed to dismantling the entire structure.

The cost of the Project is dependent upon the caliber of consultants retained, their degree of expertise and experience, and the portion of their professional life to be devoted to the Project. The cost shall be substantial.

HISTORY OF PROPOSAL:

Some extremely serious issues have arisen which issues presently place the Church in the posture of facing extremely serious financial consequences as well as significant injury to its image. As a result of sexual molestation of children by Clerics (Priests, Permanent Deacons, Transient Deacons), non-ordained Religious, lay employees and seminarians, for many months there has been continuous confidential communication amongst some expert consultants and Clergy, all of whom possess hands on experience with the more serious cases of sexual molestation. Through those discussions, the idea of this Project was born. The scope of the Project has been defined and re-defined until it reached the final form presented herein. It is contemplated that the very nature of the Project shall cause further re-definition during its existence.

The Criminal Considerations, Civil Considerations, Canonical Considerations, and Clinical Considerations are of such magnitude, not to mention the other substantial considerations such as Insurance and Public Relations, that it was decided that the

presentation of these extraordinary issues necessitated an extraordinary response, a response which would affirmatively and aggressively attack the problems. This is a very new and narrow area of legal jurisprudence which is developing with a very adverse effect upon the Church's interests. In addition to the legal issues, there are unique Canonical Considerations and extremely complex Clinical Considerations which cannot or should not be addressed in a piecemeal manner.

It is submitted that time is of the essence. At the moment this is being read, problems with which the Project will deal are continuously arising. Many of these problems appear to be old problems, and indeed some are. However, all now carry consequences never before experienced.

CONFIDENTIALITY OF THIS DOCUMENT:

The necessity for protecting the confidentiality of this document cannot be overemphasized.

The document was drafted by retained counsel hired for the specific purpose of communicating to the reader, however, though much of the language is that of counsel, the document is reflective of the thoughts of Clergy and other professionals in different disciplines, professionals who have worked closely with counsel throughout the development of these ideas.

An effort has been made to have this document afforded the protection and privilege provided under our law for confidential communications. That privilege shall not apply should the reader discuss same with anyone other than a recipient of this document.

In an abundance of caution and in consideration of the reader, great care has been given to protect the anonymity of any case mentioned or alluded to, and further there is no specific reference hereinbelow nor is there any allusion to any fact in litigation which has not been publicly reported in the press. This has been done to protect the reader so that the reader may not be placed in a position of having received any specific knowledge not generally known to the public and thereby become the target of a subpoena or other discovery device.

The national press has an active interest in items discussed herein, and therefore, an abundance of caution is required. It is requested that each reader return the document to the person from whom they received same, without copying. It is requested that no copy be retained by the reader. The rationale for this request is the great interest of the press. Over the last two weeks there has been national press coverage of the problem and that coverage is increasing. Security for the entire Project is extremely important.



INTRODUCTION

AN ILLUSTRATION OF ONE CASE:

Over ONE HUNDRED MILLION DOLLARS (\$100,000,000.00) in claims have been made against one Diocese as a result of sexual contact between one Priest and a number of minor children. To date the cost of this catastrophe exceeds FIVE MILLION DOLLARS (\$5,000,000.00) and the projected cost of concluding the civil cases in that Diocese alone is in excess of TEN MILLION DOLLARS (\$10,000,000.00).<sup>1</sup>

It is not hyperbolic to state that the dramatic description of the actual case contained hereinabove is indicative that a real, present danger exists. That other cases exist and are arising with increased frequency is evidenced by reports of same. If one could accurately predict, with actuarial soundness, that our exposure to similar claims (i.e. one offender and fifteen or so claimants) over the next ten years could be restricted and limited to the occurrence of one hundred such cases against the Church,

1. Settlements for seven cases and fees and expenses exceeded \$5,000,000.00. The average settlement for each case was nearly \$500,000.00. Ten cases remain to be settled.

then an estimate of the total projected losses for the decade could be established with a limit of ONE BILLIION DOLLARS (\$1,000,000,000.00).<sup>2</sup>

A TEN BILLION DOLLAR (\$10,000,000,000.00) class action lawsuit has been threatened, which threat is documented, and others who have not threatened same in writing, including Melvin Belli of San Francisco, are contemplating same. The suit would be brought on behalf of a number of children who are alleged victims of sexual abuse by priests and would be filed against the entirety of the Church. The effort would be to embroil the whole structure in the controversy and conduct discovery in each and every Diocese in this country in an effort to discover all damaging information.

The financial factors mentioned in the preceeding paragraphs are actual and illustrative of what is now occurring in sexual molesta-tion cases across the country.

In the case cited above, the priest has been charged in a thirty-four count criminal indictment by a Grand Jury and the crimes with which he is charged carry a sentence upon conviction of life imprisonment without benefit of pardon or parole. The estimated cost of criminal defense is one-half million dollars and with the prospect of a lengthy trial.

2. Approximately thirty cases have been reported in the press involving approximately one hundred children. At the rate the cases were settled in the first paragraph, over \$400,000,000.00 will be needed just for these cases. As this was being typed on June 8, 1985, the Associated Press reported the arrest of a priest in Florida. At the rate cases are developing, \$1,000,000,000.00 over ten years is a conservative cost projection.

The Priest is presently housed at a private mental institution approved by the Court where he shall remain pending trial at a cost of ten thousand dollars monthly.

There are a number of civil trials from that case which have been set to commence beginning September 10, 1985.

Each development of that case has carried with it attendant adverse publicity. That publicity was local in nature originally but has now become national.

There are presently a significant number of other sexual molestation cases involving Priests which exist in other jurisdictions. This document shall not allude to those out of deference to the reader as many aspects of same have not been widely reported.

Presently all three major networks (ABC, NBC, CBS) and subdivisions of same (20/20, 60 Minutes), as well as CNN NEWS have reporters assigned to developing stories. Some have had crews on location shooting second unit (background) footage for inclusion in segments to be shown later. All national radio networks, as well as CBS Evening News and NBC Evening News have shot filmed reports.

A minimum of six national print publications (NEW YORK TIMES, THE WASHINGTON POST, NATIONAL CATHOLIC REPORTER, VANITY FAIR, MOTHER JONES and ROLLING STONE) have reporters in place trying to tie the isolated, regional episodes into a national story, presumably one of scandalous proportions. Several of these publications have already published lengthy articles (See NCR 7 June 1985).

Two previously published authors, Mr. Jason Berry (author of Amazing Grace and regular contributor to many magazines of national import) and Mr. Chris Segura (author of Marshland Brace, which was nominated for the Pulitzer and a former wire reporter covering European Affairs), are attempting to place book proposals with publishers on this topic. At least one writer has applied to the Fund for Investigative Journalism for a grant to do a full length work on Pedophilia, Priests and the Catholic Church. All major wire services are now distributing articles and national commentators such as Paul Harvey have done pieces.

The American Bar Association and other groups comprised primarily of plaintiff lawyers are conducting studies, scheduling panel conferences, and devising other methods of disseminating information about this newly developing area of law. Thus far three plaintiff lawyers representing children who have sued the Church have agreed to make a presentation at two national meetings of the Bar to educate other lawyers on methods of successfully suing the Church.

Our Diocesan lawyers have themselves addressed this situation and some of its ramifications as recently as their April meeting in Chicago and there presently exists an ongoing effort by some to study the problems. Though these efforts may produce significant studies, it is believed that the retention of full time professionals and expert consultants is preferable to relying upon those whose responsibilities are already full time to take

this task and exert the requisite effort. It is contemplated that the Project, where feasible, shall avail itself of already existing resources and in some instances a coalition between those within the official structure of the Church and outside consultants on the Project shall be formed, i.e. where competent professionals exist within the USCC and other organizations and have work loads requiring less than their full attention, then, in those situations it is possible the Project personnel may reach to those resources for assistance.

A GENERAL DISCUSSION:

There are many newly developing areas of jurisprudence which deserve our attention. An example is the newly developing area of Clergy malpractice. Suits are being filed against Protestant Ministers and Catholic Clergy. These malpractice cases involve situations where clerics give advice which is considered by the civil courts to be beyond their sphere of expertise or competence. This advice allegedly causes catastrophic consequences (divorce, suicide) resulting in civil suits. This document recognizes that a vast number of such issues exist separate and apart from sexual molestation, have been discussed in the confidential consultations and meetings referred to above. It is contemplated that the Project

will deal with those issues as well as all other issues referred to it. However, this document has largely been restricted to a discussion of what has been perceived as the pressing problem, the possible cost to the Catholic Church of many millions of dollars and the potential devastating injury to its image as a result of inappropriate or felonious sexual activity between Priests and parishioners, lay employees of Religious Institutions and third parties, and related areas involving consequential civil responsibility and criminal sanctions . . . which situations give rise to Canonical and Clinical Considerations equal in import to the civil/criminal concerns.

This is the "age of litigation." The potential exposure to the Catholic Church for the continuation of claimants coming forward in legal jurisdictions across the country is very great. Already, a large number of damage claims have been made and more are certain. It might have been unthinkable a few years ago for a Catholic parent to sue the Church. Similarly, there was a time when it was unthinkable for a patient to sue a physician. The analogy with medical malpractice is well taken. This area of jurisprudence, i.e. the Church's financial responsibility for damages caused by the sexual conduct of a Priest, is presently situated where medical malpractice litigation was a quarter century ago. There are absolutely no definitive appellate court decisions which exist at present on the substantive questions. The law is waiting to be made! And it will be made, with or without the Church's involvement

in the process. Presently the Church is prepared to participate in the process through the non-uniform, random actions of individuals (local Diocesan lawyers and others) with the result being a divergent application of the Canonical, Clinical, Civil and Criminal Considerations. This Special Project seeks to rectify that immediately by making uniform assistance available to those Bishops and local lawyers who wish to avail themselves of this offered assistance.

In this age of litigation, plaintiff lawyers are constantly breaking barriers down, finding new causes of action, and searching for deep pockets, defendants to sue who possess great financial wealth. The Catholic Church is undoubtedly perceived by plaintiff lawyers to have very deep pockets, to have a very serious interest in its image, and therefore should become the biggest target in this newly developing field of jurisprudence, i.e. seeking compensation for an allegedly abused child from the employer or parent organization of the wrongdoer.

"Pedophilia" and related deviant disorders is an area which has been closeted in Western Civilization for centuries. Most individuals and organizations, including the Church and Bishops, who were ever confronted with the issue of illicit sexual relationships between adults and children responded in a manner they thought to be responsible in an effort to protect the injured child and aid the offending priest. It is now known because of strides in the Clinical field, that perhaps those actions insofar as they aided, comforted or enabled the sex offender to continue his secret

life were irresponsible and injurious to the sex offender. Though psychological study is still in its infancy in some respects, much more is known about the long and short term traumatic injury inflicted on the victim.

In any event, the entire issue of "Child Sexual Abuse," whether same be categorized as pedophiliac, homosexual or heterosexual, is displayed prominently across the front pages of newspapers where it shall remain for at least the balance of the decade (having replaced the sexual issue of the seventies, homosexuality).

The general awareness and consciousness of the public in regard to sexual abuse of children has reached a previously unattained level and shall continue to escalate with each new revelation of discovered cases of sexual molestation. This increased awareness, widespread publicity, and the excellent educational programs available to children, which we all support, shall increase the reporting of such incidents and increase the likelihood that both civil and criminal actions shall be instituted against the offender and those sought to be held legally responsible with the wrongdoer.

For well over a decade the news media of this country has exhibited a tendency to attack institutions presently or previously held in high esteem by the public, including the Presidency. The tendency is ever escalating, particularly in instances where the press can characterize a situation as scandalous.

Cases of this nature have all of the necessary elements for press reporters and plaintiff lawyers; there is a significant



injury, psychological in nature, to a sympathetic victim of a tender age, an odious and heinous circumstance surrounding the infliction of injury which engenders prejudice and punitive awards from juries against the defendant Church, an organization perceived by many to be possessed of great wealth.

Also, the secular press attempts to portray the Church as hypocritical, as an organization preaching morality and providing sanctuary to perverts . . . the attempts are in evidence today and shall escalate.

DESCRIPTION OF POSSIBLE CASE SCENARIOS

Experience has shown that sexual misconduct by the clergy takes a variety of forms. While the cases have common threads running through them, there are many dimensions and tangential aspects that could occur. All of the elements of each case must be given careful study.

Though many hypothetical cases could be considered, the following are brief descriptions of five realistic yet hypothetical occurrences. The listing is illustrative only, and intended to provide a basis for the pertinent questions which follow.

HYPOTHETICAL CASE NO. 1:

As Bishop, it comes to your attention, as a result of a visit from a parishioner, that an associate Pastor is suspected of having had sexual relations with one or more children not related to complainant.

HYPOTHETICAL CASE NO. 2:

As a Bishop, you have confirmed a suspicion that a parish priest has, over a long period of time, been involved sexually with juveniles.

HYPOTHETICAL CASE NO. 3:

As a Bishop, you have confirmed a suspicion that a parish priest has, over a long period of time, been involved sexually with juveniles and further that some of the parents have retained lawyers, some have gone to the criminal prosecutor and others have contacted various media representatives.

HYPOTHETICAL CASE NO. 4:

A case involving a pedophile priest arises in a jurisdiction where the criminal Prosecutor has great animosity against the Church. This Prosecutor has the most devastating of legal weapons in his arsenal, the Grand Jury Subpoena, which allows him to bring all of the Diocesan records and personnel he desires into a closed room, subject to cross examination, without counsel to advise them. It is the setting for a witchhunt that the vindictive plaintiff lawyer referred to above tried to institute in a civil case, i.e. it was his announced intention to prove a pervasive pattern of widespread sexual dysfunction and by implication argue same has been condoned by the Clergy. A case is now developing where these explosive elements are present.

HYPOTHETICAL CASE NO. 5:

A case involving a homosexual priest who has been suspended by a Bishop following the discovery of his sexual activity with a juvenile or adolescent. In this hypothet, the priest is a Gay Liberationist and as such retains the services of a Gay lawyer, the support of Gay organizations . . . and strikes back at us, suing to show, among other things, all sexual skeletons in our closet across the country. There is a strong Gay ministry movement as evidenced by the literature and this hypothetical confrontation can occur.

The following are select questions which should be considered in dealing with these kinds of cases. They are divided into the following categories: criminal law questions; civil law questions; canon law questions; clinical or medical questions.

CRIMINAL LAW QUESTIONS

1. Does sexual contact with minor children constitute a criminal offense? Which types of sexual contact are considered felonious (involving maximum imprisonment at hard labor) and which are classified as misdemeanors (involving fines and minimum incarceration)?

2. At what age is a child considered to be an adult? At what young age is a child considered to be so tender as to cause a sexual crime to be considered by criminal law to be an aggravated crime, one which carries the most serious sentences such as life imprisonment?

3. What is the requirement in criminal law for one who has knowledge that a sexual crime has been committed to report that knowledge to the authorities? To which authorities (District Attorney, State Child Welfare Agency) must the report be made? What criminal law penalty, fine or jail term, would be given to a Bishop who failed to comply with the reporting law?

4. Is there any privilege which attaches to the communication between the Bishop and the Priest under criminal law? Can the Bishop be made to testify before a Grand Jury, give statements to police detectives or give evidence in a criminal trial against the priest?

5. Does the criminal law provide that the Bishop's files or other diocesan records can be subpoenaed and utilized in a police investigation, Grand Jury hearing, or a criminal trial?

6. Is there an obligation to provide constitutional due process to the Priest accused of sexual crimes, and furnish an attorney for the Priest prior to eliciting any incriminatory information? Must the Priest be provided this protection and can the priest reasonably refuse to answer questions posed by his Ordinary?

7. Should a criminal lawyer be retained for the Priest or by the Priest? A lawyer separate from Diocesan Counsel? At what stage should this be done? What financial obligations exist for payment of legal fees, expenses, bonding costs, etc?

#### CIVIL LAW QUESTIONS

1. What specific provisions for insurance coverage exist in regard to the civil law consequences of the sexual conduct between the Priest and child?

2. What contractual obligation, if any, exists in regard to notification of insurers? At what point should the insurance companies be told of the exposure?

3. What rights, if any, does the Bishop have in relationship to the civil law defense of the Diocese? Can the Bishop either

select or reject the particular attorneys to be utilized? Can the Bishop dictate any aspect of the handling of the case to ensure that the image of the Church is protected from injury?

4. If the Bishop is aware of sexual misconduct, or a propensity for sexual misconduct, that took place at an earlier date, does this fact become a critical question in subsequent litigation involving child molestation? In other words, if the Bishop has knowledge that a Priest sexually abused a child in 1970, does this knowledge affect his liability in the event of a similar incident in 1980? Does this prior knowledge by the Bishop constitute negligence on his part independent of Diocesan negligence? Can the Bishop be financially liable to the suing parties, independent of, or in addition to, liability of the Diocese?

5. What civil law obligations exist toward the child-victim and the family of the child?

6. Can suits be brought against only the Corporate Entity, i.e. the Diocese, or can the superiors, including the hierarchical superiors (Pastor, Vicar General, Bishop, Metropolitan Archbishop, Papal Representative, Holy Father, Holy See) be named in the suits as well with some possibility of success?

7. Can the civil law suit be restricted to the one Priest and his actions, or will the suing parties be able to expose all other sexual misconduct of every other priest in the Diocese? Can the civil law courts cause the Bishop to give information regarding all aberrant sexual practices of Priests in the Diocese? Can all this information be subpoenaed, and will the Diocese be forced by civil law to provide the information?

8. Which parties can bring a civil law suit? Will the child be the only person entitled under civil law to a recovery of money? Can the parents sue and recover money?

9. What are the factors in civil law which determine what damages were incurred by the parties and what sums they shall receive?

10. Is there any provision in civil law for restricting the access of the press to the civil proceedings? Will all of the civil law proceedings be reported?

11. Which Canonical and Clinical procedures instituted at this juncture shall be later viewed favorably by the civil law courts and which shall be viewed unfavorably and why?



12. Which initially instituted measures will later be deemed prudent and reasonable by the civil law courts and which will be classified as imprudent and negligent?

13. In which civil law cases should the Diocese attempt to force its insurance companies to either settle cases quietly without public disclosure or, in the alternative, admit liability to prevent public disclosure or damaging information? What are the civil law effects of such settlements or admissions? What are the key factors which cause a Bishop to consider these alternatives? What effect will settlements and admissions have on future insurance premiums?

14. Which civil law cases should be defended through trial and appeal courts? What factors are to be considered in determining whether a case should settle or be tried? Most importantly, at what stage should the decision be made?

15. Does the Diocesan attorney have expertise and experience in trial law generally, and specifically does the Diocesan attorney have civil law and criminal law experience in the area of these sexual conduct cases? Should additional lawyers be hired? Should counsel be sought from lawyers with expertise and hands on experience in this field?

16. What civil law precedents, if any, exist? What was the experience of prior cases and trial court decisions? What data bank, if any, exists which might contain accurate information from prior cases and circumstances in Dioceses across the country? Which individuals (lawyers, psychiatrists, canon lawyers, etc.) have expertise, experience, and information on the civil law cases and how does the Bishop contact the people and gain access to the information?

CANON LAW QUESTIONS

1. Should the bishop investigate the incident?
2. Does he have an obligation to conduct an investigation?
3. Does Canon Law provide a format for any type of investigation?
4. Is it necessary that an investigation precede the Bishop's confrontation of the Cleric?
5. If there is a confrontation, are there any canonical procedures that should or must be followed?
6. If the Priest admits the allegations, and he is the only priest in the parish, how should the Bishop proceed?

7. Is the Bishop limited in any way, because of confidentiality, in his ability or freedom to consult with others concerning the alleged incidents?

8. In studying the source of the allegations, or suspicions, is there a preferable method for assuring credibility/reliability of the source?

9. May/should the Bishop delegate the power to investigate to a Vicar or some other person?

10. Should a record be kept of the allegation and investigation?

11. Where should such a record be kept?

12. How secure is such a record from civil authorities?

13. Should the Bishop confront the Priest? Alone or in the presence of someone else?

14. If the Priest admits the incidents, what action should the bishop take: transfer, removal, suspension?

15. Can the Priest be suspended? Without a process? What are his rights to recourse?

16. Is the Bishop canonically responsible for the Priest's support while he is suspended? If he is living in another diocese? If he is laicized?

17. Is such a priest suspected of any canonical delicts and liable to canonical penalties?

18. Does the Bishop have any canonical/moral/pastoral obligations toward the victims and their families?

19. Should the Bishop inform the Metropolitan and/or the Apostolic pro-Nuncio?

20. Does the canon law clearly define the Bishop's relationship to his Priests and Deacons (permanent and transient)?

21. What will the civil law perceive this relationship to be, based on ecclesiastical documentation available to the courts?

22. Should an expert in canon law be retained to assist in the case, possibly by helping prepare witnesses or appearing as an expert witness himself?

23. Where can such a canonical expert be found? Should he be affiliated with the NCCB, Nunciature, Holy See, etc.?

24. Does the law provide for any general method of vigilance over the activities of Priests and other church employees?

25. Does the law provide for any method of investigation and consequent action in cases of complaints of misconduct?

26. Is there a canonical entity known as the Roman Catholic Church in the United States?

27. If a class action were so filed, would the National Bishops' Conference qualify as the canonical entity?

28. What is the canonical relationship of each Diocese and its Bishop to other ecclesiastical entities such as the Metropolitan See and Archbishop; the National Conference of Catholic Bishops; the United States Catholic Conference; the Apostolic Nunciature and the Pro-Nuncio; the Holy See and the Holy Father?

29. What is the canonical authority of the NCCB over individual Bishops and their dioceses?

30. Is there any protection for diocesan files, secret archives and tribunal records?

CLINICAL/MEDICAL QUESTIONS

1. Are psychiatrists, psychologists, and social workers equally qualified, both professionally and legally, to examine Clerics who have a suspected problem of sexual molestation of children?
2. If you ask a social worker, psychologist, or psychiatrist to examine and evaluate your Cleric, is he obliged under your state law to report this to the District Attorney or the Child Abuse Agency?
3. What is the difference between pedophilia, homosexuality and the sexual abuse of adolescent males or females?
4. Does the age of the offending Priest (older or younger) create a significant difference in his diagnosis and treatment?
5. Are there mitigating psychiatric disorders of which it would be important to be aware before proceeding with a decision on a treatment facility or a treatment program?
6. If there is a problem of alcohol or drug abuse complicating the problem of sexual abuse of children or adolescents, would any alcohol treatment center be capable of treating both the alcohol or drug abuse and the sexual abuse issues?

7. Are the treatment centers presently used for Catholic Clergy and Religious, i.e. the Houses of Affirmation, Guest House, St. Luke Institute, the institutions of the Servants of the Paraclete and Southdown (near Toronto) equally qualified to treat both the alcohol/drug abuse and dependence as well as cases of sexual abuse of children or adolescents? Do they all have follow-up programs for two or more years that would monitor the Cleric's activity and report to the Ordinary?

8. If the case involves a repeat offender and prior psychiatric or psychological intervention has been useless, what drug therapy would be considered in the treatment of the sex offender, whether or not alcohol or other mitigating psychiatric disorders were present?

9. What constitutes sexual abuse? Does touching the buttocks of a fully clothed nine year old child constitute sexual abuse either in the law or from a psychiatrist's viewpoint? Does touching the covered genitalia of a fully clothed youngster constitute sexual abuse? Does masturbation of the child by the Priest or of the Priest by the child constitute sexual abuse?

10. Does the age of the child at the time of the abuse and the extent of the abuse have any effect on long term function or dysfunction of this child with adults?

11. At what age would an abused child be expected to fully comprehend and be cognizant of the long term effects of prolonged and severe sexual abuse by a lay-person or by a Cleric?

12. If the juvenile were a sixteen year old boy, would this imply that the abuse would have a lesser impact in the adult life of this victim?

13. If the teenager appeared to initiate the sexual contact and seemed to continue to enjoy it over a period of time, would this change the offense in the eyes of the law or in the eyes of a psychiatrist?

14. If the sexual contact is mainly with juvenile boys or adolescent boys., does this imply, that the boys are more likely to be homosexually oriented in their future adult life as compared to abuse of pre-pubertal children?

15. Clinically, in cases involving Cleric-sexual offenders, is there a difference if the offender regularly abused children as opposed to adolescents? Is there a difference if the victims are pre-pubertal girls as opposed to adolescent girls?

16. Would there be more likelihood that the adolescent boy or girl would "not tell the truth" as compared to a pre-pubertal child?



17. If there is a "mitigating" psychiatric disorder or psychological disorder, would it make any difference in where you would send this priest for treatment?

18. Of the facilities listed in number 7 above, which offers a complete neurological and neuropsychological as well as complete physical and medical evaluations as well as psychological testing? Would the facility and the variety of evaluations be important in determining the presence of mitigating medical or psychiatric disorders?

19. What kind of pre-intervention strategy should the Ordinary consider?

20. How soon should a complete evaluation be done?

21. Should the alleged Priest-offender see anyone else before the evaluation?

22. What are the causes of sexual abuse by Roman Catholic clergy?

23. What should an Ordinary look for and expect in an adequate evaluation of a cleric?

24. How can an Ordinary know which treatment center is best for the needs of the alleged offender?

25. Can a Priest/cleric ever return and function in the Diocese?

26. What should the Ordinary do with regard to the families of the victims?

## SIGNIFICANT CRIMINAL AND CIVIL LAW CONSIDERATIONS

The following criminal and civil law considerations follow upon the pertinent question in the same area, posed elsewhere. These are not to be construed as answers to these questions. Rather, they expand upon the questions and suggest the importance in dealing effectively with the various aspects of these two dimensions of this problem.

SUMMARY OF CONSIDERATIONS

Insurance Considerations:

1. Loss of Liability Insurance Coverage to Each and Every Diocese. It is highly probable that specific, exclusionary language shall begin to appear following a few years experience in all Diocesan liability policies which shall exclude coverage to the Diocese, the Bishop, Vicars, Clergy and other personnel for "coverage of claims arising as a result of sexual contact between a Priest and parishioner, an employee and any member of the public . . . "

Such an exclusion was adopted as an insurance industry standard on January 1, 1985 for the psychiatric and psychological profession. Coverage for those professions and the entities, partnerships, corporations, and associations which employ them is no longer available for "claims arising as a result of sexual contact between patient and therapist or other employee."

The exclusion was a reaction to payment of large claims by insurance companies over several years and an inability

actuarially to predict the risk that a physician might have sexual contact with a patient.

The estimated cost of the loss of coverage correlates to the remarks contained in the introduction. The cost could be hundreds of millions.

This threatens the very economic viability of the Church's mission in many areas.

2. Interim Increased Cost of Liability Insurance Coverage.

Following the experience by insurance companies of a number of claims resulting in large monetary court awards or cash settlements involving insurance funds and prior to the cancellation of coverage referred to above, a significantly higher actuarial value would be assigned to the risk, resulting in a significantly increased premium cost.

One Diocese which experienced insurance losses as a result of a Priest sexually molesting children has been notified that the insurance premium shall increase more than 25 percent.

According to Time Magazine (June 3, 1985) a day care center which suffered a child molestation experience was

forced to pay a liability premium which increased nearly 750 percent, from \$600 dollars per year to \$8,000 dollars per year.

This individual increase to each Diocese, weighted in aggregate will cost many millions.

CIVIL CONSIDERATIONS:

1. Liability of Bishops.

Some debate exists in the civil law's understanding of the relationship between a Bishop and his Priests and major religious superiors and their subjects.

The extent of responsibility a Bishop or religious superior has in regard to tortious or felonious conduct of his Priests/subjects has not been defined in the original sense by the higher courts of the civil law system, and thus, the exceptions to such original definition do not exist. There are absolutely no reported civil court decisions on the issues. This body of law is just beginning to develop with the filing of these cases.

The Bishop's responsibility beyond incardinated Priests, for the actions of non-incardinated Priests assigned for study, special work, visiting (or having been suspended by another) as well as a Bishop's responsibility for one whom he has suspended who is residing elsewhere, including a treatment center without appropriate supervision . . . the questions await definition.

2. Impact of Code of Canon Law on Civil Courts.

The Canon Law shall play an important part of the Civil damage cases. The interpretation of Canon Law by plaintiff lawyers in litigation has already been experienced. No court has yet made rulings in this regard.

It is well founded in civil cases that operation manuals, policy and procedure memoranda, and other documents generated as guidelines by the civil defendant may be utilized in evidence.

That the Code of Canon Law actually has the effect of Law over our personnel shall make it more relevant than some civil document which constitutes no more than a guideline.

The impact may be negative or positive depending on the preparation of the civil lawyer and the participation of a canon lawyer in cases where the issue presents itself.

3. Liability of Larger Ecclesiastical Entities

Presently there are efforts to sue, successfully, not only a diocese but also a bishop, diocesan vicars, the metropolitan archdiocese, the Holy See's representative in the United States and the Holy Father himself. These cases are being partially settled by the insurance companies without first attempting to settle the question for the civil jurisdiction in question.

The trend to expand the circle of responsibility beyond the diocese of the priests in question but to the National Conference of Catholic Bishops, the Apostolic Pro-Nuncio and the Holy Father himself shall continue.

In great measure the courts shall look to both the civil law and the canon law to comprehend the relationship of these other ecclesiastical entities with the diocese in question, the bishop and the priest-offender himself.

It is highly probable, nearly certain, that each and every Ordinary in the United States shall be made a party - defendant in a federal class action suit, the threat of which has been documented in correspondence to the General



counsel's office of the USCC-NCCB. In a class action every Ordinary in the country would have to testify about every instance of aberrant sexual conduct in their diocese, produce all records relating to aberrant sexual practices, and defend their actions or inaction in each instance.

The Papal representative in the United States, the Holy Father, and the NCCB will be the primary target of lawsuits seeking to establish their direct responsibility for the grave injury suffered by the child-victims. In these efforts plaintiff lawyers will utilize, possibly to their advantage, the structures set forth in the Code of Canon Law describing the inter-relationship and inter-dependence of these various ecclesiastical entities. The project proposed herein shall address these extremely serious issues and attempt to provide acceptable solutions.

4. Responsibility for Seminarians

The responsibility for seminarians is two-edged in that there is a responsibility on the part of the Ordinary for things done by the seminarian and things done to the seminarian.

Depending on the geographic location of the seminary as well as the canonical and corporate structure, more than

one bishop may be involved in answering the questions of responsibility. It is also possible that the wider ecclesiastical entities may be involved if the seminary has some direct connections to the Holy See. (i.e., a Pontifical seminary, inter-diocesan seminary etc.)

5. Responsibility of Bishops for Visiting Clergy

A bishop may extend hospitality to a priest who is not incardinated to his diocese and allow said priest to live and work as a priest in his own diocese. If the priest has a history of problems involving sexual misconduct and the bishop is aware of this and allows the priest to live and work in his diocese anyway, there are serious questions regarding his responsibility to act in the event of a subsequent incident.

A legal agreement between the host bishop and the priest's own Ordinary may provide a partial remedy to problems pursuant to an incident.

6. Maintenance of Diocesan Records

A paramount concern is the security of diocesan records and the limits of confidentiality that may be successfully claimed by church authorities. This issue is governed by complex discovery decisions in the state and Federal law.

In civil law the courts allow lawyers who bring suits to

use the process called "discovery" to make the defendant (in these cases, bishops and/or dioceses) produce records and personnel who may be compelled to give sworn testimony.

In the event of a class action suit such as the one that is threatened, the lawyers bringing the suit shall try to obtain records from each and every diocese in the country. They shall also try to obtain testimony from each and every bishop. All this shall be an attempt to document each and every known instance of sexual misconduct by a priest.

It is important to know what matter should be contained in a priest's personnel file, considering the very probable discoverability of these files.

The idea of sanitizing or purging files of potentially damaging material has been brought up. This would be in contempt of court and an obstruction of justice if the files had already been subpoenaed by the courts. Even if there has been no such subpoena, such actions could be construed as a violation of the law in the event of a class action suit. On a canonical level, to sanitize the personnel files could pose a problem of continuity from one diocesan administration to another.

One other suggestion regarding files has been to move them to the Apostolic Nunciature where it is believed they would remain secure, in immune territory. In all

likelihood such action would ensure that the immunity of the Nunciature would be damaged or destroyed by the civil courts.

The canon law law speaks of secret archives. Are these safe from civil discovery whereas ordinary files might not be? Thus far it appears that the secret archives afford no more security from discovery than regular diocesan archives.

7. Uniformity of Case Management

At this time there is no uniformity of case management. It is desirable that such uniformity be developed in order to provide optimum assistance to bishops and diocesan lawyers. The same issues are present in similar cases in the different diocese such as:

- \*The confidentiality of diocesan records
- \*Legal arguments against liability
- \*The criminal defense posture to be developed for a priest-offender
- \*The responsibility of insurance companies to act in a manner that is not detrimental to Church interests
- \*Legal pleadings to be filed on behalf of all defendants and their contents
- \*Potential conflicts between defendants and with insurers
- \*The public posture of all parties in relationship to the general public and the wider church community as presented

in press announcements and stories, statements of the bishop and other authorities related to the case as well as pulpit announcement.

All of the above legal efforts and the many others that arise should be coordinated so that a single, carefully choreographed theme is presented. This theme or posture should be consistent in character and design and produce a result that is advantageious for the Church, victims and the public.

8. The Discovery of Information that is Circulated About This Problem If all of the possible questions related to this problem are posed and a suitable and complete set of answers drawn up and set forth in the form of a policy manual or procedural guideline, it would not be advisable to release such a manual/document to the Bishops of the country or to the diocesan lawyers.

Such information could fall into the hands of either the plaintiffs or the press and the document itself could be deemed discoverable and used as evidence.

Nevertheless it is virtually impossible at this time to compose a document or manual which a) adequately addresses the problem with all of its vitally important aspects and b) would not cause damage if it fell into the hands of the press or plaintiffs.

Only two major insurance considerations and eight civil law considerations have been noted for the sake of brevity. This is because the purpose of this entire document is to provide a basis for understanding both the enormity and the gravity of the total situation. To continue to list the hundreds of civil law considerations and the many insurance issues would expand this document beyond its intended format. Accordingly a limited listing of the criminal law considerations, clinical and medical considerations and canon law issues follows.

#### CRIMINAL LAW CONSIDERATIONS

Every civil jurisdiction (usually by states) has statutes which impose civil and criminal penalties on persons who engage in illicit sexual activities with children and/or adolescents. If a cleric is charged with sexual misconduct civil law suits can be lodged against him and his Ordinary for monetary damages to the victim and families resulting from felonious conduct. The offender could also be charged with criminal activity. If a sworn complaint is received by a police agency or a prosecutor (DA) it is inevitable that criminal charges will be filed causing the press to publish reports of the charges. This would lead investigative reporters to delve into the details of the case.

What follows the pressing of criminal charges is this: upon completion of the criminal investigation by the police authorities and the D.A., an indictment is obtained, the priest or cleric will be apprehended and arrested, placed in custody i.e., jail pending

a bond hearing where it will be required that some individual or entity (Ordinary or Diocese) assume substantial financial obligations which will allow the priest offender to remain free (in treatment) pending trial. A very expensive criminal defense will be required prior to and through the course of the trial. At the conclusion of the trial the priest will either be acquitted or convicted. Upon conviction the priest will be sentenced to imprisonment at a state penitentiary. A judge usually has no choice (depending on the jurisdiction and what the priest is found guilty of) but to sentence a convicted offender to prison.

1. *In most or all jurisdictions there are statutes which require that instances of child abuse be reported to the civil authorities. The failure to do so can result in civil and/or criminal penalties.*

2. Providing a Criminal Defense

Every instance of sexual molestation of a child is a criminal offense. A judge must sentence a convicted offender to prison. Though this is more properly the domain of the canon law, an Ordinary has some degree of obligation to provide an offender with a competent trial lawyer in order that he be adequately defended as is his right.

3. Conflict Presented by Civil Cases

The fifth amendment of the U.S. Constitution provides the right to all who are accused of committing crimes to remain silent and say nothing to anyone which might

later be used against the subject in a court of law. Therefore, should or must the Ordinary provide a criminal lawyer to the priest prior or in advance of having the initial conversation with the priest about the complaint. Can the priest refuse to answer the questions posed by the Ordinary based on his civil constitutional rights in anticipation of criminal charges being filed against him? Can the Ordinary be forced to reveal or convey any communication he receives from the priest to police or prosecution authorities which information would either be utilized to provide corroborating evidence of the priest's guilt or provide the very basis for the prosecution. The basic conflict that exists here is whether or not the priest should honestly communicate with his Ordinary or not.

Though the accused priest is obviously the one in the best position to provide all of the basic information about the alleged incidents. This essential information is needed in order to determine how best to proceed with such matters as treatment plans for the offender; identifying all of the victims and their families so that adequate intervention can be planned etc. Nevertheless if the priest, in all good faith provides this information to his Ordinary it may derogate from his fifth amendment privilege. This could, in some jurisdictions, literally finish him in terms of a defense in criminal prosecution.



The choice of a criminal attorney at the earliest stage and the creation of the mutually cooperative relationship between the criminal attorney and counsel in the civil cases as well as insurance counsel is very important.

4. Unavailability of Plea Bargaining Process

Plea bargaining is process whereby a district attorney and a criminal defense lawyer reach a binding agreement providing that there shall be no trial. The defendant, as a result of the plea bargain, admits guilt to a crime, and receives a minimal sentence, much lighter than the maximum which might well have been imposed following a trial.

Plea bargains are unavailable in criminal cases where there is the commission of a heinous and odious crime against a young and defenseless victim. These cases are very high profile, attracting wide-spread media attention and these cases enrage communities, all of which creates obvious and subtle political pressure bearing down on the prosecutor or D.A. This forces him to bring the cases to trial. District attorneys in these cases want to make certain that there is no perception in the public or opinion in the community that because the Church was involved that the D.A. has treated the priest in a deferential or preferential manner. To prove his political independence the tendency of most D.A.'s would be to prosecute fully.

5. Extreme Criminal Law Possibilities for Superiors

There have been situations wherein District Attorneys almost pressed criminal charges against the priest's Ordinary which criminal charges would have resulted in the indictment, arrest, incarceration, bonding, trial or the Ordinary. Had this process occurred, upon conviction, the Ordinary would have been faced with the possibility of serving a severe sentence in the penitentiary.

There are a lot of criminal laws which pertain to an Ordinary in instances of sexual molestation of children by their subjects. Primarily there are two broad areas under which this criminal responsibility falls. First, the area of reporting. Failure to report information regarding sexual molestation of a child by a priest when such information is available or in the possession of the Ordinary, is considered a criminal offense in some states. Secondly, to allow a priest to continue to function, endangering the health of children, following the receipt of private, confidential knowledge that this priest victimized a child is considered to be "criminal neglect" (a crime in many states).

The proposal contained herein seeks to deal with this very serious question.

## SIGNIFICANT CLINICAL/MEDICAL CONSIDERATIONS

The section entitled "Clinical/Medical Questions" posed many of the importance questions which face an Ordinary in dealing with a cleric who is alleged to have committed sexual abuse or a related act on a child or adolescent. The following considerations in this same area expand on the problems which the alleged offense poses to the Ordinary. It is intended that they provide essential information at the outset. These considerations in no way respond to all of the pertinent questions.

## SIGNIFICANT CLINICAL/MEDICAL CONSIDERATIONS

### Pre-Intervention Strategy by the Ordinary

The Ordinary, rather than a subordinant or vicar, should confront the cleric as soon as an allegation of a sexual offense is made about the cleric. The Bishop-Priest relationship for instance, is a very special one and should be utilized to the fullest both canonically and psychologically, to intervene immediately if there is a suspicion or allegation of sexual abuse by a priest.

Prior to speaking with the priest (or cleric) the Ordinary (usually the bishop except in the case of religious clerics) should speak with a priest-psychologist who is knowledgeable about this particular problem. This should be done before the Bishop confronts or speaks with the priest so that the bishop can obtain some "pointers" on the intervention itself. The priest-psychologist can also assist the bishop in designing some personalized strategies according to the nature of the allegations made and the personality of the priest involved.

The Ordinary should make it clear to the priest before even stating the allegations that it is vitally important that truthfulness exist between them. The Ordinary should re-assure the priest or cleric that he will support him legally and financially and that he will also help him to obtain evaluation and treatment for his problems. However if the priest chooses not to be fully honest in the initial intervention, the Ordinary may still be obliged to be helpful but he could/should let the priest know that he would be disturbed by the lack of truthfulness in the initial interview.

This initial conversation between the Ordinary and the priest may be one of the most important moments in the sequence of events that will follow. It is assumed that most Ordinaries in the United States have not had a great deal

of experience with child abuse by the clergy and for that reason they need some professional re-assurance for the initial encounter with the accused. Each priest or cleric brings a different set of problems and a different set of circumstances concerning the sexual abuse. The initial intervention should be tailored accordingly.

#### What Are the Causes of Sexual Abuse by Roman Catholic Clergy

Once the priest or cleric admits to any type of sexual contact with children or adolescents it is not appropriate for the Ordinary to delve into the causes of this sexual abuse. This is best left to the professionals who have had a good deal of experience in this area and who understand Roman Catholic clergy.

Nevertheless it is important that the Ordinary have some idea as to what these causes are so that an appropriate place can be chosen for the evaluation and treatment of the priest.

A concrete example best illustrates the question. A 32 year old priest had been seen by a psychiatrist in private out-patient therapy for 2½ years which included the administration of psytropic medications. For over a three year period this priest had inappropriately committed sexual crimes in a public grammar school yard in three different locales. He was on his way to jail. He had been evaluated by two "excellent" mental health centers which stated that the inappropriate sexual behavior was due to early childhood experiences that required intense psychotherapy and perhaps group therapy.

When the priest was sent to another evaluation center with the capability of looking at medical, neurological and substance abuse problems as well as psychiatric and psychological problems, it was found that the priest had

been drinking over one quart of bourbon a day over the past five years but was unable to admit to having an alcohol problem. In such a case it would have been inappropriate to have this priest continue to see the private psychiatrist. Rather alcoholism, the primary disorder, would have to be treated and then the inappropriate sexual behaviors evaluated after the patient had been sober for a number of months.

Statistically, at least in regard to adolescent sexual abuse by priests, drugs and alcohol are the primary complicating problem or "mitigating" factor that the treatment professionals must deal with. Even though alcohol or drug abuse is present it does not mean that the sexual problem will necessarily disappear following treatment. There is however, a greater likelihood that the individual will be able to exert control and prudence if he is sober and is monitored over a prolonged period of time. Naturally treatment should be given for the sexual issues as well as the substance abuse issues.

Further, there are a number of rarer or more unusual disorders that can cause unusual behavior over a prolonged period of time. These include such disorders as manic-depressive illness, frontal lobe dysfunction, temporal lobe epilepsy, brain tumors etc. These problems will never come to light if a priest or cleric is evaluated at a center that looks only at the psychological dynamics of the patients family, his adult and religious life as the source of all problems, using the same model for treatment. Refer again to the 32 year old priest with two competent evaluation, neither of which uncovered the problem of alcohol abuse.

How Soon Should the Evaluation Take Place

IMMEDIATELY. As soon as the Ordinary has ascertained that there is some

truth to the allegations of sexual abuse by a cleric, arrangements should be made the same day or the following day at the latest for the priest's transfer to an evaluation center. The Ordinary may be familiar with a competent evaluation center or may have discussed such a center with the priest-psychologist.

It is especially important to understand that evaluation centers may be located in states having reporting laws which might prove problematic for the Ordinary. For examples some states have enacted legislation that does not extend privilege of communication between a patient and his psychologist or psychiatrist to cases involving child abuse, including sexual abuse of children. In Massachusetts a therapist, no matter what his training, must report the incident to the local authorities if there is any indication that the incident occurred within the state of Massachusetts. It is also possible that this extends to people who were involved with other adults who were involved with the incident in the state of Massachusetts. For this reason this state would be a hazardous area to send a priest for evaluation because of the stringency and extent of the reporting laws. Almost all states require and suspend the privileged communication between mental health professionals and the child if the child is the patient. A sexually or physically abused child seen by such a mental health professional must be reported in all 50 states along with the names of the persons offered by the child.

The point here is that the Ordinary should determine the reporting laws in the states of possible evaluation centers. It would be wise to consult with attorneys knowledgeable of these issues prior to sending the priest for evaluation.

The nature of the disorder dictates why the evaluation should be immediate. We are dealing with compulsive sexual habits which the priest may temporarily suspend in the face of legal or canonical pressure, but not in all instances. There are many examples wherein sexual abuse took place very soon after the

the confrontation between the priest and his Ordinary had taken place. The priest must clearly be seen as one suffering from a psychiatric disorder that is beyond his ability to control. For this reason...the compulsion of the disorder...evaluation of the disorder and the separation from temptation should be immediate and stated as such to the priest by the Ordinary without the Ordinary experiencing any feelings of misplaced guilt or lack of charity. This will emphasize to the priest the importance of his being truthful both to the bishop and to the evaluating mental health professionals.

#### Should the Alleged Offender See Anyone else Prior to Evaluation

The Ordinary may perceive, as he converses with the priest, that the latter is not taking the allegations very seriously. If this is true it is strongly urged that the Ordinary have the priest meet with competent attorneys conversant in dealing with the issue (whether or not there is an immediate legal threat). This should be arranged immediately. The attorneys should outline in detail all of the possible consequences in criminal law as well as the civil law liability of the priest and the diocese. This will also be helpful to the evaluation center since the priest will have a better appreciation of the significance and consequences of his behavior and perhaps even of the effect it may have had on the victims.

#### What About Canonical Suspension

A suspension of the cleric, especially if he is a priest, should happen in all cases. This makes a clear separation between the Ordinary and the cleric. It is a statement that the man is not capable of carrying out his sacred functions or ministry until an evaluation is completed and a determination of his fitness for ministry is made.



### How Long Does an Evaluation Take

Some mention should be made of the open ended nature of the evaluation. Many times it takes a week or two for the evaluating center to arrive at a good picture and feel for the total situation involved with the priest as well as his diocese or religious community. Most centers will do an evaluation in five days but usually will extend it in order to better get to know the priest and his diocese/community. Thus they are in a position to make a better recommendation to the Ordinary when the evaluation is completed.

### What Should an Adequate Evaluation Include

This is a very important question. In the final report the following should be looked for as part of the evaluation from any competent center.

- a. Clear evaluation by the psychologist or psychiatrist who has had experience in dealing with sex offenders of different types.
- b. An evaluation by a chemical dependency counsellor or someone with equivalent experience in substance abuse to make certain that the person does not have a history of abuse of alcohol or drugs which would be contributing to sexual problems.
- c. A complete physical and neurological examination completed by an internist or neurologist.
- d. A electroencephelogram done both in the sleep state and with nasopharengel leads.
- e. A CT brain scan with and without contrast dye study to rule out the possibility of intercerebral tumors or other cerebral pathology.
- f. Blood and urine laboratory tests that rule out the presence of alcohol and/or other illicit substances. The lab test should include an evaluation of liver, kidney, endocrine, lung, heart, and other vital functioning, all of

which may give clues as to the presence of "mitigating" problems that must be explored.

g. Some neurological assessment including an intelligence test which will give an idea of the "functional" capacity of the patient.

h. Appropriate psychological tests including projective testing which may give clues as to the stability of the character structure of the priest or the pathology of the character structure.

This is not an exhaustive but a basic list of tests which should be completed on a priest who is accused of sexual offenses. In other words, it is important to have an holistic approach to the problem which helps to discover mitigating factors which will assist in moving in the correct direction for the appropriate modality and treatment facility.

#### How To Choose an Appropriate Treatment Center

This is a most difficult and at the same time important question for the Ordinary. He may have a center where he has been pleased with the treatment of priests with other problems. However the "favorite treatment center" may not be the appropriate center for clerics with sexual problems, especially if the problem is pedophilia. The following is a partial list of appropriate questions to be answered.

a. Have the therapists and other professionals of the center had significant past experience in dealing with sexual abuse/sexual offenders/pedophiles. Will the priest be supervised by professionals with such experience?

b. What kinds of physical and environmental restrictions will be placed while the priest is in therapy. Will he be allowed use of a car at any times? Will there be non-supervised periods in a 24 hour period each day? Will he be allowed to go out to dinner, entertainments, churches where he might encounter

children in the course of his treatment program.

c. Will he be allowed to consume alcohol of any kind. No sex offender should ever be allowed use of alcohol or drugs in a recreational or social setting because of the possibility of relaxing inhibitions or relapse of sexual acts. Total abstinence is a must in order for there to be hope for abstinence and control of the sexual problem.

d. What are the criteria used to determine the fitness of the priest for discharge, possible return to ministry. How are these criteria tested during the treatment program.

e. What self-help group will the priest be required to attend while in the treatment program as well as after he leaves. It is essential that there be some form of mandatory self-help group such as AA or a sex offender group for the rest of this person's life. This should be started during in-patient treatment and encouraged, to the degree that the patient is taken to the group if necessary.

f. What concrete follow-up plans are made for the patient after treatment is concluded. Does he return on a period basis for an aftercare program. What kind of aftercare programs are set up in the diocese if the priest is to return to function there. What are the guidelines that will be given to the Ordinary with reference to future functioning in the diocese.

All of these plus many more questions must be answered. Every treatment center is not the same nor do all have the same treatment philosophy. It must be stated unequivocally that a pure psychoanalytic or psychodynamically based program is inadequate for the treatment of sex offenders. There must be a multi-disciplinary and multi-dimensional approach to the treatment of these very special people and it is essential that the Ordinary find out exactly

what is offered in and by the different treatment programs and centers before a decision is made to place the priest in a center for a prolonged period of time.

#### Can the Priest Ever Return to Ministry in the Diocese

Individual factors, the extent of the sexual abuse, the extent of the notoriety involved and the extent of knowledge of the problem are but some of the factors that go into this question.

The treatment center chosen should be one that works on a "family model" approach. This means that members of the religious family involved with the priest prior to treatment should be involved in the treatment and in the post treatment plans. There should be close communication and coordination with the diocese or religious community so that when this question arises during in-patient treatment, it can be answered directly and specifically and the treatment program moved in such a way as to assist the priest in looking at his fitness for ministry or finding new ministries or occupations.

It is inadequate to treat a sex offender in the diocese on a private psycho therapy model. It should be emphasized that in-patient treatment, preferably with peers, is the most preferable mode and the one which will have the best results.

#### What About the Families of the Victims

This is a very delicate area. While the welfare of the priest-offender is considered very important to the church officials, the welfare both at the time of the abuse and well into the future of the victims is most important and should be given a priority by Ordinaries. The effects of sexual abuse of children by adults are long lasting and go well into adulthood. This is well documented though it may well be difficult to predict the extent of the

effects in particular cases. We are speaking not only of psychological effects but also the spiritual effects since the perpetrators of the abuse are priests or clerics. This will no doubt have a profound effect on the faith life of the victims, their families and others in the community.

A rather direct approach should be made to the family (in conjunction with consultation with competent civil attorneys). Psychological help and other needed assistance should be offered to the victims and their families. If the family seems disposed to such a move, there should be some form of healing, if possible, between the priest and the family, possibly in terms of monitored communication or perhaps even a family meeting with the priest at some point when the priest, Ordinary and family are disposed to it.

We have been rather ignorant of the effects of sexual abuse of children by Catholic clergy over the years because it has never been investigated or studied in a systematic manner. However from a professional viewpoint, enough adult persons who have been in therapy in the past several years have discussed abuse by priests that it seems clear that such abuse has a profound effect even when it does not come to the attention of parents, family members or the civil or church authorities.

The extent and degree of the sexual abuse, the age of the child at the time of onset of the abuse, when it was discovered and finished, the manner in which it was discovered, any other dimensions of relationship of the priest with the family...these are all factors involved in treating the victims and their families. Special mental health professionals, trained and competent in this particular area, should be called on by the Ordinary to provide help and support as soon as is feasible. This is also a healthy preventive measure with respect to civil litigation since most families are eager to help their children and themselves in these embarrassing and complex psychosocial problems.

## SIGNIFICANT CANONICAL CONSIDERATIONS

Because of the nature of canon law, as opposed to Anglo-American Common law, there is a perceived closer relationship between the proposed canon law questions and the following discussion of canonical issues. This discussion is not an attempt to provide definitive answers to these important canonical issues. This information on the canonical dimensions of these problems provides a general context within which to work with each specific case.

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CANONICAL ISSUES

1. Investigation of Complaints

When a bishop receives a complaint that a priest or deacon has engaged in sexual misconduct with a minor child, this complaint should be discreetly investigated at once.

a. The obligation rests with the bishop himself and should not be delegated to another person. This bishop may see fit to involve trusted advisors in the process, but he should supervise and directly participate in the investigation himself. (A private response from the prefect of the Congregation for the Clergy in 1983 referred to the bishop's obligation to directly involve himself in disputes regarding priests. The response stated that this duty is not to be delegated.)

b. The Code of Canon law provides a basis for an investigation in chapter I, "The Preliminary Investigation," of Book VII, Part IV, "The Penal Process." These canons (cc. 1717-1719) offer wide discretion to the bishop in the investigation of complaints. The second chapter, "The Course of the Process," (cc. 1720-1728) outlines the manner of proceeding if the preliminary investigation shows that there is probability that a canonical delict was committed.

c. If the bishop follows the basic procedures outlined in cc. 1717-1719 he need not move to the next phase, a trial. He may simply want to go on record indicating that the canons provide for a process whereby complaints may be investigated. Such a course of action could be advantageous if the civil courts require proof of responsible action by the Church authorities in light of complaints. Following the canons to some extent shows two things: the church has a mechanism for protection of the rights of the faithful (cf. canon 221).

d. The notary: canon law allows lay persons and non-ordained to hold the office of ecclesiastical notary. §yet canon 483, 2 stipulates that in any case which could involve the reputation of a priest, the notary must be a priest. Consequently the person keeping the record of a preliminary investigation or indeed any process, including the penal process, involving these cases must be a priest.

2. Canonical Delicts

For those bound to perpetual continence and in sacred orders, a number of canonical delicts (crimes) may be committed in the course of sexual misconduct. Canon 277 refers to the cleric's obligation of perfect continence as well as his obligation to act and relate prudently to persons.

-canon 285, 1: the obligation to shun anything that is unbecoming the clerical state.

-canon 1395: this canon refers to offenses against the sixth commandment by clerics. It deals with concubinage and sexual concourse with women and related scandal in the first paragraph and with other related offenses, including those involving force, threats and offenses with children. The canon sets no specific penalties but merely refers to "just penalties not excluding dismissal from the clerical state."

-canon 1387: solicitation in the confessional. A priest who solicits in the confessional or under the pretext of confession for a sexual act is to be punished with penalties up to and including dismissal from the clerical state.

-canon 1378: this canon refers to canon 977 (the absolution of a partner in a sexual sin is invalid except in case of danger of death). A priest who commits this delict is automatically excommunicated and the absolution is reserved to the Holy See.

-canon 1389: this canon deals with the general abuse of ecclesiastical office or power. The crime is to be punished in relation to its severity.

Clerics who have sexual concourse with women, men or children are obviously liable to canonical penalties since such actions constitute the matter for canonical crimes. There are other issues related to these crimes however and the fact of commission of a crime should not be isolated as the major issue.

The canonical legislation on sexual misconduct indicates that such actions are contrary to the cleric's essential obligations. The law makes no distinction between performance of such acts while carrying out ecclesiastical duties and those perpetrated at other times. These actions are contrary to the cleric's very way of life and consequently he is obliged at all times.

### 3. Canonical Penalties Applicable

Although canonical penalties are ordinarily applied at the conclusion of a trial or process, the unique nature of certain forms of sexual misconduct, especially sexual abuse of minor children, should preclude such an approach under most circumstances.

In certain cases, the perpetrator might find himself excommunicated automatically, such as when he absolves an accomplice.



The preferred method of applying appropriate canonical penalties in such cases would be by way of administrative decree, issued by the Bishop. The penalty referred to is suspension of the priest from all sacred functions, ecclesiastical offices and duties.

\*\*\* a. Administrative Leave: after the initial report has been made and the Ordinary has decided that an investigation is justified, he should proceed according to cc. 1717-1719. The accused is simply that...his guilt has not yet been determined. The canons provide for a kind of "administrative leave" (canon 1722) whereby the priest or deacon may be asked to leave his residence and cease all public ministerial functions. This type of action by the bishop is not only advisable but should be routine. AT THIS POINT THE PRIEST OF DEACON SHOULD NOT BE SUSPENDED. Suspension is a canonical penalty which leads to a presumption of guilt. This could be misconstrued in civil courts and used to the disadvantage of the church. The priest or deacon has been accused of a delict which is actually a manifestation or result of a highly compulsive disorder. Although the actual effects of invoking canon 1722 may be similar to a suspension, the act whereby these effects take place is not a suspension. There is no process required beyond that mentioned in the canon. It would be well to explain to the accused that such action is for his benefit.

Suspension as a canonical penalty may be imposed by decree for a period of time, following the procedures outlined in the Code, or it may be imposed perpetually but not by decree. A perpetual or indefinite suspension can be imposed only after a canonical trial. In any case, suspension should only be used after the priest or deacon's guilt has been determined. If the accused is convicted and imprisoned, he could well be suspended for the duration of his incarceration. Such action might be advisable to avoid the appearance of tolerating the actions of pedophiles (but at the same time treating them with compassion). If it is determined, in conjunction with clinical advisors, that a priest or deacon can and should not exercise the ministry again because of the nature of his affliction or its severity, then laicization must be seriously considered. In the meantime it would be well to suspend the priest or deacon.

b. Removal from office: Although removal from office (associate, pastor, etc.) or transfer is not a penal procedure but an administrative procedure, the law provides for such actions if the ordinary believes that he has sufficient reason and that it redounds to the good of the faithful. Canons 1740-1752 set out in detail this procedure as well as the recourse against a decree or removal or transfer.

The ordinary, upon encountering a case of sexual misconduct, might give consideration to invoking the canons regarding removal in conjunction with those pertaining to penal procedures.

Nevertheless it is imperative to clearly understand that transfer or removal isolated from any other action is far from adequate and could in fact lead to a presumption of irresponsibility or even liability of the diocesan authorities by civil courts. In short, those presumed to be guilty of sexual misconduct, especially if it involves child molestation, must never be transferred to another parish or post as the isolated remedy for the situation.

c. Laicization: Canon 290 states that although sacred ordination, once validly received never becomes invalid, a cleric (priest, deacon or even bishop) loses the clerical state in three instances:

- when a judgement of a court or administrative decree declares the ordination to be invalid
- when laicization is lawfully imposed as a penalty
- when laicization is imposed by rescript of the Holy See.

Declaration of the invalidity of ordination is extremely rare and quite difficult to prove since it involves the intentionality of both the recipient of holy orders and that of the ordaining prelate. Allegations of lack of fitness for celibacy would not constitute solid basis to pursue such a matter.

Although the law includes dismissal from the clerical state (laicization) as a possible penalty for the offenses mentioned in canons 1387 and 1395, this penalty may not always be imposed on those guilty of sexual crimes not excluding pedophilia. Canon 1324, 1, 10, 20, 30 indicates that the penalty prescribed by law or precept must be diminished if the culprit had only imperfect use of reason; lacked use of reason because of culpable drunkenness or other mental disturbances of a similar kind; acted in the heat of passion which, while serious, nevertheless did not precede or hinder all mental deliberation and consent of the will, provided that the passion itself was not deliberately stimulated.

As is obvious from the above paragraph, it is possible to dismiss a cleric from the clerical state if he committed canonical crimes involving sexual misconduct. Yet is he acted under the influence of one or more of the conditions mentioned in canon 1324 it is not possible to impose the extreme penalty allowed, namely dismissal.

Dismissal may be prudently considered when it is obvious that the cleric in question will not be able to fulfill the duties of the clerical state and sacred orders, even to a minimal degree, because of his compulsion for illicit sexual activity. In such cases this course of action might prove to be the most beneficial for the person and for the church. It would effectively lighten the liability and responsibility of church authorities for the actions of a cleric who is proven to be completely incorrigible. The decision to proceed toward dismissal should be made in conjunction with expert canonical counsel as well as well-founded clinical advice on the man's suitability for the clerical state.

It may happen that situations arise when dismissal is seen to be the only viable course of action but when, at the same time, a court process is ill-advised or impossible. In such cases only the Holy See has the power to issue a rescript whereby a priest or deacon is reduced from the clerical state. It is possible for the Holy Father to ex officio laicize a man when it appears that no other course of action is advised. In such cases the cleric's local ordinary should prepare the petition for laicization and send it, together with all pertinent material, to the Congregation for the Doctrine of the Faith. The relative urgency of the case will determine the alacrity with which the case is handled in Rome. \*\*\* Laicization requests arising from pedophilia will be given serious consideration by the Congregation for the Doctrine of the Faith (for priests) and the Congregation for the Sacraments (for deacons).

\*\*\* Canonical Revision 7-28-86.

#### 4. Ecclesiastical Records

Canon law refers to two types of archives or records: the ordinary diocesan archives and the secret archives. In fact, there are numerous types of records kept in most if not all diocesan curias. These include financial records, lay personnel records, insurance records, priest-personnel records, tribunal acts etc. In most dioceses the priest-personnel records are kept in a separate file. What is contained in each priest's file can vary greatly with the dioceses and its policy. Usually seminary records, transfer indications, letters of commendation and complaint and other related matters are kept in the priest's file. In some instances, recorded conscience matters which would include such matters as sexual misconduct, are also contained in the priest's file.

b. The diocesan archives: Canon 487 states that only the bishop and chancellor may have keys to the archives and permission for entry must be obtained from the bishop, moderator of the curia or the chancellor. This is a broad canon which implies that the wide range of materials which could be placed in the archives enjoy a degree of security and confidentiality.

The same canon also states that persons concerned have a right to receive copies of documents which concern their personal status and are by nature public. Thus access to certain documents about persons could be restricted if these are not considered public by nature. Complaints about sexual misconduct would not be considered public by nature.

Canon 488 states that documents may be removed from the archives only for a short time and then with the permission of the bishop, moderator of the curia or chancellor.

While the canon law on diocesan records may be clear and may be presumed to guarantee security of files and confidentiality, the fact remains that in certain civil courts in the U.S. decisions have been handed down which have held that the contents of diocesan records, including priest-personnel files and even tribunal files, are not absolutely confidential and thus may be discovered in a civil court process.

b. The secret archives: Canons 489 and 490 refer to the secret archives of the diocese. The canons describe this as a secure place which is either separate from the other archives or, if this is not possible, is a place in the diocesan archives which is secure. Only the bishop is to have the key to the secret archives.

The canons do not describe in detail what is to be kept in the secret archive. Yet canon 489, 2 states that documents of criminal cases concerning moral matters are to be destroyed if the guilty parties have died or ten years after the sentence in the case has been pronounced. This implies (an implication confirmed by commentaries on the similar canon in the 1917 Code) that cases involving moral and criminal matters are by their very nature the matter of the secret archives. They are secret when actually in the place of the archives or not. Canon 1719 clearly states that the acts of the inves-

tigation of the penal process, the decrees of the ordinary by which the investigation was opened and closed and all other matters which preceded the investigation are to be kept in the secret archives. By this canon it is clear that all documents related to a penal process, even though this process may not be concluded by sentence, are to be kept in the secret archives.

If for instance, complaints of sexual misconduct are investigated by the ordinary, every document pertaining to the complaint could be construed to be related to the preliminary and formal investigation of the penal process and thereby part of the secret archives.

Although the inviolability of the secret archives is clear in canon law, it is not so certain that such is to be respected by the civil law. Random legal opinions indicate that even the serious matters contained in the secret archives could be subpoenaed in the civil courts. The matter is still under research.

As a possible manner of distinguishing between the diocesan archives and the secret archives which pertain to priest-personnel problems, the bishop could have all material related to conscience matters of a moral nature placed in separate files which he personally would keep, at his residence for instance. These could be labelled "conscience" files or something similar which would indicate that they contained matters which only the bishop, in keeping with his unique relationship to the priest, had access to.

c. Recording sexual abuse: Reports of alleged sexual abuse or sexual misconduct as well as records of investigations should be kept in the secret archives and certainly not in the diocesan archives or the ordinary priest-personnel files.

## 5. The Limits of A Bishop's/Superior's Responsibility

The question involves the limits of a bishop's responsibility for those clerics who are working or living in his diocese. This responsibility is looked upon differently in civil law and canon law, yet the civil law might well look to the canon law to clarify questionable areas.

a. The relationship to incardinated clerics: It is clear that a bishop is responsible for clerics who are incardinated to his diocese. This includes diocesan priests, transient deacons destined for ordination to the priesthood and permanent deacons. Canon 273 states that clerics have a special obligation to show respect and obedience to their own ordinary and to the Supreme Pontiff. The bishop also assigns ecclesiastical offices in his diocese, including pastorates and associate pastorates, by free conferral (canons 157, 523, 547, 682). This means that the bishop alone has the power and the right to confer an ecclesiastical office or, in other words, to make an assignment. In those dioceses which have personnel boards or officers, these have no power nor can they be given the power to make assignments or confer offices. These canons are based on the nature of the episcopal office and the contingent relationship of the bishop to his cleric-subjects.

b. The relationship to visiting clerics: It is common for clerics, especially priests, to work or study in dioceses other than their own by incardination, for temporary periods of time of varying length. The usual custom is to seek the permission of the local bishop for such a cleric to live and work in the host diocese, with the permission of his own bishop. This possibility is outlined in canon 271, 2, 3.

Such a cleric working in a diocese other than his own is responsible to the host bishop for the apostolic work he does and for his actions which carry out his clerical duties. Because the bishop is the head of the local church, his responsibility for all clerics living and working under his jurisdiction is comprehensive as is the responsibility of these clerics to the bishop. Although the law does not mention it, the cleric's proper ordinary would seem to have an obligation in justice to inform the host ordinary of any problems the cleric might have which would possibly have an effect on his life and work in another diocese.

c. Religious clerics: Clerics who are members of religious institutes have their own major superiors as their proper Ordinary. This superior is usually called a "provincial." It is not the local superior of the community in which the religious lives but the superior over the territorial grouping of religious of the same institute. The major superior's responsibility to his clerics is similar to that of the bishop to his clerics.

Religious living and working in a diocese are subject to the local bishop in those matters which involve education, public worship or the apostolate (canon 678). In most cases they are not subject to the bishop in the internal ordering of their lives. This is known as the privilege of exemption which applies to most clerical religious institutes (known also as orders, congregations and in some cases, societies). Nevertheless if the local bishop becomes aware of serious internal abuses he may intervene if appeals to the proper religious superior prove to be ineffectual (canon 683, 2).

In matters of sexual misconduct, a religious cleric is responsible both to his own superior and to the bishop of the diocese in which he lives/works/resides. If the bishop becomes aware of an alleged incident he is within his rights to notify the religious' proper ordinary and also to conduct his own preliminary investigation. The law gives the local bishop the right to impose a suspension on a religious cleric by reason of penalty (canon 1341-42) and by means of an administrative decree or precept (canons 48-58)

A bishop may also forbid a religious to remain in his diocese for grave reasons (and alleged sexual misconduct would certainly be one) provided the cleric's major superior has been informed and has failed to act. The latter is to be reported to the Holy See (canon 679).

d. Suspended clerics: Is the diocesan bishop responsible for priests or deacons whom he has suspended (or someone else has suspended). It is clear that such clerics are merely suspended and are not dismissed, thus they remain clerics and the local bishop is still responsible for vigilance over

such clerics. Similarly the clerics are responsible to their bishop. If for instance, a bishop were aware of an act of sexual misconduct by a suspended cleric, he could not absolve himself of responsibility or possible liability by the fact of the cleric's suspension.

e. The bishop's financial responsibility: The nature of the bishop's relationship to support his clerics has changed from the 1917 Code. The 1983 Code (canon 281, 1, 2) refers to the support of priests and transient deacons and non-married permanent deacons in some circumstances. Essentially a bishop is obliged to provide remuneration to the cleric as befits his condition taking into account both the nature of the cleric's office and the conditions of time and place. The second paragraph states that suitable provision be made for such social welfare as the cleric may need in infirmity, sickness or old age.

Also, canon 1350, 1 says "In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support." To arrive at the canonical nature of the bishop's financial responsibility one must study the two canons in context.

First, it is clear that the bishop responsible is the bishop of incardination. Secondly, he is obliged to support his clerics but not unrealistically. The bishop may not withdraw all support from a cleric who is withdrawn from an assignment pending an investigation into sexual misconduct. If the allegation is proven and the cleric is suspended, the bishop must study the cleric's needs and his capacity to support himself and if necessary, he (the bishop) is obliged to assist in supporting the cleric.

This support includes provision for psychiatric and medical care. A bishop cannot waive his obligation to such support by explicitly excluding clerics involved in sexual misconduct. Is the bishop bound to provide legal assistance to clerics in trouble? Strictly speaking his is not, however he may choose to do so out of charity and with a view to the impression that could arise if refused to assist a cleric in trouble in such a manner.

The second paragraph of canon 1350 states that if a cleric is dismissed and is truly in need, then the bishop is obliged to provide for him in the best way possible.

The matter of financial support is most important since clerics involved in sexual misconduct, especially pedophilia will most probably be suspended and will need extensive psychiatric care as well as legal assistance. The cleric may have little means of outside support and will therefore depend on the bishop or diocese for help. Like a cleric suffering from cancer, a pedophilic suffers from a serious emotional/mental disorder. Unlike the cleric suffering from a physical disease, the symptoms of the pedophilic's illness are also criminal actions.

f. Responsibility for Permanent Deacons: A permanent deacon, married or not, is a cleric and not a layman. When the code refers to clerics, it includes both deacons and priests with no distinction between transient

and permanent deacons. Married deacons are not obliged to continence but are obliged to chastity which precludes sexual relations with others than their wives. In the event that permanent deacons committed sexual misconduct, the bishop would have a responsibility to investigate the incident and to take appropriate action. The permanent deacon may also be suspended as can a priest. In the event that it is necessary to laicize a permanent (or transient deacon) this too is possible, yet the process is handled through the Congregation for the Sacraments rather than the Congregation for the Doctrine of the Faith which handles laicization of priests.

The bishop is responsible for just remuneration for permanent deacons who work for the church full-time. In the United States most permanent deacons have full-time professions or employment and work for the church on a part-time basis. Canon 281, 3 states that married deacons (and presumably single permanent deacons) whose support themselves and their families from secular employment are not entitled to support from the bishop as well.

It appears from a reading of the canon that a bishop is not obliged to provide for medical or psychiatric care or legal expenses for permanent deacons involved in sexual misconduct.

#### 6. The Canonical Nature of the Bishop-Cleric Relationship

The civil law will look to canon law as well as theology to aid in understanding the nature of a cleric's relationship to his bishop and to his diocese.

A cleric is bound to his diocese through incardination which takes place at the time he received the sacred order of deacon. Under the 1917 Code a cleric became incardinated at the time he received first tonsure, probably two or three years before ordination to the diaconate. By incardination the cleric is bound to the diocese in a special manner. He is not simply a resident but is a kind of ecclesiastical public servant. This pertains to permanent deacons as well as other clerics.

The priest especially is bound in a special way to the diocese because he called by Vatican II a "collaborator" with the bishop. His life's work, calling or occupation is ordered to the work of the church, ordinarily in his diocese. A priest or deacon may live and work in another diocese yet remain incardinated to his own diocese and responsible primarily to his own bishop.

The cleric owes reverence and obedience to his bishop. Here the law (canon 273) refers to the bishop of the diocese of incardination. At the time of ordination to the diaconate and again to the priesthood the cleric make a promise of obedience to his ordinary and the ordinary's successors. By this promise the cleric owes the bishop obedience in all things that are neither sinful nor illegal.

The relationship of the bishop and his priest differs theologically and

canonically from that of the bishop to a deacon. This difference would have little impact in the civil law understanding of the overall relationship of bishop to cleric. Nevertheless since most of the problems exist with priests this special relationship should be well understood.

The bishop-priest relationship is unique. Clearly the bishop is much more than an employerr since the priest is responsible to him for all areas of his life and not merely those hours during which he is exercising priestly ministry. The priest owes complete obedience to his bishop and it is the bishop alone who has the power, by reason of office, to transfer or assign a priest.

The priest is also referred to as a cooperator with the bishop. One of the post-Vatican II documents says "All priests...share and exercise with the bishops the one priesthood of Christ. They are thus constituted providential cooperators of this episcopal order. The diocesan clergy have however, a primary role in the care of souls because, being incardinated in or appointed to a particular church, they are wholly dedicated in its service...and accordingly form one priestly body and one family of which the bishop is the father." (Christus Dominus, n. 28).

Likewise says the conciliar document on the priesthood: "All priests share with the bishops the one identical priesthood and ministry of Christ. Consequently the very unity of their consecration and mission requires their hierarchical union with the Order of Bishops...Bishops will regard them as indispensable helpers in the ministry and in the task of teaching, sanctifying and shepherding the people of God." (Presbyterorum Ordinis, n. 7).

The essential responsibility of a bishop for his priests is rooted in their common sharing of the same priesthood: "On account of this common sharing in this same priesthood and ministry then, bishops are to regard their priests as brothers and friends and are to take the greatest interest they are capable of in their welfare both temporal and spiritual." (Ibid., p. 7)

Most priests are either pastors or associate pastors. Others may be teachers, preachers, administrators etc. The canons use a technical term to describe the special and unique authority and responsibility that certain offices hold in relation to the pastoral ministry...cura animarum or "care of souls." This term is directly connected with the office of bishop and the office of pastor. Others share in it or participate in it but do not have it in its fullness. According to canon 519 the pastor "exercises the pastoral care of the community entrusted to him under the authority of the bishop whose ministry of Christ he is called to share..." A pastor must be a priest according to canon 521, 1.

A diocesan priest (pastor, associate pastor etc.) is not automatically a vicar of the bishop, that is, one who represents the bishop and functions on power delegated by the bishop. The law provides for vicars in special places. The pastor has his own authority which he obtains by reason of his office, conferred on him by the bishop. While he may enjoy certain powers delegated him by the bishop, his basic pastoral powers come to him by the very office he holds.



Parish priests are not paid directly by the bishop but are paid from parish funds. The IRS considers priests to be self-employed.

## 7. The Church's Canonical Understanding of Its Identity

In lawsuits against employees of the Catholic Church it is not uncommon for the person to be named along with other authority figures in the hierarchical structure of the church. This includes local ordinaries, metropolitan archbishops, papal representatives and the Holy Father himself in some cases. Because of this tendency it is helpful to clarify the canonical dimension of the relationship of church entities.

a. The Diocese: canon 368 refers to Particular church, the diocese being the principle example. A particular church is a portion of the people of God entrusted to a bishop (canon 369). Only the Holy Father has the power to establish, alter or suppress a diocese (canon 373) or any other type of ecclesiastical jurisdiction.

The diocesan bishop, also referred to as the local ordinary, has all of the ordinary, proper and immediate power required for the exercise of his office in the diocese except in those matters which the Pope has reserved to himself or to other ecclesiastical authorities.

The diocese is composed of parishes which are erected or suppressed by the authority of the diocesan bishop. He has complete authority in his diocese including the power to enact legislation to a certain extent and according to the norms of the universal canon law. Canon 391 states that the bishop governs the diocese with legislative, executive and judicial power. In all juridical transactions the bishop acts in the person of the diocese (canon 393).

The bishop's immediate superior is the Holy Father. The Pope alone has the authority to name a bishop, appoint him to a diocese, remove him or ask for his resignation.

Each diocese is to have its own administrative offices and organs and its own court, called a tribunal. A diocese is not dependent in any way for its on-going existence on other dioceses. The bishops of the world belong to what is known as the "college of Bishops." This is a union of the bishops as successors of the apostles with the Pope at its head. It functions in solemn form when in ecumenical council.

b. The Metropolitan and the Province: Dioceses are arranged according to geographical areas called provinces. The major entity in a province is called the archdiocese. The other dioceses are called suffragan dioceses. The head of the archdiocese is known as the Metropolitan Archbishop. He has no power of governance over the suffragan dioceses but can celebrate sacred functions in churches in these other dioceses (canon 436).

The metropolitan archbishop is not the superior of the bishops of the

province. He can exercise moral suasion over them but they are not bound to obey him or accept his advice unless the metropolitan is delegated by the Pope in particular occasions. It is clear that the individual bishops do not report to the metropolitan nor is the metropolitan responsible for the decisions or actions of the bishops. The only power given him by law is to appoint an administrator of a diocese if the see is vacant and if the diocesan consultors have failed to duly elect one. Also, he may conduct a visitation of a diocese if needed but only with the permission of the Holy See.

c. The Episcopal Conference: The episcopal conference, an entity which grew out of Vatican II, is the assembly of all of the bishops in a country. Conferences are established, altered or suppressed only by the Holy See. (Canons 447 and 449). The conference can enact legislation or decrees only when this is provided for in the universal law of the church (canon 455). The conference is not a legislative body nor does it have executive or judicial power over the individual bishops of the country. It exists primarily as a service organization to assist the bishops in their pastoral work. The size and complexity of each individual conference's permanent staff varies from country to country.

The Episcopal conference in the United States, as in other countries, does not have authority over the individual bishops nor does it have a right by church law to intervene in diocesan affairs. The president of the conference is elected for a set term by the bishops. He has no authority over the individual bishops nor over the national church as a whole. The law allows the conference or the president to speak in the name of all of the bishops only when each and every bishop gives his consent (canon 455, 4).

The national conference of bishops is not the equivalent of a national Catholic Church. The dioceses do not form a federation. Their identity in the law would remain the same with or without the conference.

d. Juridic persons: Aggregates of persons or things which are directed to the church's mission in some way may be given the status of a juridic person either by provision of the law itself or by an act of a superior competent to create a juridic person. A juridic person is similar but not entirely analogous to a corporation. Dioceses are juridic persons.

e. The Apostolic Pro-Nuncio: The papal representative in the United States is known as the Apostolic Pro-nuncio. He is the personal representative of the Holy Father to the American Church and the ambassador of the Holy See to the United States. He enjoys power or authority which is given to him by law (since he usually is an archbishop) or is delegated by the Holy See.

The papal representative has no direct authority over the individual bishops. He assists the bishops by action and advice while leaving intact the exercise of their lawful power. The papal representative may act only upon instructions of the Holy See. He may not interfere in the internal workings of a diocese nor may he remove or censure bishops in any way.

Similarly bishops are not bound to report to the Papal representatives

concerning their personnel nor the internal workings of the diocese except in cases specifically defined by law. By weight of his office, the papal representative can exercise a certain degree of moral authority over the individual bishops but has no direct, canonical authority.

Finally, the papal representative enjoys diplomatic immunity. While he may be a citizen of this or that country, he carries a Vatican diplomatic passport for the duration of his service with the Holy See.

#### 8. The Advisability of Reporting Incidents to Church Authorities

Although the diocesan bishop is bound to report only to the Holy See in just about every case, it is advisable that incidents of sexual misconduct among the clergy be reported to certain ecclesiastical authorities. This of course would depend on the nature of the incident, the amount of publicity attending it and the possible civil law ramifications. Naturally there is a difference between an action which has moral culpability only and an action which is morally wrong but also constitutes matter for criminal prosecution or civil liability.

When an incident of alleged child molestation is reported to a bishop he may have an obligation in civil law to report it to civil authorities. No such obligations exists in canon law. Nevertheless, if the incident and the cleric's identity remain confidential, the bishop may wisely refrain from widespread reporting. It may be advisable in every instance to report the incident to the Papal representative in the event of a subsequent inquiry from the Holy See. Rather than communicate directly to the Holy See, a bishop should communicate through the papal representative.

A bishop is not bound to report incidents to the Metropolitan archbishop nor to the President of the episcopal conference or the conference staff, including the office of the general counsel.

#### 9. Vigilance in the Seminaries

No man has a right to enter a seminary nor a right to remain in the seminary. The law states that the bishop is to admit to a seminary only those candidates whose human, moral, spiritual and intellectual gifts as well as physical and psychological health show that they are capable of dedicating themselves permanently to ministry (canon 241, 1).

The bishop who sponsors the candidate is responsible for him. Yet the seminary may not be in the same diocese. The bishop then depends on the seminary rector and staff to assist him in determining if the candidate is suitable for ordination. A seminary rector or staff may dismiss a candidate yet a bishop still may place him in another seminary or ordain him.

Seminaries fall under the authority of the bishop of the diocese in which they exist. If the seminary is an inter-diocesan seminary by decree of the Holy See, all of the bishops involved share authority.

A seminarian may be dismissed from a seminary by the rector if the statutes of the seminary provide for this, or by the bishop. He need not be told why he is being dismissed and he has no right of appeal of any kind. Canon 10129 stipulates that those who are to be ordained must, in the judgment of the bishop, be motivated by the right intention, enjoy a good reputation, have moral probity and the physical and psychological qualities appropriate to the order to be received. If the bishop even suspects deficiencies in a candidate he may refuse to ordain him even without indicating why. There is no recourse or appeal since there is no right to ordination.

Canon 1041, 1° states that one who suffers from any form of insanity or from another psychological infirmity is "irregular" for receiving orders. Experts are to be consulted to determine if the person's infirmity will make him incapable of exercising orders properly. By irregularity is meant a kind of impediment that must be dispensed from either by the bishop or the Holy See depending on the circumstances.

#### 10. Religious Clerics

The canonical considerations listed above pertain equally to clerics who are members of religious institutes. Since there are different kinds of religious communities, it is important to understand the differences:

a. Religious institutes: this is the canonical term for groups of men or women who take public vows and are recognized and erected as a religious institute. These were commonly known as Orders, Congregations or Societies in the past and still are to a certain extent.

b. Secular institutes: these are recognized organization of clerics or laity who belong without taking public vows nor living a common life.

c. Societies of Apostolic Life: these organizations lead a common life, pursue an apostolate but do not take public vows.

The major superiors of religious institutes of men are known as Ordinaries." Their power and authority as well as responsibility for their subjects is similar to that of a bishop. In some ways, because of the vow of obedience, the religious superior may have even greater authority over his subjects.

Religious institutes are usually divided geographically into provinces with members living in religious houses. A religious ordinary is responsible for those subjects assigned to his province or those assigned to another province but living in his province. The method of assignation and the terms used differs from one community to another.

SELECTED SPIRITUAL CONCERNS

In addition to the other effects of sexual abuse on children and their families, since the perpetrators are priests or members of the clergy, there will also be serious "spiritual" consequences. Those affected include the victims, their immediate families as well as others in their circle of friends and acquaintances. There will also be serious spiritual consequences for the wider church community. Spiritual concerns also encompass the cleric-offenders and other members of the clergy in the diocese and in other areas.

1. Sexual abuse of a child by a cleric, especially a priest, can have a devastating effect on the child's short and long term perception of the church and its clergy. How will the child be able to perceive the clergy as authentic, unselfish ministers of the Gospel and the Church as the Body of Christ.
2. The victim's capacity to develop trusting relationships with adult clergy will be impaired.
3. The abused child's faith in the sacraments as sources of grace and communications with Christ, through the ministry of a priest, will be seriously weakened.
4. Depending on the manner with which Church authorities deal with the case, the victim and others may quickly develop a perception of Church's leadership as ineffective and unauthentic

vis-a-vis its commitment to all of its members and not simply its commitment to its leaders and the clergy.

5. Church attendance by the victims their families and other members of the faithful may decline.

6. Help must be given to priest-offenders to discern the nature of their commitment to the priesthood, the reasons for their choice of this vocation, their hopes and plans for the future and the real possibility that they are almost totally unfit to be priests.

7. Other priests and clerics who are not affected with sexual problems may perceive a severe hampering in their ability to minister, particularly to and with children. They might become very fearful of even touching children such as blessing them, making normal signs of affection etc.

8. In addition to the overall problem of the image of the Church as a haven for homosexuals and sexual perverts, the image of the priesthood is severely hampered and the faith of many in the priesthood is threatened by the fact of priests who are sex offenders as well as by the way the problems are handled or mishandled by Church authorities.

9. The victims and possibly even their families may develop unwarranted feelings of guilt because of the contact with priests. This can be complicated by an unwillingness to accept a priest as the minister of forgiveness and absolution with consequent inability

to alleviate the guilt feelings through the traditional channels of  
absolution.

PUBLIC RELATIONS CONSIDERATIONS

1. The necessity for careful consideration of this aspect of the problem is self-evident. The negative impact of widespread sexual abuse of children and involvement in other forms of illicit sexual activity by Catholic clergy and religious cannot be underestimated nor the full import be realistically assessed. One initial indicator is provided by the most recent attention given to the problem in the secular press as well as the National Catholic Reporter.
2. The first objective, of which one must never lose sight, is to maintain, preserve and seek to enhance the credibility of the Church as a Christian community. The Church should be presented as a sensitive, caring and responsible entity which gives unquestioned attention and concern to the victims of misconduct by priests. The Church should not be presented as or identified with only the hierarchy or the governing structures or the clergy. The P.R. approach can emphasize positive programs utilizing imaginative and creative thinking converting adversity to advantage.
3. A second objective of the media policy should be the public separation of the offender from the church authorities. In appropriate cases the offender must be made to accept the consequences of his actions and the public must be made to understand that the offender's acceptance of this respons-



ibility indicates that the church authorities could not have done anything to prevent the incident (in cases wherein this assertion is true). Separation does not mean that the church authorities abandon the offender. It means that his action will be portrayed not as an action of the church or an action even indifferently condoned by the Church but an action which the church views as profoundly unfortunate.

4. A third objective is to adopt a policy which in all cases will carefully control and monitor the tonal quality of all public statements made about particular cases or the general problem. This will include statements to and in the secular and Catholic press, letters of bishops to their clergy and faithful, remarks of Church authorities, pulpit announcements etc. All statements including written legal pleadings must be entirely consistent and aligned with the image of the Church in the minds of the general public, the Catholic community, jurors, judges, prosecutors and plaintiffs. The church cannot step out of character at any stage of the process through any action including the action of legal counsel.
5. The church must remain open and avoid the appearance of being under seige or drawn into battle. All tired and worn policies utilized by bureacracies must be avoided and

cliches such as "no comment" must be cast away. In this sophisticated society a media policy of silence implies either necessary secrecy or cover-up.

6. Policy analysts and media consultants can construct sound, specific targeted policies to be utilized in response to localized or regional publicity which may be adverse to the Church's best interests. Broad general policies of a national scope can be put in place. Most important, very specific thematic policies can be developed for each phase of a developing problem from its discovery to its conclusion.

PROJECT PROPOSAL

It is proposed that the appropriate body of the National Conference of Catholic Bishops authorize and fund the following described Project.

The Committee:

A Committee of the NCCB would be fully authorized and empowered to allocate authority and funding at its discretion, within pre-determined bounds, to a Group of four - five Bishops, holding degrees in Civil Law and/or Canon Law, to be named by the Committee. This Group of Bishops would be fully authorized, subject to the supervision of the Committee, to contract services of consultants and otherwise do any and all things necessary to conduct and carry out the mission of the Project, within the budget guidelines set in the grant of authority.

The Group of Four:

These Bishops would act immediately to contract the services of consultants in forming two distinct and separate entities:

(1) A Crisis Control Team, and (2) A Policy and Planning Group.

Thereafter, these Bishops would act as an Ad Hoc Committee of the Whole, in administering and supervising the efforts of the Team, which would primarily be concerned with assisting in developing cases in different Dioceses where requested, and the Group, which would be engaged in long term planning in an effort to put together competent and comprehensive policy recommendations to ultimately be considered by the Committee and in certain circumstances by the body of the National Conference of Catholic Bishops.

The Crisis Control Team:

Initially, the Crisis Control Team should include a full time Trial Lawyer with experience and expertise in the civil and criminal aspects of the problem. This Trial Lawyer shall close his practice and shall anchor both the Team and Group, which is more fully explained in the following material.

The second position on the Crisis Control Team shall be occupied by a Canon Lawyer, who shall give priority to duties with the Team.

The third position shall be filled by a Psychiatrist.

In time, this core group shall expand its personnel resources. However, this expansion shall not be rapid, as it is critical to maintain the level of expertise and experience specifically, and overall competence generally.

The expansion of resources shall ideally occur on a regional, geographic plane. An effort shall be made to recruit and work closely with others, giving them the benefit of the civil, criminal, canonical and clinical experience and expertise, so that they shall be equally suited to respond to a request for assistance.

All actions of this team are subject to the authority of the Group of Bishops which created the Team.

The Policy and Planning Group:

This Group would be made up of; the Group of Four Bishops, secondly, members of the Committee which created the Group of Bishops, and finally, the members of the Crisis Control Team.

In addition, it is contemplated that a wide array of consultants with expertise in different disciplines would be consulted to perform services for this Policy and Planning Group.

Thus, in addition to those listed in the preceding paragraph, the Group would also consist of, either temporarily or permanently, the following, non-exclusive listing of personnel:

\*Psychiatrists and Psychologists with expertise in evaluation and treatment of offenders as well as victims and their families.

\*Psychiatrists and Psychologists with expertise in screening, testing, and evaluating emotional stability and vocational suitability.

\*Directors of Seminaries and/or other similar Religious Houses of formation.

\*Consultants with expertise in Insurance Planning, Institution of Self Insured, single risk programs.

\*Policy Analysts with expertise in loss management.

\*Attorneys with expertise in Uniformity in Case Management in multiple jurisdictions.

\*Attorneys with specialized expertise in either narrow constitutional areas or broad based areas such as Federal Class Actions.

\*Representatives of Religious and Lay Medical Treatment Facilities.

\*Persons with expertise in area of Personnel, i.e. Religious Personnel Directors from Orders or the Personnel Directors of large, medium and small Dioceses.

\*A scholar in Canon Law to provide specific information required by Group.

\*Policy Analyst with expertise in media management, formulation, implementation, and administration of general media policy as well as a specific, targeted media policy designed to deal with a single issue.

An Administrative Assistant would work with both the Team and the Group to provide support services and facilitate the flow of information amongst the members.

## SCOPE OF SERVICES

### The Crisis Control Team:

First, the Team would not replace any individuals on either the national or local scene. Their function, where requested, would be to supplement the efforts of others and assist those who are presently positioned nationally and locally, and to devote their full time exclusively to the Project and problems encountered.

Second, their on-site involvement at a local level would only be in response to a request from a Bishop or Religious Ordinary to provide advice, assistance, guidance or active participation in the problem solving process.

Finally, a mechanism would immediately be put in place so that any Bishop or Religious Ordinary confronted with a problem would have knowledge of whom to contact for assistance. Once contacted the scope of services rendered would range to and include any of the following:

1. Perform legal and factual investigations on-site, with the cooperation and assistance of local parties, compile results and report assessment of the situation to the local Bishop, with recommendations if requested.
2. Arrange for and/or conduct evaluation of person accused and process person for treatment at appropriate facility.

3. Assist in satisfying any Canonical requirements as same may be scrutinized in Civil proceedings.
4. Assist in researching all applicable criminal and civil statutes with Diocesan Lawyer and gaining compliance with all.
5. Advise local parties, priests and psychiatrists in regard to drawing a plan for immediate intervention with families of victims with least possible negative fallout.
6. Where Civil litigation is probable, examine all evidence and assist in setting strategy which contemplates all possible courses. Particularly in these cases, force insurers to act immediately in appointing counsel and meet with insurers to explore settlement or set strategy.
7. Where Criminal action is contemplated, assist in interviewing and selecting Criminal counsel to be retained, seeking cooperation if feasible.
8. In all matters where court cases are anticipated, assist in drawing pleadings to protect the confidentiality of the process. In Criminal cases, such orders are recognized by the U.S. Supreme Court, silencing all participants and cutting off flow of information to press. In Civil cases, the efficacy of such a Court Order varies from one jurisdiction to another. However, such orders have been recognized to protect identity of juveniles.



9. In all such court cases, all uniform information and pleadings which are particularly important, such as suppressing or quashing subpoenas for Diocesan Records, all such information would be furnished to local counsel.
10. Where the press is already involved or it is anticipated they shall be involved, assistance would be rendered in formulating a media policy for every stage of the proceeding from discovery of the occurrence through settlement, judgment or conviction.
11. When requested, Team members would become active participants in the process locally. Particularly, the trial lawyer, if requested, would enroll as co-counsel and assist in the handling of the entire case, including preparation of witnesses, taking of testimony and conduct of trials.
12. In the interim, when not involved in assisting in the management of a crisis, the Team, among other things, would:
  - A. Coordinate and assume responsibility for searching out, interviewing, and recommending the retention of experts in other geographic regions in an effort to expand the resources of the Team.
  - B. Commence and complete a study of the available treatment facilities in each state, the statutory laws in each state relating to the situation, and all other

relevant data to be compiled and catalogued on a state by state basis.

- C. Commence and complete the compilation of all works of legal scholars and medical experts in the field, continuously adding to the data bank and refining the sample pleadings and other legal and medical advice to be offered.
- D. Continuously monitor those situations in which the Team has been invited to intervene, developing standard monitoring procedures to be utilized in tracking developments.
- E. The entire Team would remain responsive on a twenty-four hour basis, year around, to render assistance where requested.
- F. Work with the Policy and Planning Group.

The Policy and Planning Group:

There is no necessity for a detailed discussion of the scope of services to be provided by this Group. A perusal of the personnel who shall comprise the Group, coupled with an understanding of the nature of the problem is self-explanatory of their purpose. It is contemplated that very comprehensive and competent policies and procedures shall be produced by the Group for consideration by the Committee.

STRATEGY

In order to protect and provide a privilege to both the Team and the Group, it is contemplated that:

1. A base contract shall be executed between the Group of Four Bishops and the Trial Lawyer which, among other things, shall provide that (a) a client-counsel relationship exist between the Group of Four and the Lawyer, (b) between the National Conference of Catholic Bishops and the Lawyer, and (c) between each Diocese and the Lawyer.

This shall be done in an effort to avoid discovery of any information transmitted by any of the clients to counsel to any of the clients, providing as free a flow of information as possible without the discovery of plaintiffs or press.

2. All consultants who shall work on the Team or with the Group shall be retained under contract with the Trial Lawyer and not with anyone else. All of their fees and expenses shall be paid by the Trial Lawyer and the entirety of their work product shall be performed for him.

This is in an effort to legally shield from discovery all of the sensitive studies and other materials which might be generated during the existence of the Project.

3. The only official evidence that this Project was ever proposed or in fact exist, assuming each of these documents is returned without copying, would be the base contract between the Bishops and the lawyer which document by its very nature is private, privileged and may not be discovered.
4. In the confidential discussions mentioned hereinabove, it was the consensus that this work might best be performed by an Ad Hoc group in a method and manner whereby only the final product is officially provided to an existing Committee of the National Conference and in the interim, perhaps forever, subpoenas would be avoided.
5. It is the intention to locate this Team and center the Group in a large metropolitan area where required resources (university faculty, etc.) are readily available.

CONCLUSION

Though each case of felonious sexual misconduct is bound to be different with regard to circumstances, notoriety, possible liability, there is also a set of common threads which weave through all such cases. The very fact that these cases involve clerics of the Roman Catholic Church who have committed acts which are considered by society to be dispicable and heinous and which have received a very high decree of publicity in the media of late (not necessarily those cases involving priests but child molestation in general) makes it imperative that there be comprehensive planning and specialized strategy for handling all such occurrences among the clergy. There is simply too much at stake for the Church...its leaders, its clergy and its faithful...not to attempt to provide the best possible response to the overall crisis.

In their developmental stages these crises are so fluid and move so swiftly that it is impossible to contrive on-the-spot plans and strategies which will adequately anticipate most if not all of the adverse developments and complex considerations that arise. It is equally difficult to attempt to implement a plan put together by an unknown author, Frankly, when faced by these crises for the first time very few in authority know what to do. It often seems to those in charge that everything that might be done could well go wrong, so the temptation is to do nothing, which is worse than wrong.

It seems that the best approach which ensures affirmative and aggressive action is for an Ordinary facing such a crisis to have available to him the support, assistance, guidance and advice of personnel experienced in all aspects of the problem. A crisis con-

trol team, set to work with all aspects of the problem, can fill the need in providing immediate and short term solutions.

The long-term solutions to the problems in general; their causes and possible remedies, can effectively be addressed by a policy and planning group which can offer definitive consideration to all of the nuances and subtleties of these situations as well as the very obvious problems which have been discussed in this document. In short, there are several dimensions to the problem of multiple instances of sexual misconduct by Catholic clergy the most offensive type being molestation of children: the individual cases and the effects on clergy, victims, their families and the local church; the image of the Catholic clergy projected throughout the country and the world as a result of these cases; the determination of causes such as improper seminary screening etc.; the true clinical nature of certain of the actions, especially pedophilia. All of these dimensions demand a concentrated degree of attention by the Church for its own good in the short term and for the sake of its role in the wider society in the long term.

Those who drafted this document as well as those who have contributed to its content...all those whose thoughts are represented herein...have been directly involved, with various degrees of intensity, in each aspect of these problems. It is from this vantage point that this document is written.

The questions and considerations should provide not the answers to the problem but a source of valuable information for the Ordinaries of the country. This work has been undertaken in the hope of

contributing in some way to a solution in dealing with probably the single most serious and far reaching problem facing our Church today.

Respectfully submitted by

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