

2. I hold a Bachelor of Arts in Philosophy from the Aquinas Institute of Philosophy in River Forest City, Illinois granted in 1966. I hold an M.A. in Philosophy from the Aquinas Institute of Philosophy earned in 1968. In 1971 I received an M.A. in political science from the University of Wisconsin and another M.A. in theology from Aquinas Institute of Theology, Dubuque, Iowa. I hold a Master of Church Administration from Catholic University of America granted in 1976. In 1977 I received at M.A. in Canon Law from the University of Ottawa, Ottawa, Ontario. I have a Pontifical Licentiate in Canon Law from St. Paul University in Ottawa, Canada granted in 1977. I earned a Pontifical Doctorate in Canon Law from Catholic University of America granted in 1978. I am also a fully certified addictions counselor, having trained at the Naval School of Health Sciences in San Diego and the University of Oklahoma at Norman, Oklahoma.
3. I have held several part-time academic positions from 1974 through 1995. These have included Visiting Lecturer in Canon Law at Catholic Theological Union in Chicago, Illinois from 1979-1981; Visiting Lecturer in Canon Law, Catholic University of America, Washington, D.C. from 1981-1986; and faculty member, Midwestern Tribunal Institute, Mundelein Seminary, Mundelein, Illinois from 1979-1986. In addition, I have served as a part-time Tribunal Judge for the Diocese of Scranton, Pennsylvania from 1986-1990, for the Diocese of Pensacola/Tallahassee and the Archdiocese of Military Services from 1993-1995, and the Diocese of Lafayette in Indiana from 1991-1993.
4. I have extensive experience serving as Advocate, Defender of the Bond, and Tribunal Judge for Marriage Tribunals within the Catholic Church. Following my first assignment as a parochial assistant priest at St. Vincent Ferrer Parish in River Forest, Illinois, I became Advocate and Defender of the Bond in the Matrimonial Tribunal for the Archdiocese of Chicago. I held this position from 1974-1978. In 1978 I became Tribunal Judge in the Matrimonial Tribunal for the Archdiocese of Chicago. I held this assignment from 1978-1981. From 1986-1990 I served as Tribunal Judge and Special Assistant to the Archbishop, Archdiocese for Military Services, U.S.A.
5. In addition to teaching and administrative work, I have also written several books and articles on a variety of subjects related to Canon Law. Included are one book, several articles and contributions to books on subjects directly related to clergy sexual abuse. A complete list of my publications can be found in my curriculum vitae.
6. I continued to do parish work on weekends until I entered the military in 1986. I served as a reserve chaplain with several active duty assignments until 1990 when I became a full-time active duty officer and chaplain. I have held the following permanent assignments: 1990-1993, Grissom Air Force Base, Indiana; 1993-1995, Hurlburt Field, Florida; 1995-1997, Lajes Field, Azores; 1997-2001, Tinker Air Force Base, Oklahoma; 2001-2003, Ramstein Air Base, Germany; and 2003 to 2004, Seymour Johnson Air Force base, North Carolina. I have also been deployed to Operation Joint Forge, Operation Southern Watch and Operation Iraqi Freedom.

PROFESSIONAL EXPERIENCE IN CLERGY SEXUAL ABUSE CASES

7. From the fall of 1981-1986 I served as secretary and Canon Lawyer on the staff of the Vatican Embassy in Washington, D.C. During my tenure at the Vatican Embassy, accusations of child abuse by Catholic priests and bishops as well as members of religious communities of men and women were made against specific individuals and reported to the Vatican Embassy by the local bishops. In these cases I was given responsibility for preparing files, following-up on correspondence and preparing responses to letters received by the Vatican Ambassador. I have had direct involvement in clergy sexual abuse cases since the fall of 1982.
8. My major involvement in clergy sexual abuse cases began in June 1984 concerning the Diocese of Lafayette, Louisiana where Fr. Gilbert Gauthier had been accused of sexually abusing a number of minor boys. The publicity generated from this case involving minor victims had also provoked revelations of widespread clergy sexual abuse in several other Catholic dioceses. As the situation became public, additional similar incidents around the United States were brought to the Vatican Embassy's attention.
9. I have testified as an expert witness and consultant in clergy sexual abuse cases since 1988 and have studied documentation in cases of approximately 190 of the 195 Catholic dioceses in the United States. In the course of this work, I have reviewed more than 1,500 priest personnel files. I have been qualified as an expert witness and/or consultant on clergy sex abuse cases for more than eighteen (18) years involving several hundred separate cases in the United States, Canada, the U.K., Ireland, New Zealand, Australia and Israel. I have appeared before the legislatures of the States of Pennsylvania, Ohio, Illinois, Colorado, California, Delaware, Maryland and the District of Columbia to testify relative to child protective legislation including matters related to child abuse, clergy reporting statutes and statutes of limitations. I have also appeared before or consulted with several grand juries in the United States.
10. I have worked extensively with clergy sexual abuse victims of both sexes ranging in age from nine to 92 years of age. I have provided pastoral care to their families, including parents, spouses and children. I have also worked as a canonical consultant with dioceses and Religious Orders, giving presentations and lectures and developing policies and procedures in this area as well as assisting numerous dioceses in the United States and abroad in compiling similar policies and procedures. I have given workshops to various dioceses around the country on the issue of clerical sexual misconduct against minors. I have lectured extensively and published articles on issues related to sexual abuse by clerics and religious brothers. In addition to working with victims of sex abuse, I have also worked since 1984 with accused clerics as a canonical advocate and advisor and as a pastoral support person.

11. In preparation for this affidavit, I have reviewed extensive files provided by the Oblates of Mary Immaculate. I have reviewed the Plaintiff's Third Amended Petition. I have also reviewed depositions from the following people: Rycke Marshall, Bishop Michael Pfeifer, Gerry Weber, OMI, Thomas Ovalle, OMI, Betty Swinners and Benita Reina Swinners, Maria Rodriguez and Antonio Gonzales.

HISTORICAL BACKGROUND OF CHURCH AWARENESS OF SEXUAL ABUSE

12. In his deposition given in this case, Bishop Michael Pfeifer, now bishop of San Angelo but at one time provincial superior of the Oblates, refers several times to his opinion that Church officials lacked sufficient knowledge about clergy sexual abuse at the time the decisions were made, or not made, concerning the assignments given to Anthony Gonzales. Consequently, I believe it is important to present some information on the documented historical background of the institutional Catholic Church's involvement with sexual abuse by its clergy.
13. The Catholic Church was officially recognized as the state religion by Emperor Constantine in the early 4th century. With this recognition the religious leaders, soon to be known as the "clergy," gradually evolved into a separate, privileged class, the most exalted members of which were the bishops. Although celibacy did not become a universally mandated state for clerics of the western Church until the 12th century (2nd Lateran Council, 1139), various church leaders began to advocate it by the 4th century. The earliest recorded church legislation is from the council of Elvira (Spain, 306 AD). Half of the canons passed dealt with sexual behavior of one kind or another and included penalties assessed for clerics who committed adultery or fornication or who had sex with minors. Though it did not make specific mention of homosexual activities by the clergy, this early Council reflected the church's official attitude toward same-sex relationships: men who had sex with young boys were deprived of communion even on their deathbed.¹
14. Other gatherings of bishops throughout the Christian world, which encompassed what is now Western Europe, Northern Africa, the Middle East and the British Isles, passed laws attempting to stamp out clerical concubinage, clerical fornication and homosexual activity with minor boys.
15. The Catholic Church is organized in geographic regions known as dioceses, from a Greek word meaning a "group." The term was common from the 4th century. The head of a diocese has traditionally been a bishop. Early church legislation was passed by individual bishops for their own territory but the more important legislation with lasting historical impact was that passed by groups of bishops who gathered at periodic meetings

¹ John Boswell, Christianity, Social Tolerance and Homosexuality (Chicago: University of Chicago Press, 1980), p. 42.

known as *councils* or *synods* which were generally named after the place where they occurred. Laws were passed throughout the Christian world forbidding illicit sexual activity by the clergy. These laws, whether the product of individual bishops or groups, did not need the approval of the papacy.

16. By the 9th century collections of the growing mass of legislation began to appear. These were unofficial and generally poorly organized attempts at putting at least some of the known legislation in the same place. Several of the more prominent and complete collections have survived as essential sources for the study of the development not only of church law but of the Christian life in general. The first truly systematic collection was produced by the monk Gratian in 1140. Known as the *Concordance of Discordant Canons* or more commonly as *Gratian's Decree*, it consisted of a wide spectrum of texts arranged in a dialectic method with Gratian's own opinions added. Though never officially approved, Gratian's decree became the most important resource for the history of Canon Law. Following the medieval period, the major legislative sources were the popes themselves and the general or ecumenical councils, the most recent of which was Vatican II (1962-65).
17. The practice of individual confession of sins to a priest started in the Irish monasteries in the late sixth century. With individual confession came the *Penitential Books*, another valuable source for church history. These were unofficial manuals drawn up by various monks to assist in their private counseling with penitents in confession. These books listed the various and sundry acts which the church considered sinful and provided guidance on the acceptable penance to be imposed. The *Penitentials* provide a vivid glimpse into the darker side of Christian life at the time. Though it is not known exactly how many such books were written, the more prominent ones have been preserved, studied and translated.
18. Several of the *Penitentials* refer to sexual crimes committed by clerics against young boys and girls. The *Penitential of Bede* (England, 8th century) advises that clerics who committed sodomy with young boys be given increasingly severe penances commensurate with their rank, the higher ranking (bishops) receiving harsher penalties. The regularity with which mention is made of clergy sex crimes shows that the problem was not isolated, was known in the community and was treated more severely than similar acts committed by lay men. The *Penitential Books* were in use from the mid 6th century to the mid 12th century.²
19. The most dramatic and explicit condemnation of forbidden clergy sexual activity was the *Book of Gomorrah* of St. Peter Damian, completed in 1051.³ The author had been a

² See Pierre Payer, *Sex and the Penitentials* (Toronto: University of Toronto Press, 1984).

³ Pierre J. Payer, "Introduction" to *The Book of Gomorrah* (Waterloo, Ontario, Wilfred Laurier University Press, 1982), p. 5. "*The Book of Gomorrah stands out as a carefully planned and*

Benedictine monk and was appointed archbishop and later cardinal by the reigning pope. Peter Damian was also a dedicated Church reformer who lived in a society wherein clerical decadence was not only widespread and publicly known, but generally accepted as the norm.⁴ His work, the circumstances that prompted it and the reaction of the reigning pope (Leo IX) are a prophetic reflection of the contemporary situation.

20. Peter Damian begins by singling out superiors who, prompted by excessive and misplaced piety, failed to exclude sodomites (chap. 2). He asserts that those given to “unclean acts” not be ordained or, if they are already ordained, be dismissed from Holy Orders (chap. 3). He holds special contempt for those who defile men or boys who come to them for confession (chap. 6). Likewise he condemns clerics who administer the sacrament of penance (confession) to their victims (chap. 7). The author also provides a refutation of the canonical sources used by offending clerics to justify their proclivities (chap. 11, 12). He also provides chapters which assess the damage done to the church by offending clerics (chap. 19, 20, 21). His final chapter is an appeal to the reigning pope (Leo IX) to take action.
21. The pope’s response, included in the cited edition, is an example of inaction similar to that of contemporary church leaders. Pope Leo praised Peter Damian and verified the truth of his findings and recommendations. Yet he considerably softened the reformer’s urging that decisive action be taken to root offenders from the ranks of the clergy. The pope decided to exclude only those who had offended repeatedly and over a long period of time. Although Peter Damian had paid significant attention to the impact of the offending clerics on their victims, the Pope made no mention of this but focused only on the sinfulness of the clerics and their need to repent.⁵
22. The repeated violations of clerical celibacy were amply documented in the canonical collections of the medieval period. The most authoritative source is the *Decree of Gratian* already mentioned. Though mandatory celibacy had been decreed by the 2nd Lateran Council in 1139, this law was received with neither universal acceptance nor obedience. Medieval scholars attest that clerical concubinage was commonplace. Adultery, casual sex with unmarried women and homosexual relationships were rampant. Gratian devoted entire sections to disciplinary legislation which attempted to curb all of these vices. He demanded that the punishment for sexual transgressions be more severe for clerics than for lay men. His treatment of same-sex activities was less extensive than that of other celibacy violations, yet his attitude is evident because he cited the ancient

eloquently executed discussion of the subject reflecting both a legalistic concern with correct ecclesiastical censure and a passionate pastoral concern for those caught up in the behavior.’

⁴ John Boswell, op. cit., p. 187: “*There is in fact a considerable body of evidence to suggest that homosexual relations were especially associated with the clergy. Some Christian authors have rather defensively rejected this idea but with little supporting documentation.*”

⁵ Vern Bullough, Sexual Practices and the Medieval Church, p. 61.

Roman law opinion that *stuprum pueri*, the sexual violation of young boys, be punished by death.⁶

23. From the 4th century to the end of the medieval period it is clear that violations of clerical celibacy were commonplace, expected by the laity and highly resistant to official disciplinary attempts to curb and eliminate them. Referring to concubinage for example, one noted scholar said:

*From the repeated strictures against clerical incontinence by provincial synods of the twelfth and thirteenth centuries, one may surmise that celibacy remained a remote and only defectively realized ideal in the Latin West. In England, particularly in the north, concubinage continued to be customary; it was frequent in France, Spain and Norway.*⁷

24. Clerical sodomy continued to be a known problem though it did not attract as much legislative attention as clerical concubinage, quite possibly because of the ongoing attempts to eliminate clergy marriages. The 4th Lateran Council (1215) repeated the previous council's condemnation of celibacy violations. It added, however, a specific mention of homosexual sex by clerics and decreed that those found guilty of this transgression were either to be dismissed from the clerical state or confined to a monastery for life. The former amounted to social exile and the latter to imprisonment.⁸
25. The documentation from the medieval period indicates that although homosexual liaisons were not uncommon among the secular or diocesan clergy, most celibacy violations involved heterosexual forms of abuse. Illicit sexual activity by monks was another matter. Although concubinage and even illicit marriages occurred among the monks, the fact that they took vows of chastity precluding marriage and lived a common life theoretically isolated from women meant that their sexual outlets would be considerably restricted. The monks became known for the frequency of homosexual activity especially with young boys. Many monasteries passed local regulations in attempts to curb the rampant abuses. In his Rule, Benedict commanded that no two monks were to sleep in the same bed. Night lights were to be kept burning and the monks were to sleep clothed. Many monasteries enacted their own rules forbidding various kinds of sexual behavior and added punishments that were often more severe than those meted out to the secular

⁶ Decree of Gratian, D. 1, de pen., c.15 in Decretum Magistri Gratiani, editio Lipsiensis Secunda, editor, A.L. Richter,(Graz, Friedberg, 1879, 1959). (The manner of citing Gratian is unique. The citations here noted refer to the first part of the Decretum, and each number refers to a section known as a distinctio.)

⁷ John Lynch, "Marriage and celibacy of the clergy: the discipline of the western church: an historico-canonical synopsis," Jurist 32(1972): 199-200.

⁸ Canon 11, 3rd Lateran Council in H.J. Schroeder, editor, Disciplinary Decrees of the General Councils, (St. Louis, B. Herder Book Co. 1937) , p. 224.

clerics.⁹ So common was clerical same-sex activity that some scholars have concluded that homosexual relationships were commonly associated with the clergy.¹⁰

26. There are two aspects of the ecclesiastical legislation and overall attitude toward clerical sexual activity that stand in marked contrast to the contemporary period. The first is the documented fact that in addition to a stringent admonition by Peter Damian in the *Book of Gomorrah*, at least two general or ecumenical councils took direct aim at church leaders who supported errant clerics by their failure to take decisive action.¹¹ The 4th Lateran Council (1215) and the Council of Basle (1449) both recognized the fact that curbing the vices depended on cooperative superiors. The canon from the Lateran Council is succinct:

*Prelates who dare support such in their iniquities, especially in view of money or other temporal advantages, shall be subject to a like punishment.*¹²

27. The other unique feature of this period is the collaboration of the church with secular authorities in the enforcement of ecclesiastical laws. The Catholic Church was the only Christian denomination and the dominant social force in the medieval period. Separation of church and state was unheard of, which meant that the boundaries between secular and religious were often blurred. Church authorities considered celibacy violations to be more than a purely religious matter. They caused some degree of scandal and therefore were a matter of public interest. To enhance the opprobrium, the church often tried accused clerics in the ecclesiastical tribunals and then turned them over to secular authorities for additional prosecution and punishment. Penalties were harsh and sometimes included execution.¹³

⁹ John Boswell, Christianity, Social Tolerance and Homosexuality, (Chicago, University of Chicago Press, 1980), p. 188.

¹⁰ Michael Goodich, "Sodomy in Ecclesiastical Law and Theory," in Journal of Homosexuality 1(1976), p. 427: "*in the 13th century, the few references to homosexuality suggest that it was generally regarded as a clerical vice. Both the manuals of penance of the early Middle Ages and the conciliar and synodal legislation initiated in the 12th century placed greater emphasis upon the prevention and suppression of sodomy among the clergy.*"

¹¹ See Peter Damian, Book of Gomorrah, chapter 2, p. 30: "*And some rectors of churches who are perhaps more humane in regard to this vice than is expedient absolutely decree that no one ought to be deposed from his order on account of three of the grades which were enumerated above....Consequently when someone is known to have fallen into this wickedness with eight or even ten other equally sordid men, we see him still remaining in his ecclesiastical position. Surely this impious piety does not cut off the wound but adds fuel to the fire. It does not prevent the bitterness of this illicit act when committed, but rather makes way for it to be committed freely.*"

¹² Schroeder, Disciplinary Decrees of the General Councils, p. 256.

¹³ See Richard Sherr, "A Canon, A Choirboy and Homosexuality in Late 16th Century

28. No prior reform movement in the Catholic Church had an impact equal the 16th century Protestant Reformation. The reformers were concerned about a number of problems they saw with the Catholic Church, sexual abuses among them:

*The sexual habits of the Roman Catholic clergy, according to reformers, were a sewer of iniquity, a scandal to the laity, and a threat of damnation to the clergy themselves.*¹⁴

29. In spite of attempts to propagate revisionist versions of the Reformation, the Church's primary reaction, the ecumenical Council of Trent (1545-1563), was itself proof of the deeply entrenched and wide-ranging corruption in the Church. Secular princes had urged a reforming council but the popes resisted until 1545 when Pope Paul III summoned one to be held in the Italian city of Trento.¹⁵ The council met in 25 sessions with several periods of adjournment. It ended in 1563 after session 25 when most of the major reforms were enacted.

30. The reaffirmation of clerical celibacy did not conclude without strong opposition from a significant number of bishops who argued that mandatory celibacy was simply not working and accomplished no more than denying priests' "wives" and children a share in their estates.¹⁶ A canon was proposed which would have permitted marriage for clergy but this was rejected and mandatory celibacy re-enforced. The canon upholding celibacy was followed by one which extolled it as superior to marriage:

*If anyone says that the married state excels the state of virginity or celibacy, and that it is better and happier to be united in matrimony than to remain in virginity or celibacy, let him be anathema.*¹⁷

31. In spite of the reforming legislation and the establishment of mandatory seminary training, education and formation for priests, the bishops at Trent were no more successful at curbing celibacy violations than their predecessors. Illicit sex with women, men and young boys continued but for a time were much less obvious. By 1566, in the first year of his pontificate, Pope Pius V (1566-72) recognized a need to publicly attack

Italy: A Case Study," in Journal of Homosexuality 21(1991), p. 1-22. This is an interesting story of a priest accused of sodomizing a 13 year old choirboy in the town of Loreto. The priest was tried by the church court, defrocked and then turned over to civil authorities who sentenced him to death by de-capitation. The victim was whipped and banned from the papal states.

¹⁴ Ibid., p. 554.

¹⁵ See Cross and Livingstone, op. cit., p. 1050. Pope Paul III himself had three sons and a daughter yet promoted the reform.

¹⁶ Brundage, Law, Sex and Christian Society, p. 568.

¹⁷ Canon 10, Session XXIV in H.J. Schroeder, editor, The Canons and Decrees of the Council of Trent, (St. Louis, B. Herder, 1941), p. 182.

clerical sodomy. The constitution *Romani Pontifices* promulgated legislation against a variety of actions and practices, including the ‘crime against nature.’ This short canon condemned all who committed this crime and prescribed that they be handed over to secular authorities for punishment. Clerics, however, were to be first degraded, presumably by an ecclesiastical court, and then handed over to secular authorities.¹⁸

32. Two years later the same pope apparently found it necessary to issue another condemnation of clerical sodomy. The constitution *Horrendum* specifically named clerics who committed “the sin against nature which incurred God’s wrath” (“*quae contra naturam est, propter quam ira Dei venit in filios diffidentiae.*”) and stipulated that they be punished with deprivation of income, suspension from all offices and dignities and in some cases, degradation.¹⁹
33. Summarizing the medieval period, it is clear that the bishops were not as preoccupied with secrecy as they are today. Clergy sexual abuse of all kinds was apparently well known by the public, the clergy and secular law enforcement authorities. There was a constant stream of disciplinary legislation from the church but none of it was successful in changing clergy behavior. In spite of a millennium of failure, the popes and bishops never gave serious thought to the viability of mandatory celibacy. The variety of spiritual punishments was joined, in the later period, with severe corporal penalties, inflicted by secular authorities. Finally, and most important, at certain periods, church authorities recognized that the problem was not only dysfunctional clerics, but irresponsible leadership.

SOLICITATION IN THE CONFESSIONAL

34. Individual confession of sins by a Catholic to a priest began in the 6th century. Annual confession became mandatory with the Council of Trent. Also, the spirituality of the time prompted many people to go to confession regularly. For some this meant weekly or even daily. By the 17th century the papacy recognized that some priests were using the sacrament of Penance, commonly known as confession, as a way to solicit sex from penitents. The Pope and various regional bishops issued a series of disciplinary laws against solicitation, beginning in 1561 and extending to 2001. Papal laws were promulgated in 1561, 1622, 1741, 1917, 1922, 1962, 1983 and 2001.
35. In addition to the legislation itself, the church courts prosecuted individual cases in great numbers. The most complete records have been found in the Spanish and Mexican

¹⁸ Pope Pius V, “*Romani Pontifices*, 1 April 1566, in P. Gasparri, editor, Codicem Iuris Canonici Fontes , Vol. 1, (Vatican, Typis Polyglottis, 1926), p. 200 (Hereinafter identified as Fontes.)

¹⁹ Pope Pius V, “*Horrendum*,” Papal Constitution, 30 August 1568 in Fontes p. 229.

tribunals and reveal a shockingly high volume of complaints from women and men, accusing priests of solicitation and sexual abuse in a variety of forms. The most complete study of cases from the Spanish tribunals revealed that between 1723 and 1820, 3775 cases were completed and sentences handed down. The author concluded that this number represents a small portion of the actual cases in that it reflects only those completed and not the total number started and later abandoned.²⁰

36. Clergy sexual abuse has been enshrouded in a culture of deep secrecy since the mid-nineteenth century and possibly earlier. It appears that the *obligation* of secrecy concerning clergy sexual abuse cases was imposed by Pope Pius IX in 1866. The official document that imposes the secrecy was published on February 20, 1866 by the Sacred Congregation of the Holy Office in the form of an “Instruction”. This instruction provided clarification on certain aspects of the previous papal constitution dealing with solicitation in the confessional, *Sacramentum Poenitentiae* (1741) of Pope Benedict XIV. The actual text is as follows:

*Par.14. In handling these cases, either by Apostolic commission or the appropriate ruling of the Bishops, the greatest care and vigilance must be exercised so that these procedures, inasmuch as they pertain to [matters of] faith, are to be completed in absolute secrecy, and after they have been settled and given over to sentencing, are to be completely suppressed by perpetual silence. All the ecclesiastic ministers of the curia [court], and whoever else is summoned to the proceedings, including counsels for the defense, must submit oaths of maintaining secrecy, and even the Bishops themselves and any of the local Ordinaries are obligated to keep the secret.*²¹

37. After the promulgation of the Code of Canon Law in 1917, the Vatican issued special legislation in 1922 on procedures to be followed in solicitation cases. This document was sent to the world’s bishops but otherwise retained in total secrecy. Unlike previous special legislation aimed at curbing solicitation for sex in the confessional which was public, this document was never publicly promulgated. It contained procedures to be followed in the prosecution of cases of solicitation for sex by a cleric. In issuing the document, the Vatican stipulated that it was to remain strictly confidential. It was not to be openly published or commented upon. No explicit reason was given for this unusual secrecy nor is any justification given for the document or some of the surprising changes contained therein.
38. The 1922 procedural norms, sent by the Vatican to every bishop in the world, introduced several significant elements, including an exceptional degree of confidentiality imposed on the document itself and the persons involved in processing cases. Compared to

²⁰ Charles Henry, A History of the Inquisition in Spain.(New York, MacMillan, 1907), p. 135.

²¹ Codicis Iuris Canonici Fontes, Rome, 1926, vol. IV, n. 990, p. 267.

previous papal documentation confronting clergy sexual abuse, this document contains several significant changes which reveal the church's policy on clergy sexual crimes. Though circulated to all bishops in the world, the document has been retained with a high degree of secrecy since its promulgation.

- a. Jurisdiction: Local ordinaries (bishops and heads of religious orders) have the right to process cases included in this document. However, they retain the option of sending such cases to the Vatican's Congregation of the Holy Office for prosecution.
 - b. Secrecy-officials: Tribunal and other church personnel who are involved in processing cases are obliged to maintain total and perpetual secrecy and are bound by the church's highest degree of confidentiality, known as the Secret of the Holy Office. Those who violate this secrecy are automatically excommunicated and the absolution or lifting of this excommunication is reserved to the pope himself.
 - c. Secrecy-parties and witnesses: Even the accuser and witnesses are obliged to take the oath of secrecy. The penalty of automatic excommunication is not attached to the violation of the oath. However the official conducting the prosecution can, in individual cases, threaten accusers and witnesses with automatic excommunication for breaking the secret.
 - d. Anonymous denunciations. Anonymous accusations are not automatically ruled out though they are generally to be rejected. They are to be considered and acted upon if circumstances require and if there appears to be some semblance of veracity to the accusation.
 - e. Other sex crimes. Title V of the document specifically included homosexual acts between clerics and members of their own sex, bestiality and sexual acts of any kind with children. The document uses the Latin word "impuberibus," which means "before the age of reason." This is defined in canon 88 as one who is seven or under. The Code also contains a canon prohibiting sex with minors which is defined in canon law as one sixteen or under. A careful reading of the relevant paragraphs of the 1962 document (par. 71-73) leads to some confusion as to whom the crimes apply to. It is clear that sex with children is included and sex with males of any age, as well as sex with animals. The only category of possible victims that is unclear is sex with young girls.
39. In 1962 Pope John XXIII approved the publication of renewed special procedural norms for processing solicitation cases. Like the 1922 document, this document was buried in the deepest secrecy. Although it was promulgated in the ordinary manner and then printed and distributed by the Vatican press, it was never publicized in the official Vatican legal bulletin, the Acta Apostolicae Sedis.²² The document was sent to all

²² Acta Apostolicae Sedis or Acts of the Apostolic See is the official periodical that contains Vatican legislation. Canon 9 of the 1917 Code states that official publication takes place through the Acta.

bishops in the world as well as to the superiors of religious orders of men.

40. The other sex crimes included under Title V are not crimes connected with solicitation but the actual sexual abuse itself. These are to be processed in the same manner as crimes of solicitation. Thus, the three classes of clergy sexual abuse were cloaked in the highest degree of secrecy. Little was known about either the 1922 or 1962 documents until reference to the 1962 document, commonly known by its Latin name *Crimen sollicitationis*, was included in a 2001 Letter sent to all bishops from the Congregation for the Doctrine of the Faith on more grave crimes reserved for consideration to that same Vatican office.²³
41. The 1962 document was issued prior to the promulgation of the revised Code of Canon law in 1983 and therefore would, under ordinary circumstances, have lost its legal force. The recent letter however clearly indicates that it had been in force until May of 2001.
42. The 1922 and 1962 documents are significant because they reflect the institutional church's urgent desire to maintain the highest degree of secrecy and strictest degree of security about sexual crimes perpetrated by clerics.
43. The public exposure of clergy sexual abuse of youth which began in the mid-eighties was misrepresented by some and mistakenly believed by many to be a new phenomenon which of course it is not. In spite of a series of high profile cases from around the world, the Vatican issued no disciplinary documents until 2001. Although the Pope John Paul II had made eleven public statements about clergy sexual abuse between 1993 and 2004, this was the first attempt by the Vatican to take concrete steps to contain the problem. The document, which is a set of special procedural norms, is not exclusively about sex abuse although that is the predominant theme. It is about the processing of certain crimes considered by the Vatican authorities to be so serious that prosecution of them is reserved to the Vatican itself.
44. The 2001 document reflects much that is found in the 1962 procedural norms. There are significant developments however:
 - a. The bishop or other superior is obliged to send the results of the preliminary investigation of an allegation of sexual abuse to the Vatican congregation. The officials there decide if the case will be processed in the Vatican or returned to the local diocese for prosecution.
 - b. The canonical age of a minor was raised from 16 to 18.
 - c. The statute of limitations was extended to 10 years. In the case of sexual abuse of a minor, this time begins to run from the victim's 18th birthday.

²³ "Sacramentorum Sanctitatis Tutela," May 18, 2001, Congregation for the Doctrine of the Faith, in Acta Apostolicae Sedis, 93(2001), p. 785-788.

- d. All officials involved in processing cases must be priests.
- e. Files of cases completed on the local levels are to be sent to the Vatican for retention.
- f. The Pontifical Secret, formerly known as the Secret of the Holy Office, is imposed on all officials connected to any cases. No mention is made of imposing the secret on accusers or witnesses.

There is no mention of reporting such cases to civil authorities.

- 45. Clergy sexual abuse was unknown by the vast majority of Catholics and the general public until a series of revelations took place beginning in 1984 in the United States and in 1988 in Newfoundland in Canada.²⁴ The culture of secrecy was enabled by the official policy of the Vatican which imposed the highest degree of confidentiality on processing cases of clergy sexual abuse.
- 46. The Contemporary Era. In our contemporary era popes and bishops have been aware of clergy sexual abuse even though the general public has not been aware of this dimension of church life. The revelation of 1984 in the U.S., 1988 in Canada and later 2002 in the U.S. marked the public awareness of a problem Church officials had been aware of for decades. Although the first public cases were in the United States and soon after in Canada, it is erroneous to assume that this is a North American problem or a problem restricted to English-speaking countries. Child and adolescent sexual abuse is a problem that crosses ethnic and cultural boundaries. A major difference is not in the existence of the problem but in the manner with which different cultures respond to it.
- 47. In 1946 Fr. Gerald Fitzgerald, a U.S. priest, founded a small religious community known as the *Servants of the Paraclete*. The community was started in the archdiocese of Santa Fe, New Mexico and in time had treatment facilities in a number of States and in several foreign countries. The mission of the community was to provide assistance to troubled priests with addiction problems, psychological problems and psycho-sexual problems. From the very beginning the Paraclete Fathers were confronted with clergy who had sexually abused young people. Fr. Gerald believed that such men could neither be cured nor controlled and therefore should not be allowed to function as priests. He argued that they should be laicized, even against their will, as this would be for the benefit of the church community. He made his thoughts known in letters to various bishops as well as in reports to the Vatican.

²⁴ In the U.S. the cases involving Fr. Gilbert Gauthe became public knowledge in 1984. In Canada the major revelations began with the Mt. Cashel scandal, which became public in 1988.

48. The following is a chronological listing of some of Fr. Gerald's letters:

1952: To Bishop Robert Dwyer of Reno, Nevada about priests afflicted with sexual disorders that cause them to abuse young boys. This letter indicates that Fr. Fitzgerald had already treated a "handful" of men charged with such abuse. He shared his recommendation that such men be laicized since they would never be free of the temptation to act out. This letter is remarkable in that it clearly assesses both the disorder and the risks. He warns against the very solutions that many bishops resorted to in the ensuing years: *"Hence, leaving them on duty or wandering from diocese to diocese is contributing to scandal or at least to the approximate danger of scandal."* Fr. Fitzgerald's efforts at helping troubled priests were unique and quickly became known to all US bishops. It is safe to assume that his opinions about sexually abusing priests were known to most if not all bishops. Concerning priests who sexually abused minors he said: *"We find it quite common, almost universal with the handful of men we have seen in the past five years who have been under similar charges - we find it quite universal that they seem to be lacking in appreciation of the serious situation. As a class they expect to bound back like tennis balls on the court of priestly activity. I myself would be inclined to favor laicization for any priest, upon objective evidence, for tampering with the virtue of the young, my argument being, from this point onward the charity to the Mystical Body should take precedence over charity to the individual and when a man has so far fallen away from the purpose of the priesthood the very best that should be offered him is his Mass in the seclusion of a monastery. Moreover, in practice, real conversions will be found to be extremely rare. Many bishops believe men are never free from the approximate danger once they have begun. Hence, leaving them on duty or wandering from diocese to diocese is contributing to scandal or at least to the approximate danger of scandal."* (See Fitzgerald Letter, dated Sept. 12, 1952,)

1957: To Bishop Matthew Brady of Manchester, New Hampshire on September 26, 1957: *'From our long experience with characters of this type, and without passing judgment on the individual, most of these men would be clinically classified as schizophrenic. Their repentance and amendment are superficial and, if not formally at least subconsciously, is motivated by desire to be again in a position where they can continue their wonted activity. A new diocese means only green pastures.'*

1957: To Archbishop Edwin Byrne of Santa Fe, New Mexico: he thought it unwise to "offer hospitality to men who have seduced or attempted to seduce little boys or girls." He went on to utter an eerie prophecy of the future: *"If I were a bishop, I would tremble when I failed to report them to Rome for involuntary laicization. Experience has taught us these men are too dangerous to the children of the parish and the neighborhood for us to be justified in receiving them here....They*

*should ipso facto be reduced to lay men when they act thus.*²⁵

- 1960:** In a letter to the superior of a religious order, Fr. wrote: *“Father, in God’s name, get this man laicized as quickly as possible. This extreme type will never be converted...Men who sin with little children certainly fall under the classification of those who it were better had they not been born.* (Aug. 11, 1960)
- 1961:** To Bishop Ernest Primeau of Manchester, New Hampshire, who was attending the Vatican Council, he urged involuntary laicization for priests with sexual problems: *I am in hopes that this matter will be given serious consideration by the proper committee in the Ecumenical Council. My argument would run like this: obviously this priest has not the capacity for priestly chastity. Therefore not because he wishes it but to protect the good name of the Church, he should be reduced involuntarily to the lay state.* (June 30, 1961).
- 1962:** Fr. Gerald had been in communication with the Congregation of the Holy Office, now known as the Congregation for the Doctrine of the Faith. At the request of the prefect, Cardinal Alfredo Ottaviani, he prepared a report dated April 11, 1962. In this report he discussed the various types of sexual problems of priests, including sexual abuse of minors: *“On the other hand, where a priest for many years has fallen into repeated sins which are considered, generally speaking, as abnormal (abuse of nature) such as homosexuality and most especially the abuse of children, we feel strongly that such unfortunate priests should be given the alternative of a retired life within the protection of monastery walls or complete laicization.”*
- 1963:** Fr. Fitzgerald addressed a letter to Bishop Vincent Hines of Norwich, Connecticut concerning a priest in his care. He said in reference to bishops who have allowed sexually abusive priests to continue in ministry: *“Personally I would want to spend the rest of my life on my knees asking God’s mercy, for I know no more terrible threat than the words of Our Lord: ‘those who tamper with the innocence of the innocents - it were better if they had never been born.’”* (May 7, 1963.)
- 1963:** **Fr. Gerald had a private audience with Pope Paul VI (1963-1978) and on August 27, 1963 submitted a report to the pope at the pope’s request.** Concerning priests who sexually abuse minors he said to the pope: *“Problems that arise from abnormal, homosexual tendencies are going to call for, not only spiritual, but understanding psychiatric counseling. Personally I am not sanguine of the return of priests to active duty who have been addicted to abnormal*

²⁵ Jason Berry, Vows of Silence (New York: The Free Press, 2004), p. 97-98 citing Eileen Welsome, “Founder Didn’t Want Molesters at Paraclete,” Albuquerque Tribune, April 2, 1993.

practices, especially sins with the young....Where there is indication of incorrigibility, because of the tremendous scandal given, I would most earnestly recommend total laicization.”

1964: In 1964 Fr. Fitzgerald wrote to Bishop Joseph Durick of Nashville, Tennessee, who was attending the Vatican Council at the time. Fr. Gerald was trying to alert the Vatican authorities and the Council itself about the problem of sexually abusive priests. In this letter he draws attention to the growing numbers of such problems: *“May I take this occasion to bring to your attention what is a growing concern to many of us here in the States. When I was ordained, forty three years ago, homosexuality was a practically unknown rarity. Today it is rampant among men. And whereas seventeen years ago eight out of ten problems here [at the Paraclete facility, Via Coeli] would represent the alcoholic, now in the last year or so our admission ratio would be approximately 5-2-3: five being alcoholic, two would be what we call “heart cases” (natural affection towards women) and three representing aberrations involving homosexuality. More alarming still is that among these of the 3 out of 10 class, 2 out of 3 have been young priests.”*²⁶

49. Fr. Gerald retained his opposition to providing hospitality and help to priests who sexually abused minors. Although the documentation clearly points to the fact that he attempted to treat such priests sent by bishops, he also continued his search for a solution to these problems. In addition to his constant commitment to laicization, even if against the priest’s will, he also had a plan to set up a retreat on a remote island in the Caribbean in which he would house such priests for the remainder of their lives. He mentions this idea in a letter written in 1957 to Archbishop Byrne, his ecclesiastical sponsor and co-founder of the Paracletes:

*“May I beg your Excellency to concur and approve of what I consider a very vital decision on our part - that we will not offer hospitality to men who have seduced or attempted to seduce little boys or girls. These men Your Excellency are devils and the wrath of God is upon them and if I were a bishops I would tremble when I failed to report them to Rome for involuntary laicization....It is for this class of rattlesnake I have always wished the island retreat - but even an island is too good for these vipers of whom the Gentle master said - it were better they had not been born - this is an indirect way of saying damned, is it not? When I see the Holy Father I am going to speak of this class to his Holiness.”*²⁷

²⁶ At that time it was common among Catholic churchmen to use the term “homosexuality” to refer to the condition of priests who sexually abused young boys. The cases Fr. Gerald refers to all constitute sex between priests and minors.

²⁷ Fr. Gerald actually proceeded with concrete plans to purchase an island in the British Virgin Islands. Financial difficulties prompted Archbishop Davis of Santa Fe, Fr. Gerald’s superior, to sell the island in 1965.

50. There are other sources that demonstrate that the problem was not unknown or non-existent to the Catholic hierarchy from the mid-forties to the present.
- 1961:** The Sacred Congregation for Religious issued an official document entitled, "Careful Selection and Training of Candidates for the States of Perfection and Sacred Orders," 2 Feb. 1961. The document states that one of the common causes of "defection" or departure from the priesthood is "...*sexual tendencies of a pathological nature...*" which refers to homosexual tendencies. Later in the document reasons for dismissal are listed. The following statement is found: "*Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and the priestly ministry would constitute serious dangers.*"
- 1966:** Bishop Schenk of Duluth, Minnesota wrote an open letter to all bishops asking if anyone would be interested in the priestly services of a priest of his diocese who had been treated at the Paraclete facility in New Mexico for "psychosexual problems." He admitted in the letter that he had taken in some former patients of the Paraclete Fathers but that the ventures had turned out miserably.
- 1966:** A workshop for psychologists engaged in the assessment of candidates for the priesthood and religious life was held at the School of Nursing of the Saint Vincent's Hospital and Medical Center in New York. One of the participants stated: "*Perhaps the most troublesome and most frequent appearing sociopathic features or disturbances in assessment work concern the high incidence of effeminacy, heterosexual retardation, psychosexual immaturity, deviations or potential deviations of the homosexual type....A recent study of 107 male candidates, for example, shows that 8% of these were sexually deviant, whereas 70% were described as psychosexually immature, exhibiting traits of heterosexual retardation, confusion concerning sexual role, fear of sexuality, effeminacy, and potential homosexual dispositions.*"²⁸
- 1966** *Southdown*, a treatment center for Catholic clergy, opened in a Toronto suburb.
- 1967:** The first public discussion of priest who sexual abuse minors took place at a meeting sponsored by the National Association for Pastoral Renewal held on the campus of Notre Dame University in 1967. All U.S. Catholic bishops were

²⁸ W.J. Coville." Basic issues in the development and administration of a psychological assessment program for the religious life." In W.J. Coville, P.F. D'Arcy, T.N. McCarthy, and J.J. Rooney, editors, Assessment of candidates for the religious life: Basic psychological issues and procedures (Washington, DC: Center for Applied Research in the Apostolate, 1968), p. 28-29.

invited to attend that meeting.²⁹

1967: A priest named Fr. Rucker of Los Angeles was arrested in El Segundo California for alleged sexual molestation of a nine year old girl in January of that year. He was arrested again in April and another complaint was filed by the parents of another nine year old girl. The arrest records were not sealed and the information was known to the priest's bishop and to other bishops in the region.

1971: Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops. Citing 40 years of combined psychiatric practice in treating about 1500 priests, they concluded that 20-25% of U.S. priests had serious psychiatric difficulties and 60-70% suffered from emotional immaturity. They concluded that the psychosexual immaturity manifested itself in heterosexual and homosexual activity.³⁰

1972: Dr. Eugene Kennedy Dr. Victor Heckler published a psychological study of U.S. priests commissioned by the U.S. Bishops' Conference. His findings concurred with those of Baars and Terruwe and concluded that American priests were

- 7% psychologically and emotionally developed
- 18% psychologically and emotionally developing
- 66% underdeveloped
- 8% maldeveloped.³¹

Kennedy and Heckler stated that the underdeveloped and maldeveloped priests (74%) had not resolved psychosexual problems and issues usually worked through in adolescence. "*Sexuality is, in other words, non-integrated into the lives of underdeveloped priests and many of them function at a pre-adolescent or adolescent level of psychosexual growth.*"³²

1975: The Archdiocese of Los Angeles received the first of a series of complaints about sexual misconduct with minors by Fr. Eleutario (Al) Ramos who died in 2004.

1981: Fr. Michael Andre Moody, a priest of the Archdiocese of Los Angeles, California was convicted (1-9-81) of "lewd conduct" for sexually abusing a minor male on June 30, 1980.

²⁹A.W. Richard Sipe, "Affidavit," Doe v NOSF, District Court of El Paso, Texas, Feb. 9, 2004, . 19, p. 5-6.

³⁰ Conrad Baars, M.D., "*The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood.*" Unpublished, 1971.

³¹ Eugene Kennedy and Victor Heckler, The Catholic Priest in the United States: Psychological Investigations. (Washington, D.C., U.S. Catholic Conference, 1972).

³² Ibid., p. 11.

- 1981:** Fr. Donald Roemer of the Archdiocese of Los Angeles was charged with a felony and pleaded guilty to sexual abuse of a minor. The case received widespread media coverage.
- 1981** St. Luke Institute opens in Suitland, Maryland.
- 1981:** The summer edition of The Catholic Lawyer, the official publication of the Association of Diocesan Attorneys, published an article by Edward D. Holtz, General Counsel of the Archdiocese of Omaha, entitled “*Diocesan Liability for Negligence of a Priest.*”
- 1982:** Bishop Joseph Madera held a mandatory educational meeting for all of the clergy of the Diocese of Fresno, California at which legal, psychological and pastoral experts discussed clergy sexual abuse. This workshop followed upon the arrest of a priest in the diocese for sexual abuse.
- 1983:** The revised Code of Canon Law was promulgated, which included a canon (1395, 2) which explicitly named sex with a minor by clerics as a canonical crime.
- 1984:** “*Respondeat Superior - Diocesan Liability for the Torts of its priests,*” was presented as a paper by Bob Gibbons at the annual meeting of the Texas Catholic Conference (September, 1984). The paper discussed cases of clergy sexual abuse of minors.
- 1984:** The Times of Acadiana published a series of articles by Jason Berry exposing the mishandling of the case of Fr. Gilbert Gauthé in Lafayette, Louisiana.
- 1985:** In January Rev. Mel Balthazar was sentenced to seven years for child molestation in a Boise, Idaho court. The presiding judge said at sentencing: “*I think the church has its own atonement to make as well. They helped create you and hopefully will help to rehabilitate you.*”³³
- 1985:** February, 1985 - Fr. John Salazar of Los Angeles sexually abused a minor boy. He was later charged with other similar counts for crimes he perpetrated during the ensuing months. On July 30, 1987, Salazar was sentenced to prison following conviction. Following his release from prison (1991), he was hired by the Catholic bishop of Amarillo, Texas and assigned as pastor to a remote parish. He again abused young boys, was tried, convicted and sentenced to life in prison in 2004.

³³ Jason Berry, Lead Us Not Into Temptation (Chicago: University of Illinois Press, 1992), p. 30

1985: In May a comprehensive report entitled *The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner*, commonly known as “The Manual” was written by Michael Peterson, Thomas Doyle and F. Ray Mouton.³⁴ The 100 page detailed handbook was prepared on the initiative of the three authors with the support and input of a number of influential bishops. The U.S. Catholic Bishops Conference, though aware of the manual, dismissed it as unnecessary, claiming that it already possessed all the data contained in it and had policies and procedures in place by 1985.

1986: Dr. Jay Feierman, a psychiatrist formerly associated with the Paraclete Fathers, testified that he had treated over 600 priests for sexual problems over the previous ten years at the Paraclete facility in New Mexico (1976-1986).

1986: The Conference of Major Superiors of Men (CMSM) sponsored a conference in Ohio called *A Consultation on Male Sexuality in Men’s Religious Orders*. One of the talks was entitled “*When sexual problems become crises; Incidents of Sexual Misconduct and Church personnel - A Legal Perspective.*” (October 29, 1986).³⁵

51. The bishops of the U.S., Canada and elsewhere have, at various times, claimed they were unaware of the serious nature of clergy sexual abuse and its impact on victims. This claim is easily offset by the historical evidence. Through the centuries the church has repeatedly condemned clergy sexual abuse, particularly same-sex abuse. The very texts of many of the laws and official statements show that this form of sexual activity was considered harmful to the victims, to society and to the Catholic community. Church leaders may not have been aware of the scientific nature of the different sexual disorders nor the clinical descriptions of the emotional and psychological impact on victims, but they cannot claim ignorance of the fact that such behavior was destructive in effect and criminal in nature.
52. From the late 19th century into the early 21st century the church’s leadership on all levels has adopted a position of secrecy and silence. They have denied the predictability of clergy sexual abuse in one form or another and have claimed that this is a phenomenon new to the post-Vatican II era. The recently published reports of the U.S. Bishops’ National Review Board and John Jay College Survey have confirmed the fact of known

³⁴ Thomas Doyle, F. Ray Mouton and Michael Peterson, *The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner*. 1985. (Private)

³⁵ This talk was given by Fr. Alan Placa, a civil attorney with the Diocese of Rockville Center, NY. In 2002 Fr. Placa was removed from ministry after he himself had been investigated by police for having abused a minor years before.

clergy sexual abuse since the 1950's and the church leadership's consistent mishandling of individual cases. The bishops of the United States were no doubt aware of the general problem of sexual abuse by clerics based on the information provided them at various times over the years, such as the Eugene Kennedy study in 1972 and the Conrad Baars study in 1971. Although this data pertains primarily to the Church in the United States, its nature is such that one can assume that the conclusions would also be found in Canada should similar studies be undertaken.

53. Summarily, considering the above, in spite of claims to the contrary, the canonical history and the institutional practices of the Catholic Church clearly reflect a consistent pattern of awareness that celibate clergy regularly violated their obligations in a variety of ways but especially by sexually harassing and abusing minors and even vulnerable adults. The fact of clergy abuse with members of the same sex and with females has been extensively documented for centuries. At certain periods of church history, clergy sexual abuse was publicly known and publicly acknowledged by church leaders. From the late 19th century into the early 21st century, the church's leadership has adopted a position of secrecy and silence. This obligation of secrecy, explicitly mandated by the official documents issued in 1922, 1962 and 2001 (mentioned above in par. 19) was promulgated as official policy in 1866 in a Vatican document issued by the Congregation of the Holy Office.³⁶
54. Any attempt, official or otherwise, to deny the predictability of clergy sexual abuse in one form or another and claim that this is a phenomenon new to the post-Vatican II era is defeated by the above-cited documentation but also by the recent findings of the officially commissioned studies. The recently published reports of the Bishops' National Review Board and John Jay College Survey (February 2004) have confirmed the existence of known clergy sexual abuse since the 1950's³⁷ and the church leadership's consistent mishandling of individual cases. The John Jay report stated that there had been 4392 known clergy sexual abusers among U.S. priests between 1950 and 2004.

THE ROLE OF CANON LAW

55. It is relevant to review the role of Canon Law in this and similar cases of alleged sexual abuse by Catholic clerics. Canon Law is the name for the internal regulatory system of the Catholic Church. The word "canon" is derived from the Greek word *kanon*, which meant a rule or a straight line. Canon Law is the oldest continuously functioning legal system in the world. Its roots reach back to the 4th century when group of bishops in Spain met to enact rules in response to various problems encountered by Church communities there. The first recorded legislation dates from 309 and was enacted at the Synod of Elvira. The vast tangle of local rules was first systematized in 1140 for the

³⁶ S.C.S Off. Instruction, 20 February 1866 in Codicis Iuris Canonici Fontes, n. 990.

³⁷ The Nature and Scope of the Problem of Sexual Abuse of Minors by Priests and Deacons (Washington DC., John Jay College of Criminal Justice, USCCB, 2004), Part Two, 2.2.

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monk Gratian. Though not official, his massive work, commonly called *Gratian's Decree* remains the single most important historical source for Canon Law. His efforts and those of other scholars at the time were greatly influenced by the discovery of the main works of ancient Roman Law. Thus Canon Law took on many of the attributes of Roman Law in terms of concepts, structure and legal philosophy. The Church's laws, regulations, norms and guidelines remained un-codified until the beginning of the 20th century. The first *Code* as such was officially published or promulgated in 1917. This Code remained the basic collection of Church laws until 1983 when its successor, the revised *Code of Canon Law* replaced it.

56. The Church's internal regulatory system is not a theological document nor is it an article of faith that must be believed by Catholics. It is a collection of internal rules, regulations and norms that give concrete shape to the institutional Church. It is true that certain of the individual laws or "canons" are directly or indirectly related to theological or religious concepts. This does not mean that the legal system itself is a catalogue of the religious beliefs of Catholics. The Code describes the various offices, bodies and internal political structures of the Catholic Church. It presents the duties, responsibilities and qualifications for the various offices and positions in the Church. It contains a section on procedural laws for settling disputes and providing due process. It contains a section of criminal behavior which lists certain actions that are considered church crimes.
57. The Code of Canon Law is not a substitute for the civil law systems of the various countries where the Church is established. It does not "trump" civil law. In fact, there are canons that stipulate that the civil laws are to be obeyed in all things that are not immoral or contrary to God's law. Canon Law is used in civil cases to explain and clarify the various aspects about the Catholic Church. When it is presented in civil court the purpose is not to expect the civil judges to use it to interpret, apply, critique or explain civil law. Rather, the purpose is to assist in understanding how the institutional Church works. For example, Canon Law contains specific procedures that are mandatory for the investigation of reports of possible canonical crimes such as sexual abuse of minors by clergy. It also contains the basic requirements that bishops should look for in assigning priests to various posts. When the facts of a case are examined in civil court, Canon Law can be helpful to determine what the Church's own internal expectations were of an office-holder in a given situation.
58. Sexual abuse of minors is listed as a canonical crime in the 1917 Code of Canon Law (canon 2359) and in the revised 1983 Code of Canon Law (canon 1395). Both Codes contain a mandatory procedure to be followed by a bishop or religious superior when he receives a report of suspected sexual abuse of a minor. This is known in both Codes as the *Preliminary Investigation*. It consists of an investigation conducted by the bishop or one appointed by him into the accusation and the proofs. The investigation is to be documented and the documentation or record kept in the secret archives. Once the bishop or religious superior reviews the results of the investigation, he makes the decision

as to whether the evidence is such that either an administrative or judicial proceeding is to take place. Such a proceeding amounts to the prosecution of the case. In cases of alleged sexual abuse of a child, since the ultimate penalty can be dismissal from the clerical state, the only option available is a judicial trial. A bishop is forbidden by Canon Law from imposing a permanent suspension or dismissal by an administrative act. These can only be imposed following a canonical trial.

59. Between 1922 and 2001 the bishops were expected to follow the special norms issued in the Vatican documents of 1922 and 1962. In fact, there is scant evidence that any preliminary investigations or judicial trials ever took place. In nearly every case bishops handled reports secretly and usually transferred the clerics to new assignments either within the diocese or to another diocese. There are also documented cases wherein accused clerics were sent to assignments in other countries

OPINIONS IN THIS CASE

60. The perpetrator in this case, Antonio Gonzales, was born in 1927. He was ordained a Catholic priest in the religious community known as the Missionary Oblates of Mary Immaculate on May 5, 1957 at 30 years of age. Prior to this time he had also served briefly in the U.S. military and was honorably discharged. He was laicized by Pope John Paul II on May 8, 1987. Subsequent to his laicization he married and now has five children. He provided a deposition in this case.
61. In between his ordination and his laicization, former Father Gonzales had a variety of assignments, including assignments as assistant pastor and pastor in parishes staffed by the Oblates in the U.S. He also served for several months in Canada with an intention of remaining in Canada but changed his mind before departing for Davis Inlet and then returned to Texas in 1985. During this time he admitted that he had sexual relations with at least 10 girls under the age of 17 including his present wife who was 13 when he first engaged in sex with her. The plaintiff was 14 years old when their relationship started.
62. The documentation which I have studied provides a significant amount of information about Fr. Gonzales' life while a member of the Oblate community. It contains information that indicates that the Oblates were aware of complaints about Gonzales' sexual activities with young females as early as 1961. In fact, a letter points to a suspicion that they were aware even before that time. By 1963 his Provincial issued him a Canonical Warning giving notice of his sexual misconduct with females.
63. The documentation shows that Fr. Gonzales was sexually involved with at least four underage girls between the time of his ordination and his laicization. These are: Jane Doe 3, who was 14 when Gonzales began having sex with her (circa 1971); Jane Doe 2, who was also 14 when Gonzales began having sex with her (1973); Jane Doe 1, who was 15 when her sexual abuse began (1983) and Jane Doe 4, with whom he began a sexual

relationship when she was 14 (1984). Gonzales himself was approximately 44 when he first sexually assaulted Jane Doe 3, 46 when he first sexually assaulted Jane Doe 2, 56 when he sexually assaulted Jane Doe 1 and 57 when he met and began having sex with Jane Doe 4.

64. The Oblates had notice of Gonzales' particular immaturity at least by 1960 (cf Letter of Eduardo Martinez, OBL 0283). Throughout his years in active ministry, there were regular complaints about his questionable conduct as a priest. These included complaints about his involvement with social justice causes, his excessive drinking, his resistance to authority and his inability or unwillingness to relate well to people who didn't do things his way. These complaints are not the subject of this case, however, although they do indicate an overall lack of maturity. This immaturity may have been the reason for his transfer from Our Lady of Guadalupe Church in Brownsville (cf letter from Fr. Seidel, provincial, 5-15-61; *"I feel that it would be better for you to be replaced at Our Lady of Guadalupe in Brownsville"* OBL 0285).
65. NOTICE. The file contains a letter from William Hatten to Fr. Seidel, dated May 30, 1961. It is not clear who Mr. Hatten is but the tone and style of the letter lead me to the opinion that he was an attorney. The letter is about a report involving a woman named Jane Doe 5 (28 at the time) and Fr. Gonzales. It contains some statements indicative of the Oblates' awareness of the Oblates' the problems that followed Gonzales throughout his ministry:
 - a. Hatten talked to Fr. Knevelsberger. Fr. Knevelsberger said that he had heard the rumor at the county courthouse....that he had from time to time heard other rumors of indiscrete actions on the part of Fr. Gonzales.
 - b. Hatten met Nem J. Bryan, Deputy Sheriff of Cameron County...while she (Jane Doe 5) was sick. Fr. Gonzales would come to see her and then began to take her to church, the he would take her riding; that this led to a relationship with him and she was worried about it.
66. Mr. Hatten decided that deputy Bryan was not reliable: "My observation is that Nem Bryan is possessed of a vicious and most suspicious nature...There is no doubt in my mind that Nem Bryan is the perpetrator of the rumors concerning Fr. Gonzales." He concluded his report by expressing the opinion that Gonzales was not the father of Jane Doe's baby, but recommended that Gonzales be moved from the area since he believed that a transfer would cause the mater to be quickly forgotten. Gonzales subsequently admitted under oath that he had been sexually involved with Jane Doe 5. Hatten's dismissal of the allegation was not grounded on fact but in his subjective opinions
67. The Hatten letter constitutes notice. Although Hatten dismisses the reports and the rumors, he does not do so other than for subjective reasons. This report should have been

the subject of a more thorough and objective investigation by the Oblate superiors.

68. NOTICE. On October 16, 1963, Fr. John Hakey, Provincial, issued a canonical warning to Gonzales. The text, itself, indicates that the Oblates had knowledge of Gonzales sexual problems prior to this date:

Because of the many proven instances and accusations made against you by various people of the parish of the Immaculate Heart of Mary in Houston, and many suspicious incidents associated with you in Brownsville and Austin, in the nature of embracing and kissing and fondling women and girls, I hereby issue you a canonical warning to desist from such acts, to avoid giving scandal and to take the treatment set up for you by a competent psychiatrist and or doctor as part of your penance."

69. The only follow-up to this warning is a letter dated April 17, 1964 from the provincial's secretary indicating that Gonzales had been set up with an appointment with Dr. Laurence Smith in San Antonio. There is no documentation that I have seen that refers to follow-up with Fr. Gonzales nor is there any report from Dr. Smith.
70. Bishop Pfeifer, provincial at the time of the sexual assault and rape of the plaintiff, was asked several times about the 1963 canonical admonition in the course of his deposition. When asked if he knew about this warning when he assigned Gonzales in 1981, he said "*I don't have clear knowledge. I was briefed on his case and I believe that was brought to my attention* (p. 46). Under further questioning he admitted that anyone who saw Gonzales file would have seen the 1963 admonition and the admission by the Oblates that they were aware that Gonzales had sexually assaulted several young girls (p. 56).
71. Bishop Pfeifer also stated that between 1963 and 1981 corrective measures were taken regarding Gonzales. However, these measures were clearly inadequate. "*He was asked to get into counseling. He was not given positions of responsibility*) (p. 58). Yet the documentation also shows that the Oblates were notified of other instances between 1963 and 1981 when Gonzales behavior came under question, for example the letter from parishioners dated Feb. 7, 1973 mentioned in the next paragraph.
72. NOTICE. A group of parishioners from St. Margaret Parish in Holden, Louisiana wrote to Fr. Blackburn, provincial, on Feb. 7, 1973. They provided a list of areas of concern which included that Fr. Gonzales had made advances at Mrs. Doe in 1972 (a parishioner). The letter mentions Jane Doe 3 but makes no direct statement about Gonzales and her being in a relationship. However, the group offered several recommendations, the closing one of which specified "*That he refrain from embracing the opposite sex.*" There is no evidence that the provincial ever answered this letter or conducted any form of investigation in Louisiana.

73. Shortly after this letter was received, Gonzales was sent to Via Coeli (part of the Servants of the Paraclete treatment facility references in paragraph 47 of this affidavit) for what has been referred to as a “retreat.” The documentation contains no reports or evaluations from the Paraclete Fathers even though such reports were always provided to bishops and religious superiors of priests sent there for treatment.
74. NOTICE. Mr. Pete Pruneda, a police officer and members of St. Patrick Parish where Gonzales was assigned in 1978, sent a letter to the oblates on June 30, 1978. In this letter he stated that he had observed certain things that cannot be discussed in an open letter. He offered to have a personal interview with the superiors and concluded by expressing the opinion that Gonzales needed professional help. The documentation contains no indication that the Oblates acknowledged Mr. Pruneda’s letter and no indication that they either interviewed him or followed up with any investigation or questioning of Fr. Gonzales.
75. NOTICE. A group of parishioner’s from St. Joseph Church in San Antonio wrote to Fr. Petru, provincial, on March 23, 1979 and asked him to clarify the truth about hearsay stories of “*improper conduct involving our pastor.*” There is no indication of a direct response to the parishioners.
76. NOTICE. Fr. Roy Boucher, provincial of St. Peter’s Oblate province in Canada, wrote to Fr. Meagher, provincial of the Texas province, on July 30, 1985 about Gonzales opportune decision to return to Texas. In this letter he said: “*In light of Toni’s newly expressed preference (and my growing awareness and appreciation of the seriousness of the concerns being expressed about him by co-workers and parishioners in Thunder Bay), I readily supported Toni’s decision to remain in Texas* (cf. OBL 0209) Fr. Meagher wrote back that he was thinking of sending Gonzales for an evaluation at Via Coeli. (Cf OBL 0460). Other than the Meagher letter referenced here there is no indication of any other investigation into the concerns voiced about Gonzales’ conduct in Canada. More direct however, was the letter sent to Gonzales on the same date. This letter constitutes clear notice:

I must make clear that much concern was being expressed about you by many parishioners. These concerns were voiced to me by parishioners directly as well as by the local OMIs. The concerns, as I have already shared with you, are basically around two matters: your questionable and indiscreet behavior in respect to a number of parishioners (a number of young women) and the quality of your preaching.

77. There are then at least six examples of direct notice to the Oblates about Antonio Gonzales sexual behavior ranging from 1961 to 1985. The canonical admonition provides evidence that even by 1963 there were “*many proven accusations.*” Although the documentation does not provide detailed evidence of the many reports prior to 1963,

the fact that this phrase is used indicates that there were, in fact, a number of such reports. I make this statement because a canonical admonition is an official ecclesiastical document that is used in the penal process. Before a superior can issue such a warning, which has very serious consequences, he must be assured of documented facts to substantiate the action to be taken. In this case the wording of the decree indicates that there were reports of inappropriate sexual activity not just in 1963 but before.

78. In addition to the direct notices listed above, there also are a number of indirect indicators that the Oblates were aware of Antonio Gonzales' sexual problems and their seriousness. The documentation contains several references to psychiatric or similar care but falls short of stating the reasons for such care.
- a. July 21, 1962: Letter referring to Gonzales seeing Dr. Wade Lewis of San Antonio (OBL 0148). There is no further reference to Dr. Wade and no report of any testing.
 - b. April 17, 1964: Letter from Barbara Stinnett, provincial secretary, confirming psychological testing for Gonzales on April 23 and 24 with Dr. Laurence Smith (OBL 0182). There is no available report from Dr. Smith.
 - c. January to May, 1973: There are letters from Fr. Matt Feit of the Paraclete community referring to Gonzales stay at Via Coeli and his discharge in May. Fr. Feit suggested that Gonzales see Dr. Simon Herman while at Via Coeli. (OBL 0183 and 0184)
 - d. Mar. 3, 1973: Fr. Blackburn, provincial, wrote to Fr. Feit saying: "*I am sending some confidential matter on Tony Gonzales. The material I am sending is only a small part of what has accumulated over the years but to my mind it is essentially what is needed.*" (OBL 0185)
 - e. Mar. 27, 1979: Fr. Petru, provincial, wrote to Archbishop Furey and informed him that Gonzales was in need of temporary sick leave. (OBL 0253).
 - f. May 25, 1979: Report from Laurence McGonagle, M.D. which says that psychological testing revealed no evidence of psychosis or severe neurosis. (OBL 0190).
 - g. Oct. 31, 1979: Gonzales entered into an agreement with the provincial which stipulated, among other things, that "*By Feb. 1, 1980, to consider seriously the opportunity of Albuquerque or similar facility as well as spiritual renewal.*" (OBL 0192). This reference is to the Paraclete facilities which were located near Albuquerque, New Mexico.

- h. June 26, 1981: This letter from the vicar provincial to Dr. Robert Jimenez says that Gonzales was interested in prolong and intensive treatment at the Paraclete facility in Albuquerque. (CF OBL 0194).
- i. July 16, 1981: Letter from Fr. Pfeifer, provincial, to Gonzales telling him that he will be at the Paraclete facility for two full days of testing and evaluation in August 1981.
- j. Aug. 20, 1981: Fr. Michael Pfeifer, provincial, wrote to the Oblate Superior General and told him, "*I have spoken with the doctor who is handling his (Gonzales) professional counseling and the doctor feels that Father Gonzales is now at the point that he has worked out his problems sufficiently so that he could be reinstated to ministry on a part time basis. Father Gonzales has been seeing his doctor once a week and has been in group therapy.*" (OBL 0238). This letter is remarkable because it claims that Gonzales is "cured," yet a previous letter written by the same person on July 16 told Gonzales that he would be evaluated on the 17 and 18 August at the Paraclete facility. If Gonzales had worked out his problems then why was he sent to the Paraclete's for evaluation, and if he had such an evaluation, it is highly unlikely that the two days between the evaluation termination, August 18, and Pfeifer's letter to the Superior General provided adequate time for sufficient counseling. Fr. Pfeifer made the same assurances to Bishop Flores on Sept. 21, 1981 (OBL 0446).
- k. Nov. 17, 1981: The director of the Oblate Madonna residence wrote to the provincial, Pfeifer, and referred to Gonzales' "medical situation" and recommended special supervision for the next 12 to 18 months while he was receiving "*special medical care.*" (OBL 0200).
- l. April 21, 1982: Fr. Perri wrote to Michael Pfeifer and spoke of holding a place for Gonzales for their July 1982 program (OBL 0315)
- m. May 27, 1982: Fr. Meagher, provincial, wrote to Fr. John Ward and referred to Gonzales' doctor. He said that the doctor insisted that Gonzales take his daily dose of lithium and work with a psychiatrist or psychologist on a regular basis. He also advised that Gonzales be careful of his drinking. This letter is especially notable because it mentions the medication lithium, which is prescribed *only* for persons who suffer from Bi-Polar disorder, which back then was generally referred to as manic-depressive psychosis. There are no medical reports, with the exception of the very short report cited in "f" above, so there is no indication of either a diagnosis of bi-polar disease or of the regular lab testing that is required of people who are taking lithium.
- n. In January 1984 Gonzales went to the Oblate Galilee Community in Arnprior,

Ontario for reasons that are not clear in the documentation provided. This was an Oblate center for prayer and renewal. The documentation available indicates that he was sent there for counseling (cf. OBL 0204).

- o. July 13, 1984: Fr. Boucher, the Canadian provincial, wrote to Gonzales and referred to several aspects of the counseling plan, including regular visits to Ottawa and a counselor in Thunder Bay where he was assigned at the time. (OLN 0328).
 - p. July 25, 1984: Fr. Pfeifer wrote to Fr. Boucher and referred to the “*on-going help he[Gonzales] should seek,*” in reference to Gonzales’ counseling. (OLN 0327).
 - q. August 7, 1985: Fr. Meagher, Provincial of the Texas province, wrote to Fr. Boucher and admitted to having been familiar with Gonzales’ “problem: *“I have been familiar with Tony’s history since the beginning.”* In this letter he said that his present inclination was to send Gonzales for an evaluation at the Paraclete facility in Jemez Springs, New Mexico. (OBL 0460)
79. In spite of several references to evaluations and therapy at the Paraclete facilities, the documentation contains no reports or evaluations, which is highly unusual because the Paraclete practice has been to send out a detailed evaluation based on the initial battery of tests and interviews as well as a treatment plan. They then follow-up this documentation with regular reports to superiors and a discharge summary and after-care plan.
80. There is no medical documentation that explicitly states that Gonzales was being sent to the various psychologists, psychiatrists and psychiatric facilities because of sexual acting out with young women. I can assume, however, that this was the primary reason. There is some mention in the documentation of excessive drinking but not enough to lead to the conclusion that alcohol dependence or alcohol abuse were active diagnoses. On the other hand, the consistent practice among Catholic Church superiors, both bishops and religious had been to carefully avoid direct and detailed reference (“discrete language”) to sexual acting out by priests. That this practice was followed here appears obvious as I review the many letters sent to and about Gonzales. There is reference to his “problems” in several documents but only two make direct reference to problems with women, namely the canonical admonition and the letter of the Canadian provincial. The others “dance around” the issue, yet it is obvious to me that they were aware of the sexual problems at least as far back as 1961.
81. In addition to the direct notices listed above and the conclusions drawn from Gonzales’ long history of medical and psychological counseling, there are also several indirect references in the correspondence of the Oblate superiors.
- a. June 10, 1961: Letter from Fr. Seidel, provincial -*“I am happy to inform you that*

we have cleared the matter which pertained to your actions previously.” (OBL-01790). This is a reference to the allegation of a relationship with Jane Doe 5. It is in the letter which informed Fr. Gonzales of his transfer to Austin.

- b. Sept. 6, 1962: Letter from Fr. Seidel to Gonzales: *“I shall not go into detail about what occurred, because I take it for granted that there are two sides to the story so we will let it rest for the present unless at some later date you might want to talk to me personally.”* (OBL-0149)
 - c. Dec. 28, 1970: Letter from Fr. Blackburn, provincial. *“The few incidents that marred your progressing in the past have been well overcome, I certainly see hope.”* (OBL 0163).
 - d. April 1973: Letter from Gonzales to provincial: *“I have given them all of the problems I have had in my past...”* (OBL-0187).
 - e. April 10, 1981: Letter from vicar provincial to Gonzales: *“You were supposed to consult with Dr. Robert Jimenez.”* His faculties were suspended and he was told to see Dr. Jimenez as long as necessary and not to engage in any priestly counseling. (OBL 0193).
82. It was not unusual for the Oblate superiors to avoid any direct mention of Tony Gonzales’ sexual problems. It was also not unusual to be evasive and non-committal in any correspondence about the sexual problems of priests. Nevertheless, the indirect references cited above, when considered within the context of the direct notice and the canonical admonition, all point directly at a clear awareness by the Oblate superiors that Antonio Gonzales had a persistent problem with sexual acting out. The amount of documentation and the fact that it is spread over the entire period of Gonzales’ ministry indicates that the superiors knew of the problem in detail and probably had reports about more sexual victims than the four that are mentioned in the documentation of this case.
83. There is reference to the “medical situation,” to a “controlled ministry”, and to “helping other priests with similar problems”. In my extensive review of personnel and medical files of priests who have been sent to treatment at various facilities, I have found that the only time euphemisms, code-like language or cryptic phraseology are used is when the issue is sexual in nature. Other types of psychological problems, including alcohol or other substance abuse, are generally referred to directly without the use of veiled language. In this case there are references to excessive drinking in two documents and to the use of lithium in one document but there is insufficient information to conclude that the primary reason for of the direct, indirect and medical references were to anything other than sexual problems.
84. Antonio Gonzales wrote a letter on May 21, 2003 to Jane Doe 3. In this letter he openly

admitted his extensive sexual acting out with women:

From that time on I had to prove myself as a real man. It would be difficult to count the number of women I have been with. (OBL 0548)

85. There is documentary evidence that the Oblates knew about Gonzales' sexual problems as early as 1961 and that they knew these problems were serious enough to seek medical and psychological help over the years. Since there are no extensive medical reports available, it is impossible to determine the type of advice given to the superiors concerning Gonzales' placement in ministry. What is clear is that he was repeatedly assigned from parish to parish in spite of direct reports of his sexually acting out. Although Oblate superiors said in letters that doctors had cleared Gonzales for ministry, this is all second-hand because none of the actual reports or recommendations have been produced. In spite of what the superiors claim to be doctor's advice, what is incontrovertible is that by 1963 the Oblate superiors had sufficient information to issue a canonical warning, which is the first step in the process that could lead to penal trial and possible dismissal from the clerical state. The documentation and subsequent events show that the canonical warning had little long-term effect. By his own admission, Gonzales had been with many females, some of them underage girls. By his own admission, his first heterosexual experience was at the age of thirty, the year he was ordained. Therefore, all of his sexual experiences were while he was a priest.
86. There is no evidence of direct follow-up with the persons who either reported abuse or reported circumstances that appeared as if sexual behavior had happened. There is no evidence that the required canonical investigations ever took place at any time. There is, however, evidence that in spite of repeated examples of Gonzales' incapacity to live a celibate life and his attraction to underage girls, the Oblate superiors continued to ignore the fact that he would continue to act out. They continued to assign him to parish after parish and, even when he was ordered to take part in counseling and treatment programs, they failed to take any decisive action that would prevent continued abuse. The Oblate superiors continued to put women and girls at high risk by assigning Gonzales to various types of pastoral ministry, with the same consequences every time. It sounds very much like the alcoholic's definition of insanity: *Doing the same thing over and over expecting a different result.*"
87. There is evidence that the Oblate superiors knew that the only way to effectively deal with Gonzales' sexual problem was to separate him from the community and from the priesthood. This evidence is found in a letter sent by Fr. Meagher, provincial at the time Gonzales asked for laicization. He wrote to Father Reilly, the official at the Oblate headquarters in Rome, who was handling the matter. In this letter he voiced fears that Gonzales would change his mind and ask to return to the community even after the laicization process had started. He asked Fr. Reilly for help in making sure that there were ways to prevent Gonzales from remaining in the community. (OBL 0282).

88. In my extensive experience working in the area of clergy sexual abuse, I have found that Catholic clergy superiors, both bishops and religious, usually have very limited awareness of the complex nature of sexual abuse and limited appreciation for the extensive harm done to the victims. In spite of the advances of the behavioral sciences in the area of human sexuality, many clerics remain convinced that it is a two dimensional reality: cognitive in that we know it is there and, volitional, in that it can be controlled by the will. In this case they obviously failed to accept the fact that Gonzales' repeated sexual behavior with women and girls was driven by a highly compulsive nature. Adhering to a philosophy of human sexuality that results in denial of the damaging effects of sexual abuse is not a valid excuse for enabling such abuse.
89. The Oblate superiors from 1961 through 1985 were clearly negligent, and grossly negligent in their response to the regular reports of inappropriate sexual behavior by Antonio Gonzales. Their behavior towards Gonzales in the light of the repeated reports can be accurately described as "enabling" in that they continued to either ignore obvious warning signs or re-assign him knowing he was a danger to young girls. The Third Amended Complaint describes how Oblate Fr. James Ward, the pastor of the parish where Gonzales was assigned when he began to sexually abuse the plaintiff, knew what was happening and ignored it. He actually saw the plaintiff sitting on Gonzales' lap and allowed her to be alone in his room. This was all happening in 1982 and 1983 and not at the outset of his career. There is no valid excuse why this behavior should have been allowed by Fr. Ward or why he should not have reported it to the provincial.
90. When the plaintiff became pregnant with Gonzales' child in 1983, she notified Father Ward, who responded: "*Fr. Tony gets a lot of girls pregnant. He is not here.*" The plaintiff was left on her own with no sympathetic response from the Oblate clerics. Gonzales was transferred from Houston and from there to Canada for renewal and therapy. It was there that he met his next victim, yet another minor, who eventually became his wife.
91. Since there is no reason to believe that the Oblate superiors were incapable of comprehending that Gonzales was a danger to women and girls, the only reasonable conclusion I can reach is that they were grossly negligent in their actions. There is no evidence of an awareness of the damaging effect of his actions, much less evidence of compassion for the plight of the victims.
92. There is no doubt that had Gonzales not been a priest he would never have been able to groom and seduce these particular young women. They had all been raised to believe that priests were beyond reproach, were all-powerful and were never to be questioned. Some of his victims, including his victim in this case, may have believed they were in love with him, but regardless, the bond that he forged between him and them was clearly toxic and destructive.

THE SEXUAL ABUSE OF JANE DOE 1

93. The plaintiff was sexually abused by Gonzales when she was 14 years old. The abuse started in 1981 and ended in 1983. The Oblate superiors, including Bishop Michael Pfeifer, who was provincial at the time, became aware of the abuse when Jane Doe 1 confirmed that she was pregnant. The Oblate superiors' response to Jane Doe 1 was grossly negligent. Had they taken appropriate actions when they became aware of Gonzales sexual problems years before, he would never have been able to assault the other victims including Jane Doe 1.
94. Bishop Michael Pfeifer's deposition confirms the plaintiff's contention that the Oblate order acted with gross negligence before Anthony Gonzales raped her as well as after they became aware of the sexual assault. Although sex between an adult and a minor is considered a felony and constitutes rape in most States, including Texas, Bishop Pfeifer, the provincial at the time, did not report this to the law enforcement authorities. He claimed in his deposition that the mother did not want to report it, which even if true, is totally irrelevant since it was Pfeifer's responsibility and not the victim's mother (p. 17). Upon learning of the rape the provincial should have made immediate and personal contact with the victim. He did not. He purportedly sent Fr. Weber as his representative and claimed under oath that he did not know that Fr. Weber did not believe that sex between an adult and a 14 year old was a crime (cf Weber deposition, p. 75). Weber and Pfeifer did not appear to have communicated very thoroughly on this case because Fr. Weber did not remember that the mother supposedly did not want any further action taken on the case. Although a member of his province had raped and impregnated a 15 year old girl, Fr. Pfeifer, the provincial, did not make the effort to meet either the mother or the victim. This in itself constitutes gross negligence. When questioned about the visit, Fr. Weber stated that the purpose was to clarify what had happened but he was not sure if he was sent there to offer help to the victim and her family (Weber deposition, p. 83) and he admitted that help was not offered (p. 84).
95. Pfeifer gave confusing and inconclusive information about what happened to Gonzales after the incident with the plaintiff. Under questioning the former provincial tried to create the impression that he and his Oblate advisors seriously discussed Gonzales' future but their actions indicate quite the opposite. It is difficult if not impossible to find any justification for what Pfeifer did after knowing that Gonzales had a history of sexual abuse and the Oblate superiors had a history of completely irresponsible and negligent responses to this abuse. Gonzales was given yet another assignment. Although Pfeifer may have claimed that he was under supervision, this had been tried before with no success. On October 31, 1983, the provincial gave him another assignment, as assistant director of the Christian Holiday House in Dickenson, Texas, because of the rape of the plaintiff. Soon thereafter Gonzales went to Ontario, Canada for a period of retreat, renewal and counseling. Predictably, Bishop Pfeifer did not recall if the Canadian superiors were explicitly told about Gonzales sexual problems (p. 137). He *thinks* he

wrote a letter to this effect yet this letter is nowhere to be found! The documentation clearly shows that Gonzales was sexually active in Thunder Bay, Canada and that he raped yet another underage girl (14 yrs old) while on his retreat. Without looking at any of the other Oblate superiors whose actions in regard to Gonzales, repeated sexual abuse were clearly negligent and irresponsible, Bishop Pfeifer alone confirms that he was not only negligent but consistently negligent and to an astonishing degree. He could have prevented the rape of Jane Doe 3, the sexual assault on unknown women in Thunder Bay and the rape of the 14 year old if he had acted correctly. He did not. It is clear that he knew of Gonzales' background, knew what sexual abuse was all about, knew that Gonzales was a danger before he was assigned to Houston and certainly knew he was a danger after the rape of the plaintiff. His unsuccessful attempts at evading the questions and the straight answers during the deposition are themselves a strong indicator of the plaintiff's claim of negligence.

96. Bishop Pfeifer claimed several times in his deposition that he knew little or nothing about Anthony Gonzales' history of sexual problems. He even tried to claim that the reference to Gonzales' "medical issue" had nothing to do with sexual problems. Yet the subject of this discussion, Anthony Gonzales, stated forthrightly that he discussed his sexual acting out and his attraction to underage girls with the provincial superiors of the Oblates and named Frs. Seidel, Hakey, Blackburn and Pfeifer (Gonzales deposition pp. 7, 8, 9.) He also confirmed that he was sent away for psychological treatment for his sexual problems on several occasions (p. 9, 10, 11).
97. Anthony Gonzales' deposition clearly confirms that the Oblate superiors had known all along that he had a sexual attraction to underage girls, that he was sent for treatment for the problem, that the superiors knew about the various times he had engaged in sexual relations (rape) with underage girls, that he had fathered children and that, in spite of knowing all of this, they continued to re-assign him to parishes and other places where he was able to find victims.
 - a. Gonzales confirmed that he was sent to see Dr. Wade Lewis in 1962 because of his sexual problems with underage girls. He saw him weekly for about a year. (p. 29-30).
 - b. After he was issued the canonical warning in 1963, he was again sent to a psychologist for his problems (p. 34).
 - c. In 1961 Gonzales met and had a sexual relationship with Jane Doe 5, who was of age. His admission is important because it negates the letter of Mr. Hatten who claimed the problem was the due to a rumor planted by one of the men reporting Gonzales. (p. 36).

- d. At some of his assignments the lay people complained to Oblate superiors about Gonzales apparent familiarity with young women (p. 40)
- e. Anthony Gonzales admitted that he had many instances of sexual touching of young girls in addition to acts of sexual intercourse and he believes it was caused by the fact that he was sexually violated by a man at age 8 (p. 49).
- f. He told all of his Oblate superiors about the sexual acting out with young girls but they kept putting him back in assignments (p. 51).
- g. The Oblate provincial council members all would have known about Gonzales' sexual acting out and all would have had access to the reports and the files (p. 54).
- h. In 1981, Gonzales while he was a leave of absence he was seeing Dr. Jimenez. The Oblates sent him and paid the bills (p. 58).
- i. Gonzales signed releases to that all of the records from the various psychologists, psychiatrists and treatment centers could be shared with the Oblate superiors (p. 82).
- j. He was re-assigned from Immaculate Conception parish because of his relationship with the plaintiff. (p. 87).
- k. The Oblates superior, Fr. Hakey, knew that he had been sexually involved with Jane Doe 6 in 1960-63 timeframe in Austin (p. 116).
- l. Gonzales believes the Oblates knew of his relationship with Jane Doe 3 in Albany, Louisiana because they sent a representative to warn him about it. (p. 121). The relationship ended because he was sent to the Paraclete facility.
- m. He was then sent to Sabinal, Texas where he had a relationship with Jane Doe 2, with whom he had two children. The Oblates knew about this situation from the parishioners. He was then sent to the Paraclete facility for counseling (p. 124).
- n. Fr. Hakey, Oblate provincial in the sixties, knew almost everything about his sexual activities. He (Hakey) received letters from parishioners. (p. 142).
- o. Fr. Seidel, another Oblate provincial, knew about the relationship with Jane Doe 5 (1960). (p. 143).
- p. Gonzales gave a written statement to the Oblates about two years ago (p. 163) in which he admitted having sex with the plaintiff as well as Jane Doe 2 and the other girls whom he remembers having had sex with (p. 164)

98. The Oblate superiors claimed that they were not aware of the nature of sexual abuse of underage girls in the 70's and 80's in the same way they were aware in the 90's (Weber deposition, p. 17; Bishop Pfeifer, p. 105). When asked about the responsibility to protect young people, Fr. Weber replied:

I think the Oblates...did what they thought was the necessary thing to correct what was going on...But it wasn't understood in the 80's – I'm going to go back..to what we understood in the 90's. Because psychiatrists, you lawyers, doctors, FBI, nobody understood what was going on. (p. 71).

99. I have seen this defense numerous times and believe that it is an irrelevant excuse. It matters not whether the Church authorities, in this case the Oblate provincials, knew about the medical/psychological basis for sexual dysfunction or the psychological aspects of the impact of sexual assault on an underage girl. The superiors clearly knew that sex between a cleric and a minor is seriously wrong because it is the subject of a long standing law in the Church's own legal code. They also must have known that sex between an adult male or female and a child between the ages of 14 and 16 is a crime. They had a serious obligation to take corrective action as a follow-up to any and all reports of sexual activity by Anthony Gonzales. They consistently failed to take such action and this failure is grounded not in ignorance but in gross negligence.
100. Based upon my review of over thousands of cleric files, I have observed a pattern of conduct throughout the ecclesiastical entities in the United States and have concluded that this pattern of conduct was also followed by the Defendants, the Missionary Oblates of Mary Immaculate and its Provincials and Superiors in this case. This pattern of conduct includes (1) accepting unfit candidates such as Antonio Gonzales and candidates for the priesthood; (2) assigning and reassigning known abusers; (3) failing to investigate allegations according to proper canonical procedure; (4) failing to duly report known criminal behavior to law enforcement authorities; (5) failure to warn the community when transferring a known abuser from one assignment to another; (6) failure to provide even fundamental psychological care to victims; (7) failure to properly document accusations and reports of abuse; (8) failure to isolate accusers; and (9) failure to provide therapeutic intervention in a timely manner for all.
101. This same pattern and protocol for dealing with pedophiles and ephebophiles among the Catholic clergy and religious is also identified in recent nationwide yet limited audits of dioceses conducted by the Catholic Church. Following their meeting in Dallas in 2002, the Bishops of the United States through the United States Catholic Conference authorized the creation of a National Review Board for The Protection of Young People and further authorized a survey, statistical study, and report to be compiled through the facilities of John Jay College for Criminal Justice and published by February, 2004. These reports have now been completed and released in two (2) extensive documents.

The first document was entitled, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States* (the “John Jay Report”) and contained a statistical study. The second was entitled, *A Report on the Crisis in the Catholic Church in the United States* (the “Report”) (February 27, 2004). The findings and conclusions of these reports support Plaintiffs’ claims in this case. In the *Report* under the section entitled “The Response of U.S. Church Officials to Sexual Abuse of Minors by Priests,” the Review Board concludes that approximately 4% of all clergy in the United States have sexually abused minors. The Review Board also notes their finding of “the inadequate response by bishops and other church leaders to this problem over the last 25 years. *Id.* at pp. 91-92. The findings were as follows: Aspects of the failure to respond properly to sexual abuse of minors by priests included: (i) inadequately dealing with victims of clergy sexual abuse, both pastorally and legally; **(ii) allowing offending priests to remain in positions of risk; (iii) transferring offending priests to new parishes or other dioceses without informing others of their history; (iv) failing to report instances of criminal conduct by priests to secular law enforcement authorities, whether such report was required by law or not; and (v) declining to take steps to laicize priests who clearly had violated canon law.** (*See Report* at p. 92)

102. Thus, observation and evidence confirm pre-existing patterns and practices within the Catholic hierarchy of bishops and religious superiors routinely accepting and recycling priests who have been accused of sexually abusing children. This pattern certainly pre-existed Defendant Oblate’s assignment of Antonio Gonzales to the Houston Parish where he raped Jane Doe 1. The Oblates were clearly negligent in the screening, hiring, assignment and supervision of Gonzales. The files of the other Oblate clerics also support these opinions.
103. There is no question that all of the Provincials including Pfeifer who had direct dealings with Gonzales were grossly negligent in meeting their obligations in dealing with him. These obligations were derived from the Catholic Church’s internal legal structure and from the civil laws of the community. The Church’s own legal system deals with a broad spectrum of issues including the screening of candidates for the priesthood, supervision of candidates for the priests, obligations to Catholic and non-Catholic lay people and procedures to be followed in cases when a canonical crime has been alleged and committed. The specific obligations referred to are in the following areas: discernment of Gonzales’ suitability for ordination; proper supervision; proper response to reports of allegedly criminal activity and competent response to the obligations to protect the spiritual and moral welfare of lay people and especially young people in his territory. In certain cases the church-based obligations overlap with the civil law obligations. The bishops and religious superiors knew what the church-based (canonical) obligations were and should have been aware of the civil law obligations, especially in the area of sexual abuse of minors. Nevertheless, there is a consistent pattern of negligence, throughout Gonzales’ career on their part. This conduct was not accidental nor was it based on nonculpable ignorance of the nature of sex abuse and the impact on its victims. The

Bishops and Provincials are citizens of the United States, wherein most people know that sexually abusing a child or young person is a criminal offense and that offenders, if convicted, are sentenced to prison. The Oblates showed conscious disregard and indifference to Gonzales' foreseeable minor victims.

104. The patterns of conduct throughout the ecclesiastical entities in the United States have included assigning and re-assigning known abusers such as Gonzales, failing to investigate allegations according to proper canonical procedure, failing to report known criminal behavior to law enforcement authorities and failure to cooperate with them when they were investigating priests as in this case. Additionally, the pattern of conduct included failure to warn the public when transferring a known abuser from one assignment to another, failure to provide even fundamental pastoral care to victims, failure to honestly report to secular judicial and law enforcement authorities about sexual abusers in the ranks of the clergy and religious, failure to properly document accusations and reports of abuse, failure to isolate accused abusers, failure to provide therapeutic intervention in a timely manner or at all.
105. Based on the evidence given to me as well as on my experience as a priest and a canonist, consultant and an expert witness, it is my opinion that the Oblates were not only negligent but grossly negligent in their assignment of an obviously unfit man Antonio Gonzales. The foreseeable result was that Jane Doe 1, among others, were sexually abused. Then, in keeping with a well established pattern of secrecy systemic in the Roman Catholic Church, the Oblates, along with Gonzales and others, conspired to thwart justice. The negligence and gross negligence of the Oblates was a proximate cause of Jane Doe's damages.

SUMMARY OF EXPERT OPINIONS

106.
 - a. Anthony Gonzales sexually abused at least 15 women during the years he served in active ministry. Some of these women were underage and therefore their sexual abuse can be considered to have been rape.
 - b. The Oblate provincial superiors and other Oblate superiors had certain knowledge of specific cases of Gonzales' sexual abuse at least from 1960. The provincials knew or should have known of his sexual abuse throughout the years of his ministry and certainly before his rape of Jane Doe 1.
 - c. The Oblates sent Gonzales to various psychiatrists and psychologists as well as to therapeutic facilities because of his sexual actions with underage girls.
 - d. The Oblate superiors had a serious canonical and moral obligation to take decisive action as set forth in official Church documents, yet they intentionally and recklessly failed to take such action.

- e. The Oblate superiors were grossly negligent in their canonical and pastoral response to each report of illicit sexual activity by Antonio Gonzales.
- F. Antonio Gonzales summed his summed up his scandalous Oblate career in his own words when he wrote to one of his victims, Jane Doe 3, on May 31, 2003: *“First I denied you back then. I ran away scared. I ran back to the Church which has always protected me.”* (OBL- 0550).

FURTHER THIS AFFIANT SAYETH NAUGHT.”

Thomas P. Doyle O.P., J.C.D., C.A.D.C.

SWORN AND SUBSCRIBED before the undersigned notary on this the ____ day of
January 2008.

Notary in and for the State of Virginia

My Commission Expires