

Confidential

TO: Most Rev. John B. McCormack

FROM: Fr. Gordon J. MacRae

DATE: January 2, 2002

RE: Reflections on Memorandum dated December

OFFICE OF THE CHANCELLOR  
*Confidential*

FILE: 2001

AUTHORIZED: *GJM*

N.B. Please refer to the ~~attached~~ Memorandum dated 12/3/01 to review the questions and comments which are responded to below.

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1. I think there is agreement that it would be unproductive to attempt to investigate the [REDACTED] in terms of the time period in which their claims were alleged to have taken place. There is little hope of obtaining reliable evidence about the events of some 19 - 20 years ago.

The evolution of the various claims in police reports, depositions and sworn testimony, however, should be carefully examined. [REDACTED] testified under oath on three occasions: 1) during a pre-trial deposition with my attorney; 2) during my criminal trial; and 3) during evidentiary hearings in the lawsuits against the diocese. I have transcripts from the first two, but have never reviewed the latter. I was not represented during the evidentiary hearings, and I have not been able to obtain transcripts of [REDACTED] lengthy testimony. Eileen Nevins was told by Diocesan counsel after a settlement was reached that [REDACTED] testimony at the evidentiary hearings has not been transcribed. Diocesan counsel never requested a transcription, and the cost of requesting an original transcription has been prohibitive for me while in prison. The other [REDACTED] brothers also offered testimony during evidentiary hearings, but there is no other sworn testimony with which to impeach this as they did not testify during my criminal trial.

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2. Re-examination of the criminal conviction in the case of [REDACTED] - for which I am in prison - is not my only recourse, but it appears to be my most efficacious recourse when one considers that I have been disinclined to defend myself by implicating others through an open investigation of the history, merits, and background of all of the [REDACTED] claims, including those involving other priests, and the other claims choreographed by Detective McLaughlin. I have had very conflicting advice in this matter, but I have always presumed that the [REDACTED] have lied in the entirety of their claims. I have therefore shunned any suggestion that others should be publicly implicated. Even if there exists evidence that all or part of their claims about other priests were true or partially true (i.e. [REDACTED] original claims about Father Scruton and [REDACTED] s claims about two Hudson priests) the [REDACTED] clearly have demonstrated a pattern of deceit in this matter.

3. In regard to the demeanor of Diocesan officials, I had hoped to obtain a consensus that the [REDACTED] claims, and my resultant trial, conviction and imprisonment, were unjust and should be overturned. I have been unable to elicit a view of the [REDACTED] accusations that is seen in its own light, and not through a lens clouded by other vague and highly dissimilar allegations which have been revisited and "enhanced" by Detective McLaughlin to facilitate lawsuits, and to support the [REDACTED] charges.

I agree that much remains unclear, but I feel that there has also been a lack of clarity on the part of Diocesan officials on multiple levels. I have never doubted that the [REDACTED] accusations were (are?) seen in the light of other allegations received by the diocese directly or by way of rumor and innuendo. Though brought much later, the [REDACTED] claims, when viewed chronologically, actually precede any other claim of misconduct. One must remember that the [REDACTED] accused me - and other priests - of forced, and even violent, sexual assaults. There is nothing in my history to lend credence to these claims. I must point out that many details of the multiple accusations remain shrouded in mystery and a backdrop of deceit, and have produced questions about the behaviors of others for which I have never received clear answers. All of these claims were choreographed by Detective McLaughlin and changed radically over time.

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I feel that, at this point, one step which might be helpful is a review of the pre-trial investigation conducted by (the late) Ron Koch. Mr. Koch sent some eighty informal questionnaires to potential witnesses in regard to the multiple and varying accusations made against me. I agreed with Mr. Koch that I would neither see these questionnaires nor the responses until he had reviewed them, and I had no contact with any of the respondents. Many of these questionnaires were sent to current and former parish employees, Diocesan personnel, and acquaintances of the [REDACTED], [REDACTED], and [REDACTED]. Mr. Koch's goal in issuing these Questionnaires, which were based on details of all of the claims "handled" by Detective McLaughlin, was to attempt to find one person to corroborate the details supplied by the complainants. I believe that Attorney Koch may have sent copies of the completed documents to Brad Cook at some point prior to my trial, but I am unsure of this. Eileen Nevins has copies of all these documents and would be able to provide them.

The responses to these Questionnaires are informative both in terms of who responded and who did not respond. I feel that a review of these documents in the light of what I have consistently presented as "my side of the story" may be a positive step at this point. My long enduring sense, however, is that some Diocesan personnel have been highly selective in what information is reviewed in my regard, and have avoided exculpatory information.

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4. Re: Attorney Rosenthal - I have no reason to believe that Atty. Rosenthal is a "media legal expert." I also have no reason to expect that, if he examines my case, he would be obligated, or even permitted, to divulge information to any third party.

I must be blunt on this point. I have been told for years that the legal interests of the Diocese and my legal interests are quite different, and that, by Diocesan policy, I am on my own in addressing my legal interests. Most prisoners who maintain their innocence of a charged crime would quickly embrace the opportunity to gain the attention and assistance of Dorothy Rabinowitz and Robert Rosenthal. It was only because of the repeated citing of a Diocesan policy not to be involved in a criminal defense that I sought the interest of others.

?? I have been attempting to address this case for over eight years, and have been in prison for over seven years. Current discussions with the Diocese have been ongoing for three years. Mrs. Rabinowitz and Atty. Rosenthal became interested in my case only slightly over one year ago. Certainly one can understand my impression that Diocesan interest in examining the possibility of injustice in my case was minimal, at best, until the interest of others surfaced. I am reluctant to now sever these ties without a clearer sense of where this case stands and what should now be done.

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5. Re: Retaining Legal Counsel - In the last two weeks, I have once again been presented with an offer to fund Mr. Rosenthal's retainer fee so that he can examine the case. At this point, I feel that I should accept this offer which appears to be presented with no strings, conditions or expectations. I do not feel that viable alternatives have been presented, and I am essentially "running in place." It has taken a full year for the Diocese just to decide to recommend that I find a lawyer other than the one who is now interested.

I may be open to seek a more local legal expert that is "mutually acceptable," to proceed with the case. However, I am inclined to want to retain Attorney Rosenthal to at least conduct an initial examination of the case history, and trial/sentencing transcripts as well as any other testimony presented by [REDACTED]. I believe this to be well worth the investment of \$5,000 to \$6,000 estimated by Mr. Rosenthal as a retainer. At this point I think that it is important that I have some sense of whether there is any reason to hope for the success of a habeas corpus motion through the federal courts. It would help if I knew whether concerns about Rosenthal are the Bishop's or those of the Diocesan legal counsel.

There are other reasons why I prefer an attorney outside of New Hampshire. The already complex issues in my case are complicated further by the fact that two of the personal injury lawyers who profited from Diocesan settlements in this case are now the sitting Cheshire County Attorney and Assistant Cheshire County Attorney. The people who will be arguing to keep me in prison are the same people who profited from the accusations in the first place. Also, [REDACTED] is an official with DCYF and it was her supervisor who wrote the mysterious "Florida" letter which spawned this case. Finally, the attorney who represented [REDACTED] [REDACTED] has historical ties to the State Supreme Court and its Judicial Conduct Committee. At the risk of sounding paranoid, I am concerned about fairness, and with good reason.

The legal system in New Hampshire has not exactly distinguished itself in the last few years. The independence of "local" counsel is an issue.

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6. I would certainly agree to sharing the persons with whom we are working in regard to this case, but I am unclear about the point being made here. Am I being asked to sever ties with the people who offered to help when the no one else would? I agree that part of the issue involved in this case is "fallout and containment." At the same time, I must point out that this list is now awfully short because I would not accept most of the "advice" I have been offered. If requested, however, I will provide a list of these people and where each now stands vis-a-vis the situation.

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7. I agree that some issues ought to be brought to greater conclusion on my part because they may unreasonably interfere with current decision-making. I personally struggle with a need to both forgive and seek forgiveness without also capitulating to a revisionist history of the matter.

I am probably not going to be able to sum up the history of my relationship with a past Diocesan administration as "Attempts by the Diocese to support (me) were not perceived as supportive." Is this statement really the conclusion of three years of examining this matter? Were the pre-trial press releases, statements made to Fr. Deibel, Eileen Nevins and Ron Koch, and the lack of responses to inquiries, all misinterpreted by me? I do fully agree that the Bishop "cannot change what has already happened," and he bears no personal responsibility for the positions of others.

I fully understand the Bishop's concern that his responsibilities to the Diocese make his direct involvement in this matter somewhat cumbersome in terms of timely decisions and responses. I also have much concern and anxiety that Bishop McCormack has had to deal with this case so personally. I have no objection to pursuing this matter with Brad Cook or Father Arsenault or both.

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Some open questions:

If I accept the offer to retain Attorney Rosenthal to review the case, then what? Will retaining Attorney Rosenthal on my own preclude further Diocesan involvement? If an alternative to Rosenthal is considered, who will find this person?

Is there a way for the Diocese to help address this matter, and maintain some control, without directly funding legal expenses?

Are there other factors influencing decision-making in this case (eg., the current Boston situation)?

Are there any alternatives to a public examination of this matter?