

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

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

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FORWARD

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

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

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

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

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

HISTORY OF PROPOSAL:

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

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

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

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

CONFIDENTIALITY OF THIS DOCUMENT:

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

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

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

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

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

INTRODUCTION

AN ILLUSTRATION OF ONE CASE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A GENERAL DISCUSSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF POSSIBLE CASE SCENARIOS

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

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

HYPOTHETICAL CASE NO. 1:

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

HYPOTHETICAL CASE NO. 2:

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

HYPOTHETICAL CASE NO. 3:

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

HYPOTHETICAL CASE NO. 4:

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

HYPOTHETICAL CASE NO. 5:

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

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

CRIMINAL LAW QUESTIONS

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

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

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

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

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

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

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

CIVIL LAW QUESTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CANON LAW QUESTIONS

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

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

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

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

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

11. Where should such a record be kept?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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