

can. 368 are equivalent to a diocesan bishop."

- J. **Canon 390 [Exercise of Pontificals]** provides in its entirety: "A diocesan bishop can conduct pontifical functions throughout the entire diocese; he cannot do so, however, outside his own diocese without the express or at least reasonably presumed consent of the local ordinary."
- K. **Canon 391 [Aspect of Bishop's Governmental Rule]** provides in its entirety: "Section 1. The diocesan bishop is to rule the particular church committed to him with legislative, executive, and judicial power in accord with the norm of law. Section 2. The bishop personally exercises legislative power; he exercises executive power either personally or through vicars general or Episcopal vicars in accord with the norm of law; he exercises judicial power either personally or through a judicial vicar and judges in accord with the norm of the law."
- L. **Canon 392 [Fostering a Common Discipline]** provides in its entirety: "Section 1. Since he must protect the unity of the universal Church, the bishop is bound to promote a common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws. Section 2. He is to be watchful lest abuses creep into ecclesiastical discipline, especially concerning the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and devotion to the saints, and also the administration of property."
- M. **Canon 393 [Representation of Power]** provides in its entirety: "The diocesan bishop represents his diocese in all its juridic affairs."
- N. **Canon 394 [Fostering of Apostolate]** provides in its entirety: "Section 1. The bishop is to foster the various aspects of the apostolate within his diocese and see to it that within the entire diocese or within its individual districts all the works of the apostolate are coordinate under his direction, with due regard for their distinctive character. Section 2. He is to urge the faithful to exercise the apostolate in proportion to each one's condition and ability, since it is a duty to which they are bound; he is also to recommend to them that they participate and assist in the various works of the apostolate in accord with the needs of place and time."
- O. **Canon 403 [Appointment of Coadjutor / Auxiliary]** provides in its entirety: "Section 1. When the pastoral needs of the diocese warrant it, one or several auxiliary bishops are to be appointed at the request of the diocesan: an auxiliary bishop does not possess the right of succession. Section 2. An auxiliary bishop equipped with special faculties can be given to a diocesan bishop in more serious circumstances even of a personal character. Section 3. If it appears more opportune to the Holy See, it can ex officio appoint a coadjutor bishop who is also

equipped with special faculties; a coadjutor bishop does possess the right of succession.”

- P. Canon 407 [Episcopal Consultation and Collaboration] provides in its entirety: “Section 1. In order to foster the present and future good of the diocese as much as possible, the diocesan bishop, the coadjutor and the auxiliary bishop mentioned in can. 403, section 2, are to consult with one another on matters of major importance. Section 2. In considering matters of major importance, especially of a pastoral character, the diocesan bishop is to consult his auxiliary bishop before others. Section 3. Because they have been called upon to share part of the concerns of the diocesan bishop, a coadjutor bishop and an auxiliary bishop are so to fulfill their duties that they proceed in harmony with him in their efforts and intentions.”
- Q. Canon 489 [Untitled] provides in its entirety: “Section 1. *There is also to be a secret archive in the diocesan curia or at least a safe or file in the ordinary archive, completely closed and locked which cannot be removed from the place, and in which documents to be kept secret are to be protected most securely.* Section 2. Every year documents of criminal cases are to be destroyed in matters of morals in which the criminal has died or in which ten years have passed since the condemnatory sentence; but a brief summary of the case with the text of the definitive sentence is to be retained.” (emphasis added)
- R. Canon 490 [Untitled] provides in its entirety: “Section 1. *Only the bishop may have the key to the secret archive.* Section 2. When the see is vacant the secret archive or safe is not to be opened, except in the case of true necessity by the diocesan administrator himself. Section 3. *Documents are not to be removed from the archive or safe.*” (emphasis added)
- S. Canon 491 [Untitled] provides in its entirety: “Section 1. *The diocesan bishop is to see to it that the acts and documents of the archives of cathedral, collegiate, parochial and other churches in his territory also are diligently preserved; also, inventories or catalogs are to be made in duplicate, one of which is to be kept in the church’s own archive and the other in the diocesan archive.* Section 2. The diocesan bishop is also to see to it that there is an historical archive in the diocese in which documents having an historical value are diligently preserved and systematically arranged. Section 3. In order to inspect or remove the acts and documents spoken of in sections 1 and 2 above, the norms established by the diocesan bishop are to be observed.” (emphasis added)
- T. Canon 634 [Capacity Regarding Temporal Goods] provides in pertinent part: “Section 1. As juridic persons by the law itself, institutes, provinces, and houses are capable of acquiring, possessing, administering, and alienating temporal goods

unless this capacity is excluded or restricted in the constitutions.”

- U. **Canon 635 [Regulation of Temporal Goods]** provides in pertinent part:
 “Section 1. Since the temporal goods of religious institutes are ecclesiastical, they are governed by the prescripts of Book V, The Temporal Goods of the Church, unless other provision is expressly made.
1. The commentary prefacing Book V, The Temporal Goods of the Church, provides “[b]y temporal goods is meant all non-spiritual assets, tangible and intangible, that are instrumental in fulfilling the mission of the Church: land, buildings, furnishings, liturgical vessels and vestments, works of art, vehicles, securities, cash and other categories of real or personal property.”
- V. **Canon 1254 [Independence from Civil Authority]** provides in its entirety:
 “Section 1. To pursue its proper purposes, the Catholic Church by innate right is able to acquire, retain, administer, and alienate temporal goods independently from civil power. Section 2. The proper purposes are principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.”
- W. **Canon 1717 [Initiation of the Investigation]** provides in its entirety: “Section 1. *Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.* Section 2. Care must be taken so that the good name of anyone is not endangered from the investigation. Section 3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.” (emphasis added)
- A. An ordinary, as that term is used in Canon 1717, includes a diocesan bishop.
- X. **Canon 1718 [Decree of Ordinary Regarding the Penal Process]** provides in its entirety: “Section 1. When it seems that sufficient evidence has been collected, the ordinary is to decide: (1) whether a process to inflict or declare a penalty can be initiated; (2) whether, attentive to can. 1341, this is expedient; (3) whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree. Section 2. The ordinary is to revoke or change the decree mentioned in Section 1 whenever new evidence indicates to him that another decision is necessary. Section 3. In issuing the decrees

mentioned in Sections 1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent. Section 4. Before he makes a decision according to the norm of Section 1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages."

A. An ordinary, as that term is used in Canon 1718, includes a diocesan bishop.

Y. **Canon 1719 [Custody of the Acts]** provides in its entirety: *"The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process."* (emphasis added)

A. An ordinary, as that term is used in Canon 1719, includes a diocesan bishop.

Z. **Canon 1722 [Restrictions on the Accused]** provides in its entirety: *"To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from sacred ministry or from some office of ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit the participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases."* (emphasis added)

A. An ordinary, as that term is used in Canon 1722, includes a diocesan bishop.

22. **Father Thomas P. Doyle** is an ordained priest and a credentialed canon lawyer within the Catholic Church; however, he is not assigned to the Catholic Diocese of Toledo. Over the past several years, Father Doyle has been an outspoken critic of the Church's handling of clergy sex abuse matters and has written a number of articles and books concerning the manner in which the Catholic Church deals with criminal matters internally. Father Doyle wrote and published an article on April 6, 2002, which contains the following pertinent passages:

A. "Furthermore there is to be kept a secret archive in every diocese where more sensitive materials are kept (cc. 489-490). The canons specify very few items that must be kept in the secret archives. These include *** dispensations from impediments to orders (cc. 1027-1048), decrees of dismissal from religious life (cc.

700). and documents relating to the loss of the clerical state by dismissal, invalidity or orders or dispensation (cc. 290-293). *Also the records of canonical penal trials involving matters of morals are to be kept in the secret archive. *** Matters involving penal procedures are to be kept in the secret archive.* When an allegation of an offense is made known to the ordinary, *he is obliged by the law to conduct a preliminary investigation either personally or through another (c. 1717).* Canon 1719 refers to the acts of the investigation which are to be kept in the secret archives. This canon presumes that a written record of the investigation is made and retained. Any investigations of priests alleged to have committed sexual assault on children or anyone else would fall into this category. *** There are two fora or places for the exchange of information in Church law; the external forum concerning matters about which a record may be kept, and the internal forum, about matters of conscience about which no records are kept with the exception of decisions and decrees from the Apostolic Penitentiary in Rome. The most common place for the internal forum is sacramental confession. No records are ever kept of sacramental confessions. All matters for which there is a record, whether this is considered a confidential record or not, are matters for the external forum. Records of all canonical trials, penal procedures and investigations are a matter of the external forum. Matters in the external forum are not subject to the seal of the confessional. Judicial matters such as penal investigations are not matters of the internal forum by the very fact that a record of the investigation is mandated by the law. Similarly, the contents of a personnel file are not presumed to be matters of the internal forum. The communications between religious superiors and their subjects and bishops and their clergy are not presumed to be internal forum matters unless it is a question of communications received in the course of sacramental confession or spiritual direction or a communication which is explicitly understood to be in the non-sacramental internal forum. Documents contained in the general archives are not to be removed unless there is permission to do so from the bishop or from both the moderator of the curia and the chancellor. Then they are only to be removed for a short period of time. (canon 488). All documents in the archives are to be retained and not destroyed. Certain documents from the secret archives are to be destroyed however. These are the documents relating to criminal cases, that is, cases involving the allegation of the commission of a canonical crime. The documents that are to be destroyed are those which pertain to a person accused of a crime who has died or documents pertaining to a criminal case, ten years after the case has been closed. Even when the documentation is destroyed, a summary of the cases is to be retained along with the sentence of the tribunal if the case was subjected to a complete canonical trial. (canon 489). The above canons refer to the revised Code of Canon Law (1983).

23. In an Associated Press article dated April 29, 2004, it was reported that Archbishop Edwin O'Brien of the Archdiocese for the Military Services "told" Father Thomas

Doyle, forbidding him from leading lead public Masses. The action was reported as retaliatory in nature because Father Doyle was a whistleblower.

24. Gregory Ingels is a credentialed canon lawyer. Mr. Ingels has written an article that provides in pertinent part: "[A] priest's faculties are his 'license' to exercise his ministry. Some faculties are granted by the universal law of the Church; others are granted by the bishop of the diocese in which he is residing. *For sufficiently serious reasons, a bishop can prohibit a priest from exercising his faculties during the course of an investigation into criminal misconduct. If this criminal misconduct is established through a canonical penal process, a priest's faculties can be removed or suspended. He still remains a priest and a cleric; this action simply means that he is forbidden from exercising his priestly ministry.*" (emphasis added)

A. The aforementioned treatise on Canon Law (New Commentary on the Code of Canon Law, John P. Beal et al., Paulist Press, Mahwah NJ (2000)) lists in its bibliography Gregory Ingels as one of three named authors. The citation reads: "Ingels, G. 'Processes Which Govern the Application of Penalties.' In *Clergy Procedural Handbook*, ed: R. Calvo and N. Klinger, 206-237. Washington, D.C.: CLSA, 1992." Id. at 1817.

CANONICAL RECORDS OF THE CATHOLIC DIOCESE OF TOLEDO

25. This Affiant has reason to believe that the Catholic Diocese of Toledo was aware of the allegations of secular criminal misconduct as early as April of 1980, specifically that Father Robinson was suspected of the murder of Sister Margaret Ann Pahl. Notably, a diocesan official (Sister Phylis Ann who was at the time the Administrator of Mercy Hospital) ordered Father Robinson to undergo a second polygraph examination concerning his involvement in the murder of Sister Margaret.
26. This Affiant has reason to believe, based upon a review of Canon Law, that the murder of a nun by a priest constitutes a violation of canon law (e.g. Thou Shalt Not Kill), thereby making the act an act of canonical criminal misconduct.
27. This Affiant has reason to believe, based upon a review of Canon Law, that the diocesan bishop in 1980 was obliged to initiate a canonical penal process in order to determine if Father Robinson, or anyone else affiliated with the Catholic Diocese of Toledo, was involved in the murder of Sister Margaret. Canon Law requires that such an inquiry be memorialized in written form and those documents and/or materials be placed in the diocesan Secret Archives. Even if those documents were destroyed after ten years had transpired, the Diocese is required to maintain a written summary of the investigation and a copy of any order imposing disciplinary action and/or pastoral counseling. According to Father Doyle and other sources, such as Canon Law, such documents are not protected

of the Diocese. Given that the Diocesan Bishop is the only person in the Diocese who has the key to the Diocesan Secret Archives, it is reasonable to presume that the Secret Archives are located in close proximity to the Bishop's office at 1933 Spielbusch as a matter of control and convenience.

32. On or about September 10, 2004, this Affiant contacted the Maine State Attorney General's Office concerning a media article found on an internet web cite that indicated the Maine Attorney General's Office had conducted a review of the Diocesan Secret Archives in the State of Maine. During the telephone conversation, a representative of the Maine State Attorney General's Office confirmed that the Secret Archives did, in fact, exist and that, in that particular incident, the Secret Archives contained documents, logs, and other information concerning suspected child sex abuse offenses committed by diocesan representatives. The representative also specifically confirmed that where the Maine Diocese had otherwise purged certain records maintained in their Secret Archives, that diocese had created and maintained an orderly written summary of the records which had been destroyed, including references to the contents of said records. The review of said records took approximately four days and required several investigators.

ELECTRONIC MEDIA

33. This Affiant has reason to believe that some or all of the records maintained under the auspices of the Diocesan Secret Archives and/or the Diocesan Archives are maintained in electronic media format. Given the volume of information which the Diocese handles on a daily and/or weekly basis, it is reasonable to assume that electronic media is utilized to generate, collect, and organize the volume of information necessary to the day-to-day affairs of the Diocese. In electronic media format, such records are not immediately human readable, and must, therefore, be searched for and analyzed by officers familiar with electronic media.
34. This Affiant has consulted with Detective Bart Beavers concerning the storage of, search for, seizure of, and analysis of relevant evidence and/or information on computer systems and related devices, documentation, etc. Detective Beavers is knowledgeable on the subjects given his following qualifications:
- A. Detective Beavers is a peace officer as defined in R.C. § 2935.01(B) and currently serves with and/or on behalf of the Toledo Police Department. Detective Beavers has been a peace officer for approximately 19 years. Furthermore, Detective Beavers has been a detective for approximately 16 years. As a detective, Detective Beavers has served as the affiant for numerous search warrants that have resulted in the discovery and seizure of relevant evidence. Detective Beavers is currently assigned to a Computer Crimes Task Force at the FBI (Toledo Resident Office) and has received specialized training relative to

computer crime investigations.

35. This Affiant knows from personal experience and Detectives of the Toledo Police Department with whom this Affiant has conferred during the course of official investigations (such as Detective Beavers) that computer hardware, software, documentation, passwords and data security devices may be important to a criminal investigation in two distinct and important respects: (1) the objects themselves may be instrumentalities, fruits or evidence of a crime; and/or (2) the objects may have been used to collect and store information about crimes (in the form of electronic media).
36. Further, this Affiant knows from training, education, and experience and other Detectives of the Toledo Police Department that searching computerized information for evidence or instrumentalities of crime commonly requires agents to seize most or all of a computer system's input/output peripheral devices, related software, documentation, and data security devices (including passwords) so that a qualified computer expert can accurately retrieve the system's data in a laboratory or other controlled environment. This is true because of the following:
- A. **The volume of evidence.** Computer storage devices (like hard disks, diskettes, tapes, laser disks, Bernoulli drives) can store the equivalent of thousands of pages of information. Additionally, a suspect may try to conceal criminal evidence; he might store it in random order with deceptive file names. This may require some searching authorities to examine all the stored data to determine which particular files are evidence or instrumentalities of crime. This sorting process can take weeks or months, depending on the volume of data stored and it would be impractical to attempt this kind of search on site.
 - B. **Technical requirements.** Searching computer systems for criminal evidence is a highly technical process requiring expert skills and properly controlled environment. The vast array of computer hardware and software available requires even computer experts to specialize in some systems and applications, so it is difficult to know before a search which expert is qualified to analyze the systems and their data. In any event, however, data search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even "hidden", erased, compressed, password protected, or encrypted files. Since computer evidence is extremely vulnerable to inadvertent or intentional modification or destruction (both from external sources or from destructive code embedded in the system as a "booby trap"), a controlled environment is essential to its complete and accurate analysis.
37. This Affidavit and the corresponding Warrant have been reviewed by duly appointed Assistant Lucas County Prosecuting Attorneys as to form and content within the context of secular legal authority. Said prosecutors are satisfied that this Affidavit provides a

issuing magistrate with a substantial basis upon which to conclude probable cause exists for the issuance of the requested Warrant. Said prosecutors have authorized this Affiant to submit this Affidavit and the corresponding Warrant to this Honorable Court for its review.

In consideration of the foregoing, this Affiant requests this Honorable Court issue a Warrant to Search the persons / premises / objects described above for the property specified and to seize said property, the search to be executed and/or initiated in the DAY SEASON.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 15 Day of September, 2004.

Sgt. Steven Ferrante TPD 1649
Affiant

Sworn before me and subscribed to in my presence this 15TH Day of September, 2004.

Robert Christiansen

Judge Robert Christiansen
Court of Common Pleas
Lucas County, Ohio