

**AFFIDAVIT OF
THOMAS PATRICK DOYLE, O.P., J.C.D.
ON THE HISTORY OF CLERGY SEXUAL ABUSE
IN THE CATHOLIC CHURCH**

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, Thomas Patrick Doyle, being first duly sworn, states as follows:

1. I am a Catholic priest, ordained in May 1970. I have Master's degrees in philosophy (1968), theology (1971), political science (1970), church administration (1976) and Canon Law (1977). I have a Pontifical Doctorate in Canon Law, awarded in May 1978. Graduate studies were pursued at Aquinas Institute of Philosophy and Theology, University of Wisconsin, Catholic University of America, St. Paul University (Ottawa, Canada), University of Ottawa and the Gregorian University, Rome. I have also pursued graduate studies in addictions at the University of Oklahoma and at the Naval School of Health Sciences, San Diego. I am a Certified Drug and Alcohol Counselor. I recently left the US Air Force after 18 years as an officer and chaplain.

2. Since ordination to the priesthood in 1970 I have served as a parish priest (1971-73), advocate and later judge on the Metropolitan tribunal of the Archdiocese of Chicago (1974-1981), part-time tribunal judge for the Dioceses of Scranton, PA and Lafayette, IN. I served as Secretary-Canonist at the Vatican Embassy, Washington, D.C. from 1981-1986. I was a canonical consultant and tribunal judge for the Archdiocese for the Military Services, 1986-1990. I have also served as a guest lecturer in Canon Law at Catholic Theological Union, Chicago, Catholic University of America and the Tribunal Institute of Mundelein Seminary, Chicago. I have served as a member of the Board of Governors of the Canon Law Society of America (1978-1980). From 1983-85 and 1988-1990 I was a consultant to the Canonical Affairs Committee of the National Conference of Catholic Bishops. In 1990 I entered active duty of the U.S. Air Force and have been assigned to Grissom AFB, Indiana (1990-93), Hurlburt Field, Florida (1993-95), Lajes Field, Azores (1995-97), Tinker AFB, Oklahoma (1997-2001), Ramstein AB, Germany (2001-2003) and Seymour Johnson AFB, North Carolina (2003-2004). I have also been deployed to Operation Joint Forge, Operation Southern Watch and Operation Iraqi Freedom.

3. Since 1984 I have been directly involved with the issue of Catholic clergy sexual abuse of children, minors and adults. I have worked with victims, their families and abusers as both a canonical consultant and pastoral minister. I have worked with Dioceses and Religious Orders giving presentations and lectures and developing policies and procedures. I have been an expert witness and/or consultant in civil and criminal cases involving clergy abuse in cases throughout the Catholic dioceses of the United States. I have also served as a consultant in cases from Canada, the United Kingdom, Ireland, Australia, New Zealand and Israel. I have testified at three trials in the United States, one in Canada and two in Ireland and given numerous depositions. I

have also been asked to testify before the State Legislatures of Pennsylvania, Ohio, Colorado and Maryland on matters related to child abuse, clergy reporting statutes and statutes of limitations. I have published several articles and one book on the subject of clergy sexual abuse.

4. Sexual abuse by Catholic clergy became the subject of widespread publicity in 1984 with the celebrated case of Father Gilbert Gauthe in Lafayette, Louisiana. This led to numerous revelations of similar cases of abuse around the United States and in other countries as well. At the outset of the present era the crisis was erroneously referred to as a "pedophilia problem." Experience has shown that only 20% of clergy perpetrators are true pedophiles while the majority are classified as ephebophiles since their victims are younger adolescents. The publicity generated from the abuse cases involving minor victims has also provoked revelations of widespread clergy sexual abuse of vulnerable adults, mostly women. In any event, the age and gender of the victim are irrelevant since the sexual encounter constitutes abusive behavior by a trusted clergyman perpetrated on one with less emotional strength and spiritual power than the priest and one who is in a vulnerable position from which he or she cannot mount an adequate defense.

5. Although clergy sexual abuse has been well documented from the earliest years of the Catholic Church the present era is unique. The victims of clergy abuse had first turned to the Church authorities for help, expecting that the Church's legal system, known as Canon Law, would provide processes whereby victims would be justly treated and perpetrators properly dealt with and prevented from a continued ministry. Instead, Church officials routinely responded to victims by intimidating them in hopes of obtaining their silence. They also manipulated, stonewalled, deceived and threatened victims. Beginning in 1985, frustrated victims of clergy sexual abuse began to approach the civil courts for relief when the legal system of their own church failed to act. Thus, for the first time in Church history the victims of the clergy turned to the secular legal system for relief. While it is historically true that the civil courts had seen clergy sex cases prior to 1984¹, there were virtually no instances where the Catholic laity had sued a bishop for civil damages resulting from clergy sex abuse. As the cases rapidly increased in courts throughout the U.S., Canada, the United Kingdom and Ireland, the defendant dioceses and religious orders mounted a variety of defenses. Among these has been the recurring claim that this was a phenomenon new to the late 20th century. Furthermore many claimed that they had no way of predicting that clergy would sexually abuse since such an outbreak had never happened before. A variation on this claim sought to shift blame to the medical community, claiming that psychiatrists and psychologists admitted they knew little of pedophilia and related sexual disorders and therefore were not able to properly diagnose the disorder nor to provide competent prognoses for future behavior.

¹ In the 16th and 17th centuries there is evidence that church authorities often subjected accused clerics to canonical trials after which they were turned over to secular authorities for additional punishment. In the 20th century at least two civil trials received limited local publicity: Fr. Bruce MacArthur (El Paso, TX, 1979) and Fr. Mel Balthasar (Boise, ID, 1983-84).

6. I wish to demonstrate four significant points:

- a) Dysfunctional sexual behavior by Catholic clergy is predictable and has been known to the Church hierarchy, including the Bishops in the United States, well before the 1950's. This assertion is based on a consistent pattern of disciplinary legislation enacted by church authorities from the fourth century down to the present.
- b) The Catholic bishops of the United States were aware of the problem of clergy sexual abuse of children and minors at least by the late 1940's and early 1950's as is evident from the correspondence exchanged between Father Gerald Fitzgerald and various U.S. bishops
- c) The Catholic Church has never been successful in curbing clergy sexual abuse with its own disciplinary laws nor is there evidence that it ever provided any adequate pastoral care to victims.
- d) There were adequate warnings from psychologists and psychiatrists about the potentially dangerous emotional state of a significant percentage of U.S. clergy. These warnings date back to the mid fifties and were ignored by the U.S. bishops.

7. The Catholic Church was officially recognized 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. 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.²

The Council of Elvira was not the only source of early legislative attempts to curb the sexual misdeeds of the clergy. 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.

8. 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

² John Boswell, Christianity, Social Tolerance and Homosexuality (Chicago: University of Chicago Press, 1980), p. 42.

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 known as *councils* or *synods* which were generally named after the place where they occurred. Given the poor state of communications at the time it is remarkable that the various councils and synods produced disciplinary legislation similar in tone. Sexual violations by the clergy were not confined to any specific geographic area. Laws were passed throughout the Christian world. These laws, whether the product of individual bishops or groups, did not need the approval of the papacy. Although the pope had been respected as the first among bishops from the earliest years of Christianity, the centralization of power was not evident until the middle ages (12th-13th centuries) during which time several popes gradually reserved various powers to themselves. 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).

9. The practice of individual confession of sins to a priest started in the Irish monasteries in the latter 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. Several of these refer to sexual crimes committed by clerics against young boys and girls. The *Penitential of Bede* (England, 8th century) advises that clerics who commit 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.³

10. The most dramatic and explicit condemnation of forbidden clergy sexual activity was the *Book of Gomorrah* of St. Peter Damian, completed in 1051.⁴ The author had been a Benedictine

³ See Pierre Payer, *Sex and the Penitentials* (Toronto: University of Toronto Press, 1984).

⁴ 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*

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.⁵ His work, the circumstances that prompted it and the reaction of the reigning pope (Leo IX) are a prophetic reflection of the contemporary situation. He begins by singling out superiors who, prompted by excessive and misplaced piety, fail 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.

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.⁶

11. 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 Roman law opinion that *stuprum pueri*, the sexual violation of young boys, be punished by death.⁷

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.’

⁵ 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.*”

⁶ Vern Bullough, *Sexual Practices and the Medieval Church*, p. 61.

⁷ *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

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.*⁸

Clerical sodomy continued to be a known problem though it did not attract as much legislative attention as clerical concubinage and this 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.⁹

12. 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 the 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 clerics.¹⁰

So common was clerical same-sex activity that some scholars have concluded that homosexual relationships were commonly associated with the clergy.¹¹

a section known as a distinctio.)

⁸ John Lynch, "Marriage and celibacy of the clergy: the discipline of the western church: an historico-canonical synopsis," Jurist 32(1972): 199-200.

⁹ 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.

¹⁰ John Boswell, Christianity, Social Tolerance and Homosexuality, (Chicago, University of Chicago Press, 1980), p. 188.

¹¹ 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

13. 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.¹² 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.*¹³

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 the 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.¹⁴

14. The Protestant Reformation of the 16th century was sustained by much more than the controversy over the sale of indulgences. Luther and the other major reformers such as Zwingli

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.”

¹² 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.*”

¹³ Schroeder, *Disciplinary Decrees of the General Councils*, p. 256.

¹⁴ See Richard Sherr, “A Canon, A Choirboy and Homosexuality in Late 16th Century 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.

and Calvin, all rejected mandatory celibacy.¹⁵ The rejection was motivated in great part by what the reformers saw as widespread evidence that clerics of all ranks commonly violated the obligations with women, men and young boys. In reference to life in the monasteries on the eve of the 16th century Protestant Reformation, Abbott says that the monks' "lapses" with women, handsome boys and each other...became so commonplace that they could not be considered lapses but ways of life for entire communities."¹⁶ Up to this time the Church's leaders continued to advocate the long-standing remedies of legislation, spiritual penalties, physical penalties and warnings, none of which worked. Living in the midst of a clerical world of non-celibate behavior, the reformers believed that this supposedly celibate world caused moral corruption:

*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.*¹⁷

No prior reform movement in the Catholic church had an impact equal the 16th century Protestant Reformation. 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 II summoned one to be held in the Italian city of Trento.¹⁸ 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.

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.¹⁹ 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.*²⁰

¹⁵ Elizabeth Abbott, A History of Celibacy (Cambridge, DaCapo Press, 1999), p. 108, 113 and John Lynch, "Marriage and Celibacy of the Clergy: The Discipline of the Western Church: An Historico-Canonical Synopsis," Jurist, 32-2(1972), p. 207.

¹⁶ Elizabeth Abbott, op. cit., p. 102.

¹⁷ Ibid., p. 554.

¹⁸ See Cross and Livingstone, op. cit., p. 1050. Pope Paul III himself had three sons and a daughter yet promoted the reform.

¹⁹ Brundage, Law, Sex and Christian Society, p. 568.

²⁰ 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.

The council also dealt with concubinous clerics in the final session. The detailed canon describing the procedures to be followed by bishops and the penalties prescribed for guilty clerics are clear proof that the definitive legislation of the Fourth Lateran Council was indeed not that definitive in practice. The canon of Trent mentioned not only priests but guilty bishops.²¹

In spite of the reforming legislation and the establishment of mandatory 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 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.²²

Two years later the same pope apparently found it necessary to fire another salvo at 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.²³

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.

15. Solicitation in the Confessional

In spring, 2003 the American media drew attention to a secret Vatican document issued in 1962 which prescribed special procedures for processing cases of an especially vile form of clergy sexual abuse: solicitation of sex in the confessional. The Pope and various regional bishops issued a series of disciplinary laws against solicitation, beginning in 1561 and extending

²¹ Session XXV, canon 24 in Schroeder, p. 247-48.

²² 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.)

²³ Pope Pius V, “*Horrendum*” Papal Constitution, 30 August 1568 in Fontes p. 229.

to 2001. Papal laws were promulgated in 1561, 1622, 1741, 1917, 1922, 1962, 1983 and 2001. 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 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.²⁴

After the promulgation of the Code in 1917, the Vatican issued special legislation on procedures to be followed in solicitation cases in 1922. This document, like the 1962 document, was sent to the world's bishops but otherwise retained in total secrecy. In 1962 Pope John XXIII approved the publication of renewed special procedural norms for processing solicitation cases. Like the 1922 document but unlike all previous papal legislation on this subject, 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.²⁵ The document was sent to all bishops in the world. The dispositive section of the document is preceded by an order whereby the document is to be kept in the secret archives and not published nor commented upon by anyone. 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.

It introduced several significant elements including an exceptional degree of confidentiality imposed on the document itself and the persons involved in processing cases. Compared to previous papal documentation confronting clergy sexual abuse this document contains several significant changes which reveal the church's policy on clergy sexual crimes.

This legislation introduced the following innovations in church policy:

- 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

²⁴ Charles Henry, a History of the Inquisition in Spain.(New York, MacMillan, 1907), p. 135.

²⁵ 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.

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.

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 the 1962 document until reference to it was included in the recent Vatican legislation on sex crimes, the 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.²⁶ 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. When this document's existence was publicly revealed in March 2003, it surprised many bishops and canon lawyers who claimed not to have known about it. Furthermore there is little if any evidence that the document was ever referred to in any of the hundreds of civil cases brought against dioceses and religious communities over the past 15 years.

The 1962 document is significant because it reflects the church's urgent desire to maintain the highest degree of secrecy and strictest degree of security about the worst sexual crimes

²⁶ “*Sacramentorum Sanctitatis Tutela*,” May 18, 2001, Congregation for the Doctrine of the Faith, in *Acta Apostolicae Sedis*, 93(2001), p. 785-788.

perpetrated by clerics. The document does not include any background information about why it was issued nor is there any reasoning available for the imposition of extreme secrecy and the inclusion of the crimes in Title V. One can only presume that cases or concerns had been brought to the attention of the Vatican authorities which prompted the decree.

Since the archives of the Holy Office, now known as the Congregation for the Doctrine of the Faith, are closed to outside scrutiny it is impossible to determine the number of cases referred to it between 1962 and the present. The other factor impeding a study of cases is the prohibition of local dioceses from ever revealing the very existence of cases much less the relevant facts.

The public exposure of clergy sexual abuse of youth which began in the mid-eighties was 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 had made several statements about clergy sexual abuse 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.

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 is extended to 10 years. In the case of sexual abuse of a minor this time begins to run from the victim's 18th birthday.
- 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.

16. The Contemporary Era

Although it is clear from the above references to church documents that the church hierarchy, including the Bishops in the United States, were aware of the probability of sexual abuse of children and adolescents by clerics before the 1950's, it cannot be disputed that there was an awareness and knowledge of the problem of sexual abuse of children and adolescents by clerics among the church hierarchy, including the Bishops in the United States, beginning in the 1950's. The claims that they were unaware of clergy sexual abuse or the serious nature of such

abuse prior to this time are empty and contrived in light of information that has been uncovered in the various civil and criminal trials since 1985, documents issued by church authorities and various studies conducted under church auspices over the past 50 years.

The following is a chronological listing of various indicators:

- 1952:** Fr. Gerald Fitzgerald, founder of the Paraclete Order and associated treatment facilities for priests located in New Mexico, Missouri and California, wrote to Bishop Robert Dwyer of Reno, NV, 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. (See Fitzgerald Letter, dated Sept. 12, 1952, as attachment 1.)
- 1952:** Fr. Fitzgerald wrote to Bishop Robert J. Dwyer on Sept. 12, 1952. Concerning priests who sexually abused minors he said *“We find it quite common, almost universal with the handful of men we in the last 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.”*
- 1957:** Fr. Fitzgerald wrote to Bishop Matthew Brady of Manchester NH 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:** Again, Fr. Fitzgerald writes to Archbishop Edwin Byrne (Santa Fe) that 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 eery 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.*²⁷
- 1959:** Pope John XXIII directed a personal letter to Fr. Gerald Fitzgerald, dated Sept. 14, 1959, in which he acknowledged the work that Fr. Gerald was doing with priests who were sexual abusers: *“Our pastoral heart was greatly consoled...when we learned of your very commendable apostolate among the Lord’s own anointed who...have fallen prey to the insidious snares of the evil that beset the path of priests.”* He uses the language that was and still is commonly used by the hierarchy to refer to sexual crimes. The letter indicates that the Pope and therefore the Vatican bureaucracy was aware at that time of the problems of sexual abuse by priests.
- 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 common life and the priestly ministry would constitute serious dangers.”*²⁸
- 1966:** A workshop for psychologists engaged in the assessment of candidates for the priesthood and religious life is 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 typeA 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.”*²⁹
- 1967:** The first public discussion of priest sexual abuse of minors took place at a meeting sponsored by the National Association for Pastoral Renewal held on the campus of

²⁷ 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.

²⁸ Sacred Congregation for Religious, “Careful Selection and Training of Candidates for the States of Perfection and sacred orders,” 2 Feb. 1961 in Canon Law Digest, Vol. 5, p. 471.

²⁹ 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.

Notre Dame University in 1967. All U.S. Catholic bishops were invited to that meeting.³⁰

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 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.³¹

1972: Dr. Eugene Kennedy published a psychological study of U.S. priests commissioned by the 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.³²

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 as a pre-adolescent or adolescent level of psychosexual growth.*"³³

1978: Fr. Bruce MacArthur, priest of Sioux Falls SD, is convicted of the rape of a 51-year-old patient in a nursing home. He serves 31 months in prison. After his release his bishop helps him find pastoral work in Mexico and Africa where he serves until 1990. He has been charged with sexual abuse of underage girls from 1963 onwards

1983: The revised Code of Canon Law is promulgated, which includes a canon (1395, 2) which explicitly names sex with a minor by clerics as a canonical crime.

1984: The Times of Acadiana published a series by Jason Berry exposing the mishandling of the case of Fr. Gilbert Gauthe in Lafayette Louisiana.

1985: In January Rev. Mel Balthazar is 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.*"³⁴

1985: In May *The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting*

³⁰A.W. Richard Sipe, "Affidavit," Doe v NOSF, District Court of El Paso, Texas, Feb. 9, 2004, . 19, p. 5-6.

³¹Conrad Baars, M.D., "*The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood.*" Unpublished, 1971.

³²Eugene Kennedy and Victor Heckler, The Catholic Priest in the United States: Psychological Investigations. (Washington, D.C., U.S. Catholic Conference, 1972).

³³Ibid., p. 11.

³⁴Jason Berry, Lead Us Not Into Temptation (Chicago: University of Illinois Press, 1992), p. 30

the Problem in a Comprehensive and Responsible Manner, commonly known as “The Manual” is written by Michael Peterson, Thomas Doyle and F. Ray Mouton.³⁵ The 100 page detailed handbook was prepared in 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.

- 1993:** The Pope issues his first public statement on clergy sexual abuse in a letter directed to the Bishops of the United States. The bishops form the first *ad hoc* committee to study the sexual abuse issue. The committee published a three-part manual in 1994, 95 and 96 successively.
- 1994:** The Vatican published the official Catechism of the Catholic Church which contains a remarkable paragraph about child sexual abuse: “*Connected to incest is any sexual abuse perpetrated by adults on children or adolescents entrusted to their care. The offense is compounded by the scandalous harm done to the physical and moral integrity of the young, who will remain scarred by it all their lives; and the violation of responsibility for their upbringing.*”³⁶
- 1995:** The late Bishop Bernard Flanagan, former bishop of Worcester MA, stated in a deposition (June 6, 1995) that in 1971 he had heard of clergy sexual abuse in dioceses other than his own and that bishops were privately discussing this issue.³⁷
- 1995:** Hans Hermann Cardinal Groer, Archbishop of Vienna, is forced to resign following credible accusations of sexual abuse of minor boys. On April 14, 1998, under orders from Pope John Paul II, he relinquishes all privileges, titles and practices associated with the episcopacy and the cardinalate.
- 2004:** On February 27 the final reports of the survey conducted by the John Jay College of Criminal Justice and the study done by the National Review Board are released. Both reports were commissioned by the U.S. Bishops in 2002. The John Jay survey reveals almost 4500 clergy perpetrators reported by dioceses since 1950 as at least 10,000 known victims. The National Review Board report places blame for the widespread scandal directly on the bishops’ negligence.

17. Conclusions

In spite of claims to the contrary, the canonical history of the Catholic Church clearly reflects a consistent pattern of awareness that celibate clergy regularly violated their obligations in

³⁵ 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)

³⁶ Catechism of the Catholic Church (New York, Doubleday, 1995), no. 2389, p. 574.

³⁷ Deposition of Bishop Bernard Flanagan, June 6, 1995, Barry vs. Roman Catholic Bishop of Worcester, a Corporation Sole and Thomas A. Kane, defendants. C.A. No. 93-02438, Commonwealth of Massachusetts, p. 152-153.

a variety of ways. The fact of clergy abuse with members of the same sex, with young people and with women is fully documented. 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. 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 Bishops' National Review Board and John Jay College Survey have confirmed the fact of known clergy sexual abuse since the 1950's and the church leadership's consistent mishandling of individual cases.

The bishops have, at various times, claimed that they were unaware of the serious nature of clergy sexual abuse and unaware of the 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.

Further, Affiant, sayeth not.

Thomas Patrick Doyle

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

Subscribed and sworn to before me

this 27 day of April 2006.

Ronald R Polk

Notary Public in and for the
State of CALIFORNIA

