

REPORT
OF
THOMAS P. DOYLE, J.C.D., C.A.D.C.

In the case of

JOHN ROE 2 vs THE Catholic DIOCESE OF HONOLULU, THE
SOCIETY OF ST. SULPICE AND THE CATHOLIC FOREIGN
MISSION SOCIETY (MARYKNOLL FATHERS AND BROTHERS)

1. Retention as Expert Witness

My name is Thomas Patrick Doyle. I was ordained a Catholic priest in the Dominican Order on May 16, 1970. I also served as an officer in the United States Air Force from 1986 until 2004. I currently reside in Vienna, Virginia.

Expert qualifications – education

My expert qualification, educational background and expert experience are all set forth in my report *G.O. et al vs. Catholic Diocese of the State of Hawaii, also known as the Diocese of Honolulu, et al.*

Items reviewed in preparation for the report

In preparation for this report I have reviewed documents from the files of the Diocese of Honolulu pertaining to Bishop Joseph Ferrario; the depositions of John Roe 2, Sr. Bernadette Kenny, Fr. Edward Dougherty, M.M., Fr. Richard Callahan, Ms. Claudia Koblenz-Sulcov

I have also reviewed the complaint, the Plaintiff's First Supplemental Response to the Diocese of Hawaii's first set of interrogatories and the Maryknoll's Second Supplemental Response to Plaintiff's First set of Interrogatories. I have also reviewed my own reports

in the *v. Diocese of Honolulu and Maryknoll Fathers* case as well as the *John Doe v. Diocese of Honolulu, Maryknoll and James Jackson*.

2. The Sexual Abuse of John Roe 2

A. Overview of the case

John Roe 2 was born in Germany on . His father was a career officer in the U.S. army. In 1973 he moved with his family to Hawaii where his father had been reassigned to Fort Smith. The family joined St. Anthony Parish in Kailua, Hawaii. John Roe attended the parish school and took an active part in parish life with his family. He met both perpetrators, Fr. Joseph Henry and Fr. Joseph Ferrario at St. Anthony Parish. When John was 9 Fr. Henry led him into a storage area in the Church. Fr. Henry had been talking to the 9 year old about penises. They were alone and he exposed himself to John Roe (John Roe depo, p. 99-100). He then pushed him face down on the carpet and raped him. (Depo, p. 107-109).

Within two days or so he told Fr. Avery, another Maryknoll priest at the parish. He next told Sr. Margaret and then Sr. Joyce. He testified that Sr. Margaret cried and ran out of the room and that Sr. Joyce slapped him and asked why he was lying (Depo. P. 125). Fr. Henry continued to put his hands on J.R and he would also pat him on the bottom but he never sexually assaulted or raped him again.

Fr. Henry died on November 13, 1974. Not long after his death the Maryknoll priests left the parish and diocesan priests took over. Fr. Joseph Ferrario was assigned as pastor in 1976. John Roe liked him at first and one day asked if he could talk to him about Fr. Henry (Depo. p. 136). They went to an area of the property where he proceeded to tell Fr. Ferrario about the sexual assault. He recalls that as they spoke Fr. Ferrario was becoming sexually excited. It ended up with J.R. being forced by Ferrario to perform oral sex. That was the only sexual encounter between them because he avoided Ferrario after that.

B. The Ecclesiastical Context of the Sexual Abuse of John Roe 2

John Roe 2 was sexually abused as a young student attending a Catholic school in the Diocese of Honolulu, Hawaii. The school belonged to St. Anthony Parish, Kailua, Hawaii. This was and remains a parish directly affiliated with the Diocese of Honolulu. It was erected by the Bishop of Honolulu and although it had been entrusted to priests of religious institutes at one time or another, it remained a diocesan parish. The first person to sexually abuse John Roe 2 was Fr. Joseph Henry. Fr. Henry was a member of the Catholic Foreign Mission Society, commonly referred to as Maryknoll after the geographic location of its headquarters. For a number of years the Maryknoll Fathers accepted the responsibility of running the parish. The parish was also staffed at one time by members of the Society of St. Sulpice, also known as the Sulpician Fathers. At the present time it is run by priests of the Diocese of Honolulu.

C. Authority and responsibility for St. Anthony Parish

The ultimate authority over St. Anthony Parish and the priests who served there was and is the bishop of the diocese. This authority is grounded in the office of bishop. The bishop is especially responsible for the nurture and safeguarding of the moral and spiritual welfare of all who came to the parish and all parishioners. The bishop alone has the power to appoint pastors and associate pastors and also the power to remove them.

The role of a priest is not adequately understood by comparing it to the employer-employee relationship. A priest's essential mission or job-related duty is to give good example by the way he leads his life. Consequently a priest's "job" cannot be described in terms of certain actions he performs nor can it be described in terms of time or place. In other words, he is "on duty" at all times and in all places. The bishop is responsible for seeing that the priests in his charge observe the duties and obligations they have assumed. This responsibility of the bishop extends to the totality of the priest's life. This does not mean micro-management but it does mean that the bishop's authority over a priest extends to anything a priest says or does that has any impact on members of the community.

John Roe 2 was sexually abused by Fr. Joseph Henry, a member of the Maryknoll Fathers and Brothers, and by Father Joseph Ferrario, a

member of the Society of St. Sulpice incardinated as a priest of the Diocese of Honolulu.

In cases similar to this case attorneys for the defense have often claimed that if the perpetrator is a member of a religious institute, the bishop of the diocese has no authority over him or responsibility for his actions. This is completely incorrect. The foundation for the bishop's claim to authority over members of the Sulpicians, Maryknoll or any other religious institute is the fact, as clearly set forth in Church legislation and norms, that the bishop is the primary authority figure for the entire diocese. He is responsible for the moral and spiritual welfare of every Catholic who either resides in the diocese or is staying there even temporarily. This responsibility extends to all works of the apostolate as they are frequently called in the Catholic Church. Works of the apostolate or ministries as they are sometimes called, include all the traditional works of the Catholic Church: parishes, schools, hospital chaplaincies, hospitals, seminaries and mission work to name a few. The bishop is responsible for and has direct authority over every work of the apostolate whether it falls within the ambit of the traditional works of the Church or is a unique or non-traditional work (cf. canon 678 of the 1983 Code of Canon Law, canon 612 of the 1917 Code of Canon Law). His authority obviously extends to priests attached to the diocese but as has been said already, it extends to priests of religious institutes as well as diocesan priests from other dioceses.

When a religious institute staffs a parish the procedure for assigning priests to staff the parish as pastors or assistant pastors involves two steps. First, the major superior of the religious institute which is either the superior of the entire institute or a regional superior, often known as a "provincial superior," presents candidates for the offices of pastor and associate to the bishop. The religious superior *must* present only priests whom he knows fulfill the essential requirements to be a pastor or associate: "*He should in addition [to being a priest] have those qualifications of character, knowledge, virtue, prudence and experience which will enable him to govern the parish properly.*" (Canon 453). In other words the pastor and the assistant pastors must have the spiritual and moral qualities required for them to meet their obligations and responsibilities: "*The pastor must guard that nothing be done against faith or morals in his parish, especially in the schools whether private or public, and he must foster or institute works of charity, faith and piety in his parish.*" (Canon 469).

The religious superior presents candidates to the bishop whom he knows fulfill the requirements mentioned in the previous paragraph. If the bishop has no objections, he is then free to make the actual assignment or appointment to the position of pastor or assistant pastor. The bishop can take the word of the religious superior or he is free to conduct his own investigation into the suitability of the candidates (canon 459). The religious superior cannot make an assignment to a parish on his own. He has the authority to assign members of his institute to residence in a house or religious community in a diocese but he has no authority to officially assign a priest to parish ministry. Just as the bishop has the sole authority to appoint a pastor so to he has the authority to terminate a pastor or associate who is a member of a religious institute. Similarly the religious superior can terminate the assignment of a pastor to a religious community. When either the bishop or superior does so, if he has not consulted with the other first, he must at least inform the other.

A priest who is a member of a religious institute is subject to two superiors: the bishop in all things that pertain to the ministry in the parish, and the religious superior in all things that pertain to the internal life of the institute. This may include issues such as vacations, use of money, community prayers etc. In some issues there is over-lapping authority and responsibility.

D. Mandatory response to a report of sexual abuse by a cleric

Sexual abuse of a minor is listed as a specific crime in the Church's legal system. There are certain mandatory actions that follow upon the reception of a report of an alleged act of abuse. The bishop of the diocese is primarily responsible for taking these actions. If the alleged perpetrator is a member of a religious institute and the institute's superiors receive notice or a report, they must immediately refer the matter to the bishop of the diocese (*Crimen sollicitationis*, Preliminary Matters, no. 4).

In matters of sexual abuse of minors perpetrated by priests, a special set of procedural rules was in force between 1922 and 2001. These were issued by the Holy See in the form of an instruction. This instruction, commonly known by the name *Crimen sollicitationis* was first issued by the Congregation of the Holy Office in 1922 and again in 1962. This instruction states clearly that the *local ordinary* which is a technical canonical term for the local bishop, has the jurisdiction over any cases of

sexual abuse of minors that take place in his diocese, including those cases wherein the accused is a member of a religious institute (*Crimen sollicitationis*, Preliminaries, nn. 2 and 4).

The local bishop or the religious institute superiors did not have an option as to how to proceed when they received knowledge of a possible incident of sexual abuse. A report, even an anonymous report, that had any degree of specificity about it, i.e., an act committed by someone on a designated person, was to be taken seriously.

The priest's religious superior has the obligation to see that the priest-member observes his obligations to follow the rules of the religious institute. These include the adherence to the obligations that are attached to the promise of celibacy. However in a case of sexual violation of a minor a serious canonical crime is also presumed to have been committed and in such cases the investigation and prosecution of the crime is the obligation of the local bishop. If the alleged perpetrator is a member of a religious institute but living and working in a diocese, it is incorrect to assert that the priest's religious superior is responsible for handling the case "in house" without reference to the local bishop.

E. Sexual Abuse by Maryknoll Priests in Hawaii

This case is about the sexual abuse of John Roe 2 by Fr. Henry. The case also contains information about two other victims of Henry,

Henry was not the only Maryknoll priest assigned to Hawaii who perpetrated sexual abuse.

The Maryknoll superiors admitted they had 33 claims of sexual abuse by Maryknoll priests or brothers. These claims came from several countries where Maryknoll has engaged in pastoral work (Cf. *Defendant's Response to Plaintiff John Roe 2's first Request for Interrogatories*, dated Feb. 22, 2013).

The list provided by Maryknoll cited above includes four priests who were reported to have engaged in sexual abuse in Hawaii: *Joseph Henry, James Jackson, Walter Johnson and Edwin Meuth.*

3. Fr. Joseph Henry, M.M

Fr. Joseph Henry was born in Ireland on February 18, 1902. He entered Maryknoll on September 1, 1922 and was ordained a priest on June 11, 1933 (age 31). He was assigned to Hawaii in 1949 and in 1950 was assigned as pastor to St. Anthony parish in Kailua where he remained until his death on November 13, 1974.

As of August 2014, Maryknoll had been named in ten lawsuits as a result of sexual abuse perpetrated by Fr. Henry. John Roe 2 was abused in 1973. He was not the only victim of Fr. Henry nor was he the first.

John Roe 2 has filed a lawsuit in which he states that Fr. Henry sexually abused him in 1954 when he was a parishioner at St. Anthony Parish and a student at the parish school. John Roe 2 reported that the sexual abuse was witnessed by another priest named Fr. Alexander (Dan) Perry. Fr. Perry was a member of another religious community known as the Congregation of the Sacred Hearts of Jesus and Mary. Fr. Perry was assisting the Maryknoll Fathers at St. Anthony Parish as what is commonly known as a "supply priest" meaning that he was there to celebrate Masses on Sundays and other days as needed. He was not a member of the parish staff nor was he formally assigned to the parish. Whether he was a member of the staff or not, Perry was obligated to report what he saw and what he knew about to the bishop but he did not.

Fr. Henry anally raped John Roe in a secluded area of the church. The victim was 9 years old at the time. He described the assault in detail in his deposition (Depo p. 91, 92, 107.) He also testified that he told three people within days: Fr. Avery, another Maryknoll priest at the parish, Sister Margaret and Sister Joyce, both sisters from the school. There is no record in the documentation that any of them ever reported this to the diocese or to Maryknoll superiors.

John Roe reported that Sister Margaret cried and ran out of the room when he told her (depo p. 125) and that when he told Sister Joyce she slapped him and asked why he was lying (Ibid.) Fr. Avery's response was different than the other two. He told Fr. Avery first, within two days of the assault. He admitted that he liked Fr. Avery whom he described as a nice man. The rendition of the priest's response is important: *"He said this was a terrible thing that happened; that terrible things happen, and we ask God for forgiveness, and he gave me this whole spiel and then he said this was*

between us and that the church would take care of it, and not to tell my mother and father and to trust him to take care of it and in the meantime, stay away from Fr. Henry.” (depo, p. 126).

There are three important elements to Avery’s response:

1) he acknowledged that the sexual assault was real and not a figment of John Roe’s imagination;

2) he urged the victim to maintain secrecy and thus to cover up the crime and

3) he implied that he knew that Fr. Henry was a danger to children because of sexual abuse by urging him to stay away from him. Although it is impossible to verify for certain what Avery knew his conversation with John Roe leads to the presumption that the Maryknoll community knew that Fr. Henry had sexually abused minors prior to his assault on John Roe.

4. Bishop Joseph Ferrario

John Roe was sexually assaulted by Bishop Joseph Ferrario who was a priest and pastor of St. Anthony's at the time it happened in 1976. He described the incident in detail on p. 137 of his deposition.

Joseph Ferrario was born on March 3, 1926 in Scranton PA. He was ordained a priest for the Diocese of Scranton on May 19, 1951. The documentation presented does not contain an ordination certificate for Bishop Ferrario however it does contain his petition to Bishop William Hafey of Scranton for the order of priesthood. In this petition he states that he is a deacon of the Diocese of Scranton. There is likewise no documentation listing his assignments. However other documentation indicates that his first assignment was a teaching position at St. Patrick Seminary, Menlo Park, CA in the Archdiocese of San Francisco. Bishop Ferrario entered the Society of St. Sulpice sometime after his ordination to the priesthood and remained a member of the Society until he was appointed Bishop of Honolulu. He was assigned to teach at St. Stephen's Seminary in Honolulu in 1957 and remained in Hawaii for the rest of his life. Both St. Patrick's and St. Stephen's seminaries were staffed by the Sulpicians. St. Patrick's was an upper level or major seminary at the time Ferrario taught there. Students completed their theological training and went on to ordination. St. Stephen's was a high school or minor seminary.

The Society of St. Sulpice is a religious institute of the Catholic Church. It was founded in 1641 and is named after the Church of St. Sulpice where the society was originally located. The purpose of the society has been the education of priests. Their ministry or work has been staffing and teaching at seminaries. Priests who become members remain incardinated or attached to their home diocese. They remain subject to the bishop of the diocese but are also under the authority of the superiors of the society. They do not take the religious vows that members religious orders take. Rather, they make a commitment to the society.

Fr. Ferrario taught at St. Stephen's seminary from 1958 to 1970. In 1970 he was named to the vocations or recruiting committee. In 1975 he became pastor of St. Anthony's Parish in Honolulu. On January 13, 1978 he was consecrated auxiliary bishop of Honolulu to serve under Bishop Scanlan. In 1982 Bishop Scanlan retired at the age of 75. The Holy See appointed Bishop Ferrario as Ordinary or diocesan bishop on May 13, 1982. He was formally installed on June 25, 1982. He retired on Oct. 12, 1993 at age 67 and on Dec. 12, 2003 he died at age 77.

On January 23, 1963, Fr. John Ward, rector of St. Stephen's seminary, wrote to Fr. Lloyd McDonald, provincial superior of the Sulpicians. This letter expressed Fr. Ward's concern about Fr. Ferrario:

"Over the years I could not help noting, nor could the others here, that Joe [Ferrario] has been exceedingly thick with individual seminarians and former seminarians. One of the latter is in his room by the hour, and, in a typical week, as often as four or five different days...He has, for example, brought along youngsters on tours of the outer islands that he arranged for visiting priests and major seminarians from California...I am concerned that Joe is losing his judgment."

He also indicated that he had spoken to Fr. Ferrario but there was no change. Fr. McDonald responded on January 29, 1963. All he said was that he would try to change his assignment in the coming summer. There are no other documents in the files produced to me that mention this issue either directly or indirectly. There is no indication if Fr. McDonald or anyone else ever spoke to Ferrario about this nor is there any clear indication that he was moved as was indicated by Fr. McDonald.

Bishop Scanlan announced his retirement on June 30, 1981. In anticipation of his retirement the Holy See initiated the process of selecting his successor shortly before the retirement was made public. Almost immediately rumors began to circulate in Honolulu that Bishop Ferrario would succeed Scanlan. The succession was not automatic and although Ferrario had been an auxiliary bishop of the diocese this did not mean the Holy See would automatically appoint him diocesan bishop.

Problems with Ferrario's Appointment as Bishop of the Diocese

Preface to this section: I served as secretary-canonist at the Vatican Embassy from 1981 to 1986. My main duty was to manage the complex process whereby candidates were vetted for the office of bishop. This included managing the process of appointment of bishops to dioceses, retirement of bishops, resignation of bishops and creation of new dioceses. In 1981 Bishop Scanlon announced his retirement and the Holy See instructed the Apostolic Delegate or Papal Ambassador, Archbishop Laghi, to initiate the process for selecting a successor. I was tasked with managing this process. As we proceeded with the process the interventions from several laypersons in the diocese complicated matters and necessitated several special consultations with the Holy See.

The ordinary process was conducted. Bishop Ferrario was not an automatic selection nor was the process conducted lightly as if it were a formality. The process consisted of the confidential investigation by the Apostolic Delegate, later to be known as the Papal Nuncio, into the state of the diocese. At the same time the nuncio solicited the names of possible candidates from Bishop Scanlan and the other bishops of the ecclesiastical province of San Francisco of which Honolulu was a member. Confidential questionnaires were also sent to a number of the priests of the diocese including all who held any kind of official position. As part of this process a small number of laypersons were also invited to submit comments on the diocese and the names of possible candidates. The entire process was conducted in strict secrecy. None of the prospective candidates knew they were under consideration although it is almost certain that Bishop Ferrario would have correctly assumed that he would be a candidate.

The questionnaires sent to the respondents all contain a warning that the person is not to discuss even the existence of the questionnaire with anyone else. Those being investigated do not know they are being investigated. If anything comes up in any of the questionnaires that is questionable, the papal nuncio has an obligation to clarify it, often by obtaining more information from the person who brought up the point and from others.

Shortly after the retirement was announced, the papal nuncio began to receive letters from laypersons in Honolulu all of which were urging the Holy See not to appoint Ferrario. The letters appeared to be the result of a

campaign organized by two business executives from Honolulu. The two individuals, whose names were Sue Mueller and Ted Waybright, sent in the results of private investigations they had conducted as well as testimonial letters from a number of people. They claimed that Bishop Ferrario was active in the gay community and was regularly seen in gay bars in the company of younger men. They also claimed that he had been sexually involved with more than one young seminarian from St. Stephen's seminary. The letters and reports were detailed and factual as opposed to vague and non-specific.

The papal nuncio, Archbishop Pio Laghi also received a letter from the father of a young boy who claimed he had been sexually abused by Bishop Ferrario at the seminary. This letter, combined with the large volume of other communications, prompted Archbishop Laghi to do something. He communicated with the Holy See and informed them about the accusations. He was instructed to conduct a confidential investigation and to appoint the retired bishop, Bishop Scanlan, to carry this out. Scanlan was sent a letter with the instructions from the Holy See. He was instructed to contact the father and his son and to meet with them. He was told the entire matter was to be carried out in absolute secrecy and that the man and his son were to be sworn to secrecy before they were interviewed. He met with them at a restaurant and questioned them, especially the young boy, using language that was both elusive and intimidating. They were reminded that it would be seriously sinful if they gave inaccurate information. In spite of the intimidation the young man stuck to his story of having been sexually abused by Ferrario. The bishop recorded it all in writing but added that he did not think it was totally true and that the boy may have been misinterpreting Bishop Ferrario's actions. He based this opinion only on his subjective reactions to the entire matter.

The letter-writing campaign, the accusations, the secret investigation and Scanlan's opinion were all included in Archbishop Laghi's report to the Holy See. These documents were not only referenced in the final report, which I wrote, but the originals were included. The report in question was the final report sent by the papal nuncio to the Holy See following the investigation into the state of the diocese and the recommendations for the appointment of the new bishop.

Archbishop Laghi received instructions from the Holy See to the effect that he was to meet personally with Bishop Ferrario and ask him if

there was any truth to any of the charges. This all happened at the same time that Cardinal Cody of Chicago had died. Ferrario was contacted and instructed to attend Cardinal Cody's funeral that took place on April 30, 1982 in Chicago. After the funeral Bishop Ferrario met with Archbishop Laghi who informed him of the Holy See's concerns. The archbishop also questioned him specifically about the accusations contained in the letters received as well as accusation of the former seminarian who had been interviewed by Bishop Scanlon. Bishop Ferrario's response was to deny all of the allegations. He claimed that those who opposed him were a group of very conservative Catholics who opposed his Vatican II inspired thinking.

Archbishop Laghi sent the results of his conversation to the Holy See and on May 13, 1982, Bishop Ferrario was appointed bishop of Honolulu. He was formally installed on June 25, 1982.

The Vatican was informed that there were serious allegations against Ferrario, not only of homosexual behavior with age-appropriate men, but also with under aged boys. What the officials in the Vatican actually believed is not known. However they chose to ignore the warnings and appointed Ferrario as bishop.

David Figueroa

David Figueroa was another victim of Bishop Ferrario when Ferrario was pastor of St. Anthony. Like John Roe 2, Figueroa was sexually abused by Fr. Joseph Henry and also like John Roe 2, David told Fr. Ferrario about the abuse. In 1975 the future bishop engaged David, then 15 years old, in a pattern of sexual assault and abuse that would carry on until David was 21. David's mother found out about the sexual abuse in 1979. In 1985 she wrote to the papal nuncio (Archbishop, later Cardinal Pio Laghi) and described the sexual abuse of her son. Laghi referred the matter to the Holy See and was instructed to carry out a secret investigation.

This investigation, which did not remain secret for long, was carried out by Bishop Daniel Walsh, then an auxiliary bishop of San Francisco and a former student and close friend of Ferrario. It was never known who leaked information about the supposedly secret investigation but the leak must have been someone close to the investigation because the details are accurate.

Walsh conducted a very superficial investigation which was limited to speaking with Ferrario, with David and his mother and reviewing the material provided by Mrs. Figueroa. David received a letter from Archbishop Laghi, dated April 7, 1986, which invited him to meet with the investigator on the condition that the conversation remain secret (Cf Letter, Laghi to Figueroa, 4-7-86, Pro no. 1017/86/2). The results were sent to the Holy See. Ferrario was summoned to Rome to discuss the accusations and in 1987 the Holy See made a decision that was never publicized.

The diocese of Honolulu issued a press release in 1989 which said that the rumors were false and that those involved were "*associated with an ultra-conservative religious group in Hawaii who claim to be Catholic but who, in reality, are at odds with the Catholic teaching and authority.*" The statement also said that "*Archbishop Giovanni Re, Secretary of the Vatican Congregation of Bishops which investigated the charges and dismissed them in 1987, said "there did not turn out to be anything against the bishop. For us the accusations were baseless."* (RCC3758).

The investigation of Ferrario took place under the papacy of Pope John Paul II. During his papacy reports of sexual abuse of minors perpetrated by other bishops in the U.S. and elsewhere were sent to the Holy See. As long as these reports and the information contained in them remained secret the Holy See did nothing beyond referring the report back to the accused bishop who then responded with a denial. When any of the accusations against bishops became publicly known, the bishop was allowed to retire without any admission of guilt and with the support of the Holy See. No bishop accused of sexual abuse of a minor was ever officially investigated or subjected to canonical prosecution during the papacies of John Paul II (1978-2005) and Benedict XVI (2005-2013). Ferrario resigned in 1993 at age 67 for health reasons.

5. 1963 Notice and the sexual abuse of John Roe 2

Joseph Ferrario sexually abused John Roe 2 in 1976. He sexually abused David Figueroa the same year and continued to sexually abuse him until he was 21 years of age. The first recorded notice about Ferrario contained in the documentation is the letter sent by Fr. John Ward, rector of St. Stephen's Seminary in Hawaii, to Fr. Lloyd McDonald, provincial

superior of the Sulpicians, on January 23, 1963. This letter was written at a time when priests regularly interacted with minor boys without concern or comment. Fr. Ward's letter raises serious concerns based on Ferrario's habit of spending excessive amounts of time with seminarians and with one in particular. The absence of documentation from Ferrario's personnel file had prevented other possible documentation from being reviewed.

6. Expert Opinions

A. The Church's standard of care

The fundamental standard of care. The phrase "standard of care" is an appropriate term to use in describing the Church's norms which relate to the relationship between the clergy and the lay people and between the lay people and the clergy and the institutional Church. The official concept of "church" that is part of Catholic teaching and which influences the understanding and the theoretic application of many Church laws, practices and teachings, is that the Catholic Church is a community of persons seeking spiritual guidance and support from the community as a whole. The concept of "Church" is not restricted to the clergy but includes all believers. With this in mind the fundamental obligation of the members of the Church but especially of the leadership and the clergy, is the moral and spiritual welfare of all. The bishops have the primary responsibility for seeing that this standard of care is adhered to especially by the clergy. It is the bishop's obligation to see that the priests live up to their calling, honor their obligations and fulfill their commitment especially the commitment to celibacy.

The Catholic Church is not only a spiritual movement or way of life but also a socio-political reality within secular society. Like any society it has need of structure, norms and regulations. The Church's governmental system is officially known as a *hierarchical* system meaning that the authority and power needed to sustain the community is vested in individual leaders and not in representative bodies. The pope and the local bishop are the two fundamental offices in the Church. The three main governmental functions make up the offices of pope and bishop. Hence for the entire Church the pope is the legislator, executive and judge. For the diocese the bishop holds these three offices. Consequently the pope is responsible for

the entire Church and the bishop is responsible for those entrusted to him in his diocese.

The Church's regulatory system is known as Canon Law (See 2. A above). The various norms or canons speak to the rights, duties and obligations of various office holders in various situations. The Code is one way to understand the application of the norms for the standard of care.

The standard of care regarding sexual abuse. The Code of Canon Law, promulgated in 1917 was the version of Church Law in force for most of the period that Authenrieth was an active priest. It contains a specific canon naming sexual abuse of a child or minor by a Catholic priest to be a canonical crime. This crime is considered so serious that the law prescribed dismissal from the priesthood as the ultimate applicable penalty.

In 1922 and again in 1962 the Holy See promulgated legislation that contained special norms for the investigation and prosecuting of four special sexual crimes committed by the clergy. One of these crimes is sexual abuse of a minor. These special laws were passed because the Church realized the very grave nature of these crimes including the grave nature of sexual abuse.

When a bishop receives a report of the possible commission of the crime of sexual abuse he is obligated to conduct a preliminary investigation. This investigation is not optional. The report may come from any source and must be considered even if it is from an anonymous source. The investigation looks to the veracity of the report or allegation and to the existence of proofs. The investigation in no way makes any kind of judgment or opinion as to the innocence or guilt of the alleged abuser. The results are given to the bishop. He then is to proceed to a forma canonical trial if the results indicate that the accused cleric possibly committed the crime of sexual abuse.

The Church through its clerical leadership also has a very serious obligation to provide pastoral care and spiritual healing to the victim and to anyone else harmed by the sexual abuse, such as the victim's parents. Pastoral care is not equated with psychological counseling or the care provided by a physical. It is a unique kind of care offered by the religious leader to one whose moral and spiritual well-being has been gravely harmed by a cleric who committed the act of sexual abuse.

The gravity of the obligation to observe the standard of care. The gravity of the obligation can be estimated in part by the very serious harm that is inflicted on a minor who is sexually abused. That harm is greatly increased if the victim is a vulnerable, devout Catholic and the perpetrator is a priest. Catholics are taught to view priests with the highest degree of respect and furthermore are taught to place unquestioned trust in them. The priest is the Catholic's guide to spiritual security. He is the guarantor of favor with God especially if the person has committed grave sins.

According to Catholic teaching and tradition sexual sins are always grave. Such sins, when committed by a priest are not only sinful in themselves but sacrilegious as well because the sacred nature of the priest. The priest's most solemn and sacred duty is not limited to carrying out specific tasks in the Church. His most solemn duty is to lead and inspire by the integrity of his life. In fulfilling its responsibility the Church, through its leaders, must not give even the slightest impression that there is a double standard with regard to sexual morality. It must not give the impression that sexual transgression especially of the gravest kind, are somehow excusable if the perpetrator is a priest.

B. Specific Opinions

1. John Roe 2 was sexually abused by Fr. Joseph Henry in 1973. By that time the Bishops of the Diocese of Honolulu and the superiors of the Maryknoll congregation knew or should have known that Fr. Henry was a sexual abuser and a serious threat to children. Their first notice came as early as 1954 when he sexually abused _____ and was seen by Fr. Dan Perry.
2. The bishop of the diocese and the Maryknoll superiors knew that both had a serious responsibility to protect the spiritual and moral welfare of all children in the school including _____ in the 1950's and John Roe 2 in the 1970's.
3. The evidence from the case of Fr. James Jackson indicates that the Maryknoll superiors and the bishop of the diocese knew of the reality of sexual abuse by priests and knew of its serious nature.

4. The Sulpician superiors knew as early as 1967 that Joseph Ferrario had an unusual interest in boys. They merely spoke to him but did no more. When Joseph Ferrario was under consideration for appointment as auxiliary bishop in 1977, confidential letters of inquiry would certainly have been sent to the Sulpician Superior General and to all Sulpician superiors to whom Ferrario had been subject. It is not known if anyone mentioned the concern of Fr. John Ward, communicated in writing to the provincial superior Lloyd MacDonald in 1963. It is possible this information, though known, was not mentioned in the responses to the confidential inquiries. Likewise it is not known if the papal nuncio (Archbishop Jean Jadot at the time) or the officials of the Holy See saw this information and ignored it. Either way there is a strong possibility at least that some Church officials involved were negligent.
5. Fr. Ward's letter is explicit enough and provides a sufficient variety of incidents and circumstances to lead to the conclusion that Ferrario's associations with the young students posed a serious problem. In spite of his disclaimer that he "felt certain there is nothing morally wrong" there was enough evidence to investigate. The bishop should have had the kind of relationship with the seminary authorities that would have prompted them to refer the matter to him.
6. The Holy See had ample evidence in 1981 that Bishop Ferrario had been actively engaged in homosexual actions with both adults and young boys. In spite of this evidence they appointed him bishop of the diocese.

Vienna, Virginia

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