

## ***An Open Letter to All Roman Catholics and All Other Interested Persons***

June 17, 2010

Dear Friends,

Creating a safe environment for children and young people stands within the Catholic Church as a matter of highest priority and urgency. Indeed, throughout the United States many policies and procedures have been implemented to protect minors from sexual abuse. And this commitment to improved protection of minors is good.

Recently, however, I became aware of a situation in the Diocese of La Crosse (Wisconsin) in which, I contend, children and young people might be at risk. But to know for sure if the risk is truly present, additional information must be made known, yet it is not forthcoming. Actually, after more than three months of effort, I must acknowledge that I have been unable to generate a sense of priority and urgency among the local and national Church leaders whom I believe should take the initiative to investigate my concern.

In short, these Church leaders neither attempt to prove me wrong nor do they take corrective action. *Why is it so difficult for the leaders of the Catholic Church to do the right thing?*

So, my next step is to do what the Catholic Church expects of me and bring this concern to the attention of the Christian faithful at large. In other words, not only do I feel a strong moral obligation to have my concern resolved, but Catholic Church law authorizes and empowers me to do so. In fact, canon 212, §3 of the Code of Canon Law establishes the right and at times even the obligation for all the Christian faithful, the laity and the clergy alike, to make known their opinion for the good of the Church to Church leaders and to the rest of the Christian faithful. I would add even to the public at large if the issue is sufficiently important.

**Canon 212, §3: “According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.”**

For people who might be interested, the following link is to the section of the Code of Canon Law that contains canon 212, §3 as it appears on the Vatican website.

[http://www.vatican.va/archive/ENG1104/\\_PU.HTM](http://www.vatican.va/archive/ENG1104/_PU.HTM)

Thus, I have both the right and the responsibility to raise my concern. Actually, my concern is regarding a specific norm that impacts the decisions reached by the Diocesan Review Board of the Diocese of La

Crosse when assisting the Bishop to evaluate an allegation of sexual abuse of a minor by a priest or a deacon. The norm in question identifies the standard of proof that the Review Board uses. The consequence of using an incorrect standard of proof could mean that children in that diocese are at risk.

I present my position under the following headings:

- Pertinent Church Law;
- Situation in the Diocese of La Crosse – My Concern;
- My Suggested Solution;
- My Steps Taken to Bring About Change;
- My Personal Commitment to the Effort; and
- Some Concluding Thoughts.

### **Pertinent Church Law**

Before I explain the essence of my concern, I present on the next two pages some key concepts of church law that govern the situation. Understanding these concepts will facilitate appreciating the problem as I see it.

To begin, I want to compare church law to civil law regarding the determination of guilt. I suspect that most people understand that in civil law, for the guilt of a person to be determined in the absence of a guilty plea, a trial is necessary in which guilt is established “beyond a reasonable doubt.” The corresponding expression for the same reality in church law is “moral certitude.” Actually, writing in 1941, Pope Pius XII described moral certitude as “certainty that excludes all prudent doubt and every doubt founded on positive reasons” (*Acta Apostolicae Sedis* [1941] p. 424). Hence, for both civil and church trials this standard of proof for establishing guilt is high, excluding all reasonable or prudent doubt. And this standard of proof is not always easy to attain.

The following link is to the 1941 edition of *Acta Apostolicae Sedis*. The description of “moral certitude,” written in Italian and found on page 424, is: “morale certezza, che cioe escluda ogni dubbio prudente, ossia fondato su ragioni positive”.

[http://www.vatican.va/archive/aas/documents/AAS%2033%20\[1941\]%20-%20ocr.pdf](http://www.vatican.va/archive/aas/documents/AAS%2033%20[1941]%20-%20ocr.pdf)

But the work of a diocesan review board is not a trial and guilt or non-guilt is not the question. Rather, a diocesan review board engages in a process to consider the evidence so as to render advice to the Bishop, not a sentence or a judgment. Actually, the work of a diocesan review board is akin to the work of a grand jury in civil law where the jury determines if there is a probable cause or sufficient evidence to issue an indictment. Similarly, a diocesan review board examines the evidence to determine if this evidence indicates the probable nature of the allegation, that the allegation “at least seems true,” or that there is a “semblance of truth” in the allegation. Each of these phrases is a legitimate expression of the Latin words *saltem veri similem* found in canon 1717, §1, in the Code of Canon Law.

The following link is to the section of the Code of Canon Law that contains canon 1717, §1 as it appears on the Vatican website.

[http://www.vatican.va/archive/ENG1104/\\_P6V.HTM](http://www.vatican.va/archive/ENG1104/_P6V.HTM)

That canon 1717, §1 provides the standard of proof for a diocesan review board is established by the Essential Norms related to the Dallas Charter of 2002 (cf. norms 2 and 6).

The following link is to the Dallas Charter and its related Essential Norms.

<http://www.usccb.org/ocyp/charter.pdf>

In fact, these Essential Norms, approved by the Apostolic See and promulgated by the United States Conference of Catholic Bishops (USCCB) in December 2002, stand as particular law for the Catholic Church in the United States of America (cf. canon 455), and a diocesan bishops cannot validly legislate contrary to them (cf. canon 135, §2).

The following links are to the sections of the Code of Canon Law that contain canons 455 and 135, §2 as they appear on the Vatican website.

[http://www.vatican.va/archive/ENG1104/\\_P1L.HTM](http://www.vatican.va/archive/ENG1104/_P1L.HTM)

[http://www.vatican.va/archive/ENG1104/\\_PF.HTM](http://www.vatican.va/archive/ENG1104/_PF.HTM)

Therefore, in both civil and church law, this lower standard of proof is very different from “beyond a reasonable doubt” or “moral certitude.” Indeed, this lower standard of proof permits the presence of unanswered questions and doubts because these can be resolved in a later judicial process where the higher standard of proof is employed. What is needed at this lower standard of proof is the presence of probable cause or the semblance of truth, and this is the standard to be used by a diocesan review board.

Concisely put, the Canon Law Society of America says that “the principal role of the Review Board is to assess whether the proofs which are gathered are sufficient to support the probable nature of the allegation” (*Guide to the Implementation of the U.S. Bishop’s Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of minors by Priests or Deacons*, 2003, p. 27).

There is one final point dealing with the pertinent church law. Concerning cases of sexual abuse of minors by priests or deacons, when the “semblance of truth” standard of proof (the lower standard) is met, the case alleging sexual abuse must be sent to the Congregation for the Doctrine of the Faith (CDF) in Rome. This is the Congregation in church law that is competent to determine what further action is to be taken. In fact, this directive is clearly stated in the “Guidelines to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations,” published by the Vatican, where in Section A: Preliminary Procedures it says, “If the allegation has a semblance of truth the case is referred to the CDF.”

The following link is to the “Guidelines to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations.”

[http://www.vatican.va/resources/resources\\_guide-CDF-procedures\\_en.html](http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html)

### **Situation in the Diocese of La Crosse – My Concern**

Two realities contribute to my conviction that the concern I raise is on point and deserves immediate attention: 1) a stated norm that is posted on the Diocese of La Crosse website; and 2) a statistic that is related to the history of clergy sexual abuse cases in the Diocese of La Crosse.

- 1) A stated norm that is posted on the Diocese of La Crosse website.

On March 4, 2010, Archbishop Jerome ListECKI, the new Archbishop of Milwaukee and the former Bishop of La Crosse, met with the Review Board of the Archdiocese of Milwaukee. I am a canon lawyer and a member of the Review Board. In preparation for that meeting and somewhat out of curiosity, I visited the Diocese of La Crosse’s website to read the norms governing its Review Board. I was interested in knowing how they compare to what we do in the Archdiocese of Milwaukee. But as I read the Diocese of La Crosse norms, I was surprised to see in Norm 6 C that the standard of proof for the Review Board to use in assisting the Bishop in his assessment process is “moral certitude which excludes every prudent doubt or every doubt founded on positive reasons”. This is the higher standard of proof that is similar to “beyond a reasonable doubt” in civil law. According to the Diocese of La Crosse website, this norm was established by Archbishop Raymond Burke in 2003 when he was the Bishop of La Crosse, and the norm has continued in place ever since. Of course, I hold that this is a wrong standard of proof for a diocesan review board. Moreover, I also say that as a result of using this incorrect standard of proof children might be at risk today. I do not know the motivation for Diocese of La Crosse to use “moral certitude,” be it deliberate or inadvertent. But in my opinion, this is a situation calling for immediate corrective attention.

The following link is to the Norms for the Review Board of the Diocese of La Crosse (this document begins with a letter and a Decree of then Bishop Burke; Norm 6 C is near the bottom).

<http://www.dioceseoflacrosse.com/Home/Offices%20and%20Ministries/Youth%20Ministry/Main/Safe%20Environment%20Website/Green%20Book.htm>

I assume that the Diocesan Review Board actually follows this stated norm and does as Norm 6 C instructs. Is not that what the Bishop of La Crosse would expect them to do? In other words, would not the Bishop want and expect that the advice he receives from the Diocesan Review Board is based on Norm 6 C? If not, why have the norm? Further, are we to suppose that the Bishop would seek advice based on Norm 6 C, but with the intention of not using that advice? I think not.

**So, here is the problem as I see it.** Priests or deacons might still be in active pastoral ministry in the Diocese of La Crosse who otherwise might not be there, all because the higher, more rigid and inappropriate “moral certitude” standard of proof, one that could be very difficult for the person who is making the allegation to establish in a non-trial situation, is used by the Review Board when assessing an allegation of sexual abuse of a minor. In other words, because the Review Board is requiring more of the person making the allegation than is necessary to establish the “semblance of truth” or that the allegation “at least seems true,” the possibility exists that the Review Board will determine that some allegations do not need to be forwarded to the CDF, thus allowing priests or deacons who should be removed from ministry to actually continue in ministry. And this could endanger children.

- 2) A statistic that is related to the history of clergy sexual abuse cases in the Diocese of La Crosse

My concern is not based solely on the use of an incorrect standard of proof. There is more. Last November 30 when I first met with Peter Isely and John Pilmaier, two representatives of the Survivors Network of those Abused by Priests (SNAP), an interesting statistic came to light. The meeting occurred a couple of weeks after the announcement that Archbishop Jerome ListECKI, then the Bishop of La Crosse, would be the next Archbishop of Milwaukee. A brief moment in this conversation included a comment by Peter Isely that, while not knowing much about the newly appointed Archbishop ListECKI, approximately 60% of the allegations against priests in the Diocese of La Crosse were held to be unfounded or unsubstantiated. Then, on March 24, 2010 when I was meeting with Archbishop ListECKI about my Diocese of La Crosse concern, the Archbishop made a passing reference to 60% of the cases being unsubstantiated. When Archbishop ListECKI and Peter Isely mention the same statistic, I take note.

Later, I noticed in the 2009 Annual Report published by the Office for Child and Youth Protection (OCYP) of the USCCB, in Chapter Four, on page 40, a chart produced by the Center for Applied Research in the Apostolate that shows credible vs. unsubstantiated allegations for 2006-2009. This chart indicates that, as a national average, approximately 10% of the allegations during this time period were ruled unsubstantiated, while approximately 90% were considered credible. Immediately I recalled the comments regarding 60%.

The following link is to the 2009 Annual Report. [http://www.usccb.org/ocyp/annual\\_report/9\\_CH4.pdf](http://www.usccb.org/ocyp/annual_report/9_CH4.pdf)

In short, it seems to me, if my concern is on point and the use of the incorrect standard of proof could mean that more proof is demanded of the person making an allegation than is required by church law, and that, as a result, some priests or deacons could still be in active ministry who would not be there if the correct standard of proof were used, I would not be surprised if the experience of the Diocese of La Crosse is that their percentage of allegations considered to be unsubstantiated for the years of 2006-2009 might be well in excess of the national average of approximately 10%.

Of course, I do not have access to the Diocese of La Crosse information, but Church leaders in the Diocese of La Crosse do. I wonder what the data show. During the years 2006-2009, what percentage of allegations was held to be credible and what percentage of allegations was held to be unsubstantiated? An important element of truth will be found in these percentages and truth, the whole truth, is the key to healing.

### **My Suggested Solution**

The solution is simple. The Diocese of La Crosse needs to implement two actions. First, the Diocese should change Norm 6 C so as to comply with c. 1717. §1, the governing church law, as well as changing other norms that would require an alteration as a result of this change to Norm 6 C. Second, the Diocese should reprocess all the clergy abuse cases that were handled on the basis of “moral certitude,” but now using the “at least seems true” standard of proof provided in c. 1717, §1. So far, however, although these actions should be easy to do, nothing has changed, at least as posted on its diocesan website.

### **My Steps Taken To Bring About Change**

On March 7, 2010, I sent an email to Monsignor Richard Gilles, the Administrator of the Diocese of La Crosse who heads the Diocese while they await a new bishop. In this email I explained my concern and I copied Archbishop ListECKI on this email. The next day Monsignor Gilles emailed me thanking me for my message and saying that he would look into my concern.

On March 14, I sent an email to Ms. Diane Knight, the Chair of the USCCB National Review Board to explain my concern. I promptly received a response saying that the matter would be discussed with the OCYP. Some days later Ms. Knight emailed me to say that this contact did take place and that she would continue to follow up. Then, on April 20 she sent me an email informing me that she continues to pursue my concern but with no response coming yet from the USCCB.

On March 22, I placed a posting on the Canon Law list-serve, an email going to hundreds of canon lawyers in the United States and elsewhere in the world. Without disclosing the diocese in question (La Crosse), I explained my concern and I asked these canonists to respond to four questions. Am I reading the law correctly? If yes, might children be at risk today? Are my suggested corrective actions the proper actions? Do you know of any diocese whose diocesan review board uses “moral certitude” as the standard of proof? A few canon lawyers responded directly on the list-serve, but did not really address my concern or questions. However, one canon lawyer did respond to me in a private email saying yes to the first three questions. Concerning the fourth question, he knows of none.

On March 23, I forwarded the inquiry that I had posted on the Canon Law list-serve to Bishop Thomas Paprocki, the bishop who chairs the USCCB’s committee on canonical affairs and church governance, and to Monsignor Ronny Jenkins, one of the associate general secretaries of the USCCB. Both are canon

lawyers and probably had already received my posting, but I wanted to be sure. I requested their comments but, so far, there is no response from either.

On April 13, after reading the “Guidelines to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations,” published by the Vatican and that confirms my legal position, namely that if an allegation of sexual abuse of a minor by a priest or a deacon has a “semblance of truth” the case must be referred to the CDF in Rome, I emailed Archbishop ListECKI. I pointed out to him my personal conviction about my concern and I asked him to take the lead to bring about the necessary change in the Diocese of La Crosse. Within a couple of days the Archbishop responded in an email saying that he believes we should wait for the new Bishop of the Diocese of La Crosse because he is the one who would have the authority to make the change to the norm. On the contrary, however, I contend that by means of a dispensation or indult the Holy See could give Monsignor Gilles the authority for him to immediately make the necessary change in the norm and to reprocess the cases needing review. After all, this would simply bring the Diocese of La Crosse in line with church law. In fact, given the current climate regarding the sexual abuse crisis in the Church, I would speculate that the Holy See would respond promptly to a request for such authority. I should also say that in his response to me, Archbishop ListECKI expressed his conviction that no child is at risk in Diocese of La Crosse.

On April 26, I sent an email to the USCCB National Review Board to explain my concern about Norm 6 C that governs the activity of the Review Board of the Diocese of La Crosse. I copied Archbishop ListECKI and Monsignor Gilles. The USCCB National Review Board met on the weekend of June 11-13. According to Ms. Diane Knight, the Board’s Chair, the members appreciate my concern and believe that the matter should be resolved. Yet, the Board recognizes that it lacks the authority to bring about the resolution.

On June 6, I sent an email to Monsignor Gilles in response to his letter of May 10, 2010 to the USCCB National Review Board reacting to my email of April 26. In addition to holding to my position, in my email I explained to Monsignor Gilles some points of context that focus my commitment to this effort. I copied Archbishop ListECKI and the USCCB National Review Board.

### **The Context of My Personal Commitment to the Effort**

Some key events and some personal ponderings focus my determination about the concern that I have raised.

#### **1) Context – Some Key Events**

Tuesday, October 13, 2009 began like so many other days. Even when the telephone rang it did so as it has done many times in the past. But the message that I received from the caller was completely different from any prior message. Most likely I would be on the evening news and in the morning newspaper.

A few hours later I was the center of attention at a news conference that Peter Isely and SNAP held on the steps of the Cathedral of Saint John the Evangelist in Milwaukee. The stated allegation from SNAP was that, while I was assigned to the Chancery Office of the Archdiocese of Milwaukee in the 1990's, I was involved in a cover up concerning one of the worst priest sexual abuse cases ever documented in the United States, that of Lawrence Murphy. The allegation is completely false, yet the pain of the moment was very real.

But what happened about six hours later has had a most profound effect on me as a priest. I recognized that a question was surfacing within me, one that I had never entertained before. How would I behave today if I had been the victim of sexual abuse by a priest when I was a minor? Of course, I don't know for sure how I would behave, given that I have never been sexually abused. But, what if it had happened to me?

As I entertained this question and concentrated on the harm done by such abuse, my agony of the prior six hours dissipated and I turned to prayer. I realized that what matters is the care for the victims / survivors, not me. Moreover, during the ensuing days I found my empathy for these persons growing as I focused on their struggle for truth, justice, healing and peace. I also began to wonder how the lives of survivors would be different today if they had never been abused by a priest.

Then, on November 30, 2009 I met for about two hours with a couple of SNAP representatives, Peter Isely and John Pilmaier. In brief, we discussed the hope that eventually there will be healing, for the survivors and their families, for the Church, and for the community at large. Of course, truth, the whole truth, is the key.

In December a group of priests began what have become ongoing meetings with some survivors of sexual abuse by priests and persons who support them, seeking to find a pastoral approach to learning truth and fostering healing. As a result and only as a beginning, four candle light vigils, held in various parts of the Archdiocese of Milwaukee, are taking place this spring and summer. Indeed, although the flicker of hope generated by this effort is small and fragile, the flicker of hope exists.

## 2) Context - Some Information That I Frequently Ponder

I have heard some survivors say that in the sexual assault, not only was their body violated, their voice was taken away as well. That is, they could not speak because they were too embarrassed or too young to speak up and tell what happened. Or, as some say, when they did talk about the assault, they were not believed or they were ignored. So, the isolation of silence became part of their cross.

Another reason why survivors often find it difficult to be heard is a reaction that is common among people when a priest is accused of sexual abuse of a minor. Some parishioners or friends of the priest respond to the news of the allegation by asking, "How can you think badly of Father, look at all the good he has done?" However, this question bears faulty logic. Every person is capable of doing both good and



evil. The good that we do usually takes place in the light where it can be seen. The evil, however, often takes place in a dark spot of life where few people will know about it. Actually, it is possible that in cases of sexual abuse of a minor, only the victim and the perpetrator know the truth. Hence, to say that the priest has done much good might be true, but it also might be true that he has a dark spot in his character where enormous evil also can take place. So, if truth, justice and healing are to prevail, the voice of the victim must be able to rise above the clamor of those who do not know the actual truth.

For many survivors the anguish felt because of the Church's poor response to the crime of sexual abuse by a priest has been a greater anguish than was the anguish of the assault itself, as great as that pain must have been. The survivors loved the Church and were involved in the parish or school life. That is why they were available to be preyed upon. But, they now feel that the Church they loved so much has turned on them.

I also am told that, while many survivors have left the Catholic Church and have no intention of returning, other survivors feel very disconnected from the Church but long for that connection to be restored. When I reflect on this desire for reconnection, I recall the story of Jesus being willing to leave the 99 sheep who were in good shape (so to speak), and to go after the one that needed some help. (Cf. Mt. 18:12 and Lk. 15:4)

If trust in the Church can be restored, the restoration will come about one person at a time.

### **Some Concluding Thoughts**

More than three months have passed since my original email to Monsignor Gilles noting my concern. That amount of time, in my opinion, should have been sufficient time to generate a solution, but none has surfaced and that is disappointing. Yet, I trust that a solution can be found.

I realize that the Diocese of La Crosse is without a Bishop, although Pope Benedict XVI has recently named Bishop-designate William Callahan, OFM Conv, to be the next Bishop of La Crosse. Monsignor Gilles believes that they need to wait for the new Bishop to be installed before change can happen. However, I contend that by means of a dispensation or indult the Holy See can give Monsignor Gilles the authority to immediately make the necessary change in the norm and to reprocess the cases needing review.

I should also say that, even if a solution had emerged quickly, I still would have brought this matter to the attention of the USCCB National Review Board for two reasons. First, if one diocese (La Crosse) could have its Diocesan Review Board use an incorrect standard of proof, other (arch) dioceses could be doing the same and this possibility should be examined. Second, future diocesan audits of their compliance with the Charter for the Protection of Children and Young People, especially regarding the Diocesan Review Boards, should identify the actual standard of proof that is used when reviewing allegations of sexual abuse of a minor by a priest or a deacon.

Given the gravity of my concern, I will not turn away from this challenge, lest I extinguish the small flicker of hope that I referred to in the Context – Some Key Events section above.

If the Catholic Church is serious about safeguarding children and young people, then the Church leaders should **prove me wrong or immediately begin corrective action, thus demonstrating that protecting minors from sexual abuse is a matter of highest priority and urgency.**

*Why is it so difficult for the leaders of the Catholic Church to do the right thing?* I request all Roman Catholics, as well as all other interested persons, to speak out any suggestion they might have to help the Catholic Church in its current moment of darkness. The suggestion could provide the words of inspiration that make the difference. Of course, let us keep praying for all people who suffer in any way because of sexual abuse of minors by priests or deacons.

Sincerely yours in Christ,

*Rev. James E. Connell*

Reverend James E. Connell, JCD

(Reverend James E. Connell is a priest of the Archdiocese of Milwaukee. He currently serves as the pastor of Holy Name of Jesus Parish and Saint Clement Parish, both in Sheboygan, Wisconsin. Father Connell also is a canon lawyer and a member of the Archdiocese of Milwaukee Review Board.)