

ORIGINAL

**AFFIDAVIT FOR
WARRANT TO SEARCH & SEIZE**

THE STATE OF OHIO)
Lucas County,) ss.

Before me, Robert Christiansen, Judge of the Common Pleas Court, Lucas County, Ohio, the undersigned, Detective Steven Forrester, Toledo Police Department, being duly sworn, deposes and says that he has reason to believe that on the premises known as the Catholic Diocese of Toledo, Catholic Center, 1933 Spielbusch Avenue, Toledo, Lucas County, Ohio, including all outbuildings, annexes, sheds, garages, and curtilage of said premises in the City of Toledo, Lucas County, Ohio, known to be occupied and/or frequented by Bishop Leonard Blair (Diocesan Bishop), Father Michael Bilian (Episcopal Vicar), and the administrative officials of the Catholic Diocese of Toledo, there is now being concealed certain property, to include:

1. The Diocesan Secret Archives;
2. Key(s) and/or combination(s) to the Secret Archives;
3. Internal policies and/or procedures concerning the creation of, maintenance of, and access to the Diocesan Secret Archives for the period 1980 through the present;
4. Any and all records and/or logs concerning access to the Diocesan Secret Archives for the period 1980 through the present;
5. Filing cabinets, safes, lock boxes, and/or locked compartments wherein documents and other tangible items may be stored;
6. Books, records, notes, memoranda, documents, photographs, negatives, video:apes, digital photography and/or videography, undeveloped film and the contents thereof, and/or tangible items relating, directly or indirectly, to Father Gerald Robinson, Father Jerome Swiatecki, Sister Margaret Ann Paul, the death of Sister Margaret Ann Paul, and/or any canonical process relative to the

location for several years prior to her death. At the time of Sister Margaret Ann Pahl's death, Father Robinson had been ordained a catholic priest in the Toledo Diocese and has served in that capacity under the authority of the Toledo Diocesan Bishops until 2004.

7. On or about April 18, 1980, Father Robinson failed a polygraph examination conducted by the Toledo Police Department, scoring "deception indicated" on relevant questions concerning the murder of Sister Margaret Ann Pahl. The results indicated that Father Robinson was involved in the murder of Sister Margaret Ann Pahl. At the direction of Sister Phyllis Ann, who served as the Administrator of Mercy Hospital and a diocesan representative at the time, a second polygraph was administered to Father Robinson. The test results indicated that Father Robinson passed the polygraph; however, the test report qualifies the raw data and ultimate conclusions in the following respects: "Subject's polygrams contained a high background of emotionality and inconsistent specific responses indicative of emotional stress were noted on several of the relevant questions set forth above at various times during the testing sequence. For these reasons, the polygrams themselves are of marginal utility for diagnostic purposes." Given the manner in which the two polygraphs were administered and the data interpreted, this Affiant believes that the first polygraph was the more reliable of the two. The latter polygraph is mentioned, in part, to forego any potential *Franks* challenge(s) levied at the contents of this Affidavit.
8. Early in the criminal investigation, Father Gerald Robinson was identified as a suspect in the murder of Sister Margaret Ann Pahl. During that period of time (1980), Toledo Police Deputy Chief Ray Vetter told Monsignor Schmidt, an official serving with the Catholic Diocese of Toledo at the time, that Father Robinson was the focus of the criminal investigation.
9. No criminal charges were issued at that time (circa 1980) because certain forensic examination techniques were simply not available to law enforcement authorities.
10. In 2003, this Affiant and Investigator Tom Ross reopened the case. Additional forensic testing was done with crime scene evidence, the results of which further implicated Father Robinson as the person who murdered Sister Margaret Ann Pahl.
11. On or about December 15, 2003, this Affiant and Investigator Tom Ross went to the Catholic Diocese of Toledo, Catholic Center, located at 1933 Spielbusch, Toledo, Lucas County, Ohio, to request production of the diocesan personnel records of Father Robinson in order to determine if there was any information in the records which might be relevant to Father Robinson's suspected involvement in the murder of Sister Margaret Ann Pahl. During a meeting held on the fourth floor of that building, Father Michael Billian, who now serves as the Episcopal Vicar of the Catholic Diocese of Toledo, left the room for a short period of time and returned with a file that he provided to this Affiant and Investigator Ross. The file was substantially devoid of any information concerning

Father Robinson's service in ministry, his performance evaluations (or their equivalent), and/or any internal (canonical) investigation(s) conducted by the Catholic Diocese of Toledo into the death of Sister Margaret Ann Pahl or Father Robinson's fitness to serve in ministry. In short, the Catholic Diocese of Toledo provided information concerning Father Robinson, which included his picture, brief biographical information, his date of ordination as a priest, and bare-bones information concerning his service in ministry within the Catholic Diocese of Toledo.

12. Throughout the course of the criminal investigation(s), the Catholic Diocese of Toledo has repeatedly stated (through its authorized representatives) that it has been fully cooperative with law enforcement in our attempts to investigate the murder of Sister Margaret. However, during that period, neither the Catholic Diocese of Toledo nor any of its representatives have ever mentioned that the Diocese maintained "Secret Archives".
13. On or about April 23, 2004, a search warrant was executed at the home of Father Robinson. Police seized additional evidence that linked Father Robinson to the murder of Sister Margaret Ann Pahl and/or corroborated the investigators' theory of the case.
14. On or about May 3, 2004, the Lucas County Grand Jury issued a true bill charging Father Robinson with *Aggravated Murder*, in violation of R.C. 2903.01. The charge stemmed from the death of Sister Margaret Ann Pahl.
15. On or about August 30, 2004, this Affiant learned that the Catholic Diocese of Toledo maintained Secret Archives and had been doing so since at least 1917.
16. On or about September 1, 2004, the Lucas County Prosecutor's Office obtained a press release (Exhibit 1)¹ that had been published on the internet web site of the Toledo Catholic Diocese on April 26, 2004. The press release was issued under the authority of Bishop Leonard P. Blair, the current Diocesan Bishop for the Catholic Diocese of Toledo. The press release stated in pertinent part: "Because of the publicity that this case has attracted both locally and nationally, the diocese will not conduct *any further interviews* at this time regarding the investigation." (emphasis added). The Diocese' statement implies that the Catholic Diocese of Toledo had already conducted interviews into the allegations that Father Robinson had engaged in criminal misconduct.
17. On or about September 1, 2004, the Lucas County Prosecutor's Office obtained a press release (Exhibit 2)² that had been published on the internet web site of the Catholic Diocese of Toledo on April 27, 2004. The press release was issued under the authority of Bishop Leonard P. Blair and stated in pertinent part that the Diocese' Review Board had

¹ The article original printed on September 1, 2004, was reprinted on September 9, 2004, and submitted as an exhibit. The initial print copy was annotated by prosecutors, information which is protected by the attorney work-product doctrine.

conducted an investigation into allegations made by a woman which implicated Father Robinson in criminal misconduct. The statement expressly stated that diocesan investigators had worked the case, specifically noting that the allegations warranted a "thorough investigation of the whole matter".

18. On or about September 1, 2004, the Lucas County Prosecutor's Office obtained a press release (Exhibit 3)3 that had been published on the internet web site of the Catholic Diocese of Toledo on April 27, 2004. The press release was issued under the authority of Bishop Leonard P. Blair and stated in its entirety:

A. "April 27 – Toledo, Ohio – Bishop Leonard Blair made a pastoral visit to Father Gerald Robinson this afternoon in the Lucas County jail. Bishop Blair and Father Robinson discussed Father's canonical status given the allegations against him in the 1980 murder of Sister Margaret Ann Pahl. Bishop Blair has placed Father Robinson on Leave of Absence with the following restrictions; namely, that he is excluded from public ministry; may only celebrate Mass alone with no one present; may not celebrate the other sacraments. Father Robinson has accepted these restrictions effective today."

B. This Affiant has reason to believe that Bishop Blair's decision stemmed from a canonical penal process conducted internally at the Bishop's personal direction. This Affiant has reason to further believe that the canonical penal process generated records and other materials that must be stored in the Diocesan Secret Archives according to Canon Law and the statements of credentialed canon lawyers.

19. Catholic Diocese of Toledo (The "Diocese"). At all times relevant to this affidavit, the Catholic Diocese of Toledo has its principle place of business in Lucas County, Ohio. Presently, the Diocese maintains its diocesan headquarters at 1933 Spielbusch Avenue, Toledo, Lucas County, Ohio. A Catholic Diocese oversees all of the various Catholic schools, churches, associated organizations, and associated personnel within its assigned territory. At all times relevant to this affidavit the Diocese was responsible for the oversight of Father Robinson, Father Swiatecki, Sister Margaret Ann Pahl, and any and all diocesan representatives who may have been involved with any and all management, administrative or otherwise, of {St. Vincent} Mercy Hospital. All authority for actions of the Diocese and its associates derive from the Pope in Rome and/or the diocesan bishop as codified in Canon Law. At all times relevant to this affidavit, the Diocese receives benefits, both tangible and intangible, from its various affiliates and their actions, both lawful and/or unlawful.

CANON LAW OF THE CATHOLIC CHURCH

20. From August 30 through September 14, 2004, this Affiant, with the aid of assistant prosecutors (principally, Thomas Aquinas Matuszak), researched the Canon Law of the Catholic Church concerning the maintenance of Diocesan Secret Archives. Prosecutor Matuszak's qualifications are set forth below:
- A. Prosecutor Matuszak currently serves as a Lucas County Assistant Prosecuting Attorney assigned to the Organized Crime Task Force (hereinafter "OCTF") which he founded in 1997.
 - B. Prosecutor Matuszak is a "law enforcement officer" as that term is defined in Revised Code sections 2901.01(A)(11) and 2933.231(A)(1). Additionally, Prosecutor Matuszak is a "prosecutor" as that term is defined at R.C. sections 2933.231(A)(2) and 2935.01 and Ohio Criminal Rule of Procedure 2. Prosecutor Matuszak is, therefore, authorized to apply for the issuance of a search warrant pursuant to R.C. 2933.21 et seq.
 - C. Prosecutor Matuszak has successfully completed specialized training relative to the investigation and prosecution of organized criminal activities to include the following courses: (1) *Basic Narcotics Investigator's Course* conducted by the U.S. Drug Enforcement Administration [1997]; (2) *The Law of Drug Interdiction* conducted by the Ohio State Highway Patrol [1997, 2000]; (3) *Electronic Surveillance and Wiretaps* conducted by the Ohio Peace Officers Training Academy [1997]; (4) *Electronic Surveillance and Wiretaps* conducted by the United States Attorney's Office for the Northern District of Ohio [1997]; (5) *Computer Crimes* conducted by the United States Attorney's Offices for both the Northern and Southern Districts of Ohio [1998]; (6) *Law Enforcement and the Internet* conducted by Law Enforcement Internet Intelligence [1999]; (7) *Tracing Illegal Proceeds* conducted by Burke & Associates [1998]; (8) *Fraud Investigations* conducted by Burke & Associates [1998]; (9) *Advanced Forensic Accounting Investigations* conducted by the Federal Law Enforcement Training Center [1999]; (10) *White Collar Crime* conducted by the National District Attorneys Association [1999].
 - D. Since 1997, Prosecutor Matuszak has assisted with approximately fifty (50) formal investigations of organized crime having some nexus to Lucas County, Ohio. As part of said investigations, Prosecutor Matuszak was worked in conjunction with law enforcement agencies – local, state and federal – in approximately thirty (30) states, to include the following agencies: (1) U.S. Federal Bureau of Investigation; (2) U.S. Drug Enforcement Administration; (3) U.S. Secret Service; (4) U.S. Internal Revenue Service; (5) U.S. Department of Agriculture; (6) U.S. Department of Justice, Money Laundering Section; (7) U.S.

Attorney's Offices, including O.C. Strike Forces; (8) Ohio Attorney General's Office, Organized Crime Investigations Commission; (9) Michigan Attorney General's Office; (10) Ohio Bureau of Criminal Identification & Investigation; (11) Toledo Metro Drug Task Force; (12) Erie County Drug Task Force; (13) case-specific task forces; and (14) the Royal Canadian Mounted Police.

Additionally, Prosecutor Matuszak participated in the successful investigation and prosecution of cases involving national security concerns and received a commendation from the Director of the United States Secret Service as a result.

- E. Prosecutor Matuszak has reviewed and authorized the submission of approximately 100 search warrant affidavits and their respective search warrants for judicial consideration to include the following types of warrants: (1) standard search warrants [e.g. probable cause to search a particular location]; (2) anticipatory search warrants [e.g. pre-signed search warrants effective only in the event a condition precedent is satisfied]; (3) search warrants based upon continuing courses of criminal conduct [e.g. search warrants based upon largely historical information which demonstrates a pattern of behavior]; (4) document search warrants [e.g. search warrants restricted to certain business records, financial documents, or other records typically kept in the ordinary course of business, licit or illicit]; (5) pen registers and trap & trace devices [pursuant to R.C. § 2933.76]; (6) warrants for the interception of aural, wire and/or electronic communications [pursuant to R.C. § 2933.51 et seq.; e.g. clone pagers and wiretaps]; (7) orders for the production of internet protocol information; (8) computer search warrants [e.g. hard drives, CPU's and software]; (9) orders for the production of credit histories; (10) orders for the production of tax records; and (11) international consent directives. Of those search warrants that Prosecutor Matuszak has reviewed and authorized prior to submission for judicial consideration, none have ever been invalidated or overturned on subsequent judicial review, either at the trial level or on appeal.
- F. Prosecutor Matuszak has previously served as the affiant for approximately five (5) search warrants, all of which produced relevant evidence and/or instrumentalities of those crime(s) enumerated in the respective search warrant affidavit(s). None of the aforementioned search warrants were invalidated/overturned on subsequent judicial review.
- G. Prosecutor Matuszak has represented law enforcement in approximately one hundred (100) cases in which a search and/or seizure was challenged at the trial level. As a direct result, Prosecutor Matuszak has briefed the law of search and seizure extensively. To date, Prosecutor Matuszak has never lost a motion to suppress the fruits of a search warrant, either at the trial level or on appeal.
- H. Prosecutor Matuszak is a nationally-recognized instructor concerning the

investigation and prosecution of organized crime, public corruption, money laundering, and white-collar crime. Prosecutor Matuszak has taught courses for the FBI Academy in Quantico VA, the National District Attorneys Association, the National College of District Attorneys, the Ohio State Bar Association, the Ohio Prosecuting Attorneys Association, the Ohio State Highway Patrol, and other state and local law enforcement organizations.

21. All statements contained in this affidavit concerning Canon Law are derived, in whole or part, from English translations of the Roman Catholic Church's *Codex Juris Canonici* (1983) found in New Commentary on the Code of Canon Law, John P. Beal et al., Paulist Press, Mahwah NJ (2000), and The Code of Canon Law. A Text and Commentary, James A. Criden et al., Paulist Press, Mahwah NJ (1985), both of which are reference books commissioned by The Canon Law Society of America. The 1983 text was sanctioned by the Roman Catholic Church, to wit: (1) Nihil Obstat: Rev. Msgr. Donald B. Zimmerman, J.C.D., Censor Librorum; and (2) Imprimatur: Most Rev. Peter L. Gerety, D.D. Archbishop of Newark.
- A. New Commentary on the Code of Canon Law, at 6, provides that canon law is a set of norms created by reasoned enlightenment through faith, it intends to bring order into the life of the ecclesial community, it is articulated and promulgated by those who are entrusted with the community's care, and its purpose is to serve the common good. *Thus canon law imposes obligations; that is, it establishes legal bonds from which rights and duties flow* (emphasis added).
 - B. Canon 1 provides that the canons affect the Latin Church (a.k.a. the Roman Catholic Church as that term is used in this affidavit). The Roman Catholic Church and all of its various affiliates are strictly governed by Canon Law as translated into English from the *Codex Juris Canonici* and other official sources of canonical law from the Roman Catholic Church.
 - C. Canon 6 provides that the 1983 Revision of canon law supersedes the preexisting 1917 canons as well as other preexisting juridic of the Roman Catholic Church.
 - D. Canon 134 provides in its entirety: "Section 1. By the titles of ordinary in the law are understood, in addition to the Roman Pontiff, diocesan bishops and others who, even if only on an interim basis, have been placed over a particular church or over a community which is equivalent to it according to the norm of can. 368, as well as those who possess ordinary general executive power in said churches and communities, namely vicars general and Episcopal vicars; and likewise for their own members the major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who possess at least ordinary executive power. Section 2. By the title of local ordinary are understood all those mention in Section 1, except superiors of religious institutes and

societies of apostolic life. Section 3. Whatever things in the canons in the realm of executive power which are attributed by name to the diocesan bishop are understood to pertain only to the diocesan bishop and to others equivalent to him in can. 381, Section 2, excluding the vicar general and the Episcopal vicar unless they have received a special mandate."

- E. Canon 137 provides that ordinary executive power can be delegated both for a single act and for all cases, unless the canon law expressly provides otherwise.
- F. Canon 375 [Powers of Diocesan Bishops] provides in its entirety: "Section 1. Through the Holy Spirit who has been given to them, bishops are the successors of the apostles by divine institution; they are constituted pastors within the Church so that they are teachers of doctrine, priests of sacred worship and ministers of governance. Section 2. By the fact of their Episcopal consecration bishops receive along with the function of sanctifying also the functions of teach and of ruling, which by their very nature, however, can be exercised only when they are in hierarchical communion with the head of the college and its members."
- G. Canon 377 [Appointment of Diocesan Bishops] provides in pertinent part: "Section 1. The Supreme Pontiff [a.k.a. The Pope in Rome] freely appoints bishops or confirms those who have been legitimately elected."
- H. Canon 380 [Profession of Faith / Loyalty Oath] provides in its entirety: "Before he takes canonical possession of his office, the person promoted is to make a profession of faith and take an oath of fidelity to the Apostolic See in accord with a formula approved by the same Apostolic See."
 - 1. At all times relevant to this affidavit, the Roman Catholic Church requires priests and bishops to take an oath upon the assumption of their respective offices. The Oath of Fidelity on Assuming an Office to be Exercised in the Name of the Church reads, in pertinent part, as follows: "I shall follow and foster the common discipline of the whole Church and I shall observe all ecclesiastical laws, *especially those which are contained in the Code of Canon Law*, so help me God, and God's holy Gospels, on which I place my hand" (emphasis added).
 - 1. Canon 381 [Scope of Episcopal Power] provides in its entirety: "A diocesan bishop in the diocese committed to him possesses all the ordinary, proper and immediate power which is required for the exercise of his pastoral office except for those cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority of the Church or to some other ecclesiastical authority. Section 2. Unless it appears otherwise from the nature of the matter or from a prescription of the law, persons who head the other communities of the faithful mentioned in