THE REPORT
OF THE INDEPENDENT INVESTIGATION
OF THE CATHOLIC DIOCESE
OF KANSAS CITY-ST. JOSEPH

TODD P. GRAVES

KANSAS CITY, MISSOURI
AUGUST 31, 2011

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Section I

Executive Summary

On May 19, 2011, Father Shawn Ratigan, a priest of the Diocese of Kansas City-St. Joseph (the "Diocese"), was arrested and charged under Missouri's child pornography law. Two weeks later, another Diocesan priest, Father Michael Tierney, was removed from his parish by Bishop Robert Finn, the Diocesan ordinary, after a finding that recent reports of Fr. Tierney's sexual abuse of minors in the early 1970s were credible. Bishop Finn publicly apologized for mistakes in the handling of the Fr. Ratigan case, stating, "Things must change. I also have to change."

Bishop Finn announced a "Five-Point Plan" which, among other things, called for an independent investigation into the Diocese's handling of the Ratigan and Tierney cases and its sexual abuse policies and training program. In mid-June 2011, the Diocese asked Graves Bartle Marcus & Garrett, LLC (the "Firm"), to undertake the investigation and recommend changes to its policies and procedures.

Over the past sixty days, the Firm interviewed 54 witnesses and reviewed thousands of pages of documents and emails freely made available to us by the Diocese. The Diocese and its personnel fully cooperated with our investigation even as their cooperation with parallel criminal investigations and civil litigation made significant demands on their time and resources. After careful review of the evidence, the Firm has prepared factual findings and conclusions.

A. Findings

The Firm's key finding is that Diocesan leaders failed to follow their own policies and procedures for responding to reports relating to Frs. Ratigan and Tierney. In both

cases, the Diocesan Vicar General, Msgr. Robert Murphy, waited too long to advise the Independent Review Board ("IRB"), a body of confidential advisers to Bishop Finn, of the allegations. In Fr. Tierney's case, the failure to notify the IRB did not seriously undermine the integrity of the investigation or, in the Firm's judgment, place minors in danger.

The flaws relating to Fr. Ratigan were more serious because neither Msgr. Murphy, nor Bishop Finn, nor others with knowledge brought the matter to the full IRB until after the arrest. Absent IRB guidance, Msgr. Murphy conducted a limited and improperly-conceived investigation which focused on whether a specific image on Fr. Ratigan's laptop, which held hundreds of troubling images, met the definition of "child pornography." Before he had viewed the images, Msgr. Murphy solicited an opinion from an IRB member, Capt. Rick Smith, but merely described one photograph over the telephone in a neutral manner. Msgr. Murphy also shared the images with Diocesan counsel and received an opinion that a single disturbing image did not constitute child pornography.

Rather than referring the matter to the IRB for a more searching review, Msgr. Murphy allowed two technical answers to his limited questions to satisfy the Diocese's duty of diligent inquiry. Relying on these responses, he failed to timely turn over the laptop to the police. Although Bishop Finn was unaware of some important facts learned by Msgr. Murphy or that the police had never actually seen the pictures, the Bishop erred in trusting Fr. Ratigan to abide by restrictions the Bishop had placed on his interaction with children after the discovery of the laptop and Fr. Ratigan's attempted suicide.

B. Recommendations

Based on its findings regarding Frs. Tierney and Ratigan and Diocesan policies and procedures for handling abuse, the Firm recommends that the Diocese strengthen the

reporting and investigation provisions in its sexual misconduct policies. The Firm's key recommendations are as follows:

- any Diocesan employee or volunteer who receives a report of current abuse involving a minor must report to the police and the Division of Family Services, whether or not he or she is a mandated reporter;

- the Ombudsman should be notified of reports of current or past sexual abuse of minors, and should also receive reports of two new categories of conduct: sexual misconduct with minors and boundary violations;

- all reports should be immediately investigated by the Ombudsman;

- the Independent Review Board should be notified of all reports so that it can make a credibility determination and recommendation to the Bishop, and certain reports will receive expedited review while the accused is placed on administrative leave; and

- the Diocese should take greater steps in offering victim support and in notifying the public regarding priests removed from ministry due to the credible allegations of child abuse.

C. This Report

This Report contains all of the Firm's major findings and conclusions. To aid the reader in understanding the scope of our review and the way in which we conducted our investigation, we have provided brief descriptions in Sections II and III, respectively. Section IV reports the Firm's findings and conclusions and is divided into five subsections: (A) the Diocese's adherence to the current policy for handling claims of sexual abuse of a minor; (B) training in child abuse prevention; (C) the handling of claims against Fr. Tierney; (D) the handling of claims against Fr. Ratigan; and (E) our conclusions. Section V, concludes the Report and outlines the Firm's recommendations. Exhibit A is a flowchart illustrating the flow of reporting and decision-making under the revised procedures the Firm has recommended, and Exhibit B details the Firm's investigative methods.

Section II

The Four Issues Considered by the Firm

The Diocese engaged the Firm to complete four tasks:

(1) review the Diocese's policies and practices in handling reports of child sexual abuse;
(2) review the Diocese's existing training programs for prevention and reporting of child sexual abuse;
(3) investigate the Diocese's handling of reports of abuse by Father Shawn Ratigan and Father Michael Tierney; and
(4) consider the suitability of the current policies and practices, and prepare a set of recommendations for changes or additions to the policies.

With respect to the first task, the Firm undertook to review not only the Diocese's written policies, but also its actual practice. The period reviewed by the Firm begins in 2002, the year in which the United States Conference of Catholic Bishops adopted the *Charter for the Protection of Children and Young People*, and continues to the date of this Report, August 2011.

The Diocese's written policies are clearly posted on its website and are comprised of several different policy documents, including the non-monetary terms of a settlement agreement the Diocese reached in 2008 with 47 sexual abuse plaintiffs. While reasonably detailed and even somewhat voluminous, the policies are susceptible to varying interpretations. It was therefore necessary to consider how the policies had actually been implemented by various Diocesan officials and bodies during the 9-year period covered by this Report.

With respect to the second task, the Diocese's training regimen for child abuse prevention and reporting was developed over several years. The scope and content of the

training regimen is a matter of Diocesan policy. The Firm reviewed the methods the Diocese has used to implement and monitor the training throughout the Diocese.

With respect to the third task, the Firm's review of the Diocese's handling of reports of abuse by Frs. Ratigan and Tierney involved not only the period in which the reports were received, but also the priests' vocational training, formation, and time in ministry. Further, the review was not limited to incidents or reports that could be defined as "credible reports" of abuse, and considered all comments, suggestions, or occurrences known to Diocesan employees, staff, or volunteers. This portion of the review extended to the deliberation of Diocesan officials or bodies who were made aware of, considered, and acted upon any reports of abuse or concerns about the priests' conduct.

Fourth, after completing its first three tasks and reviewing the fruits of its investigation, the Firm considered the suitability of the Diocese's written policies and past practices. Based on these considerations, and based on its review of policies and practices in other dioceses and other institutions, the Firm has prepared a set of recommendations for changes to the Diocese's policies and practices in handling reports of child sexual abuse.

The next section, Section III, outlines the Firm's investigative methods and the manner in which the Firm's recommendations were prepared; additional details regarding the Firm's investigation and the preparation of this Report can be found within Exhibit B. The remainder of the Report, which follows Section III, is organized to address each of the Firm's four tasks. Section IV details the Firm's findings and conclusions with respect to policies and practices, training, and Frs. Tierney and Ratigan, and Section V outlines and explains the Firm's recommendations.

Section III

The Course and Methods of the Investigation

A. Introduction

After engaging the Firm, Bishop Finn pledged to make all employees and records of the Diocese available for a complete and searching review. In the Firm's judgment, Diocesan employees, clergy, and counsel cooperated fully in the investigation and made a good faith effort to fulfill Bishop Finn's pledge to fully impart the Diocese's knowledge and information to the Firm's investigators and attorneys.

B. The Course of the Investigation

On June 10, 2011, the Firm wrote the Diocese and requested that it preserve electronic and hard-copy documents and data that could be relevant to the investigation. On June 21, 2011, the Firm sent the Diocese its first document request, and six days later, the Firm and Diocese defined the scope of the investigation. Throughout July, the Diocese produced thousands of responsive emails and electronic documents.

By August 18, 2011, the Firm had conducted approximately 54 witness interviews. The Firm had reviewed several thousand pages of documents in hard copy form culled from a variety of document custodians at the Catholic Center, certain parishes and schools,

and certain independent contractors. The Firm had also reviewed responsive electronic documents from the "C" drives of seven key officers at the Catholic Center, including but not limited to Bishop Finn and Msgr. Murphy. Finally, the Firm also requested, received and reviewed thousands of emails residing on the Diocesan Microsoft Exchange Server (i.e., its email server) for these same seven officers. The Firm expended over 1,200 man-hours in completing this review, undertaking its analysis, and preparing this report.

The Firm's interviews, document review, and research were conducted within an extremely tight time frame. The Diocese maintained its documents in several locations, and it took substantial time and effort to cull hard copy and electronic documents. Some interviews had to be conducted before the Firm had received or had a full opportunity to review documents relating to that witness. The Firm's investigation also coincided with parallel investigations by law enforcement from several jurisdictions, and the Firm respected the prerogative of law enforcement and the need to avoid even unintentionally interfering with those investigations. Diocesan counsel and staff worked with the Firm in dealing with these unavoidable constraints, and the Firm is confident that its investigation has compiled data that form a solid basis for our findings and recommendations.

C. Investigative Methods

The Firm's investigation relied on three sources: (1) interviews of Diocesan and third party witnesses; (2) a review of documents and electronic data from the Diocese; and (3) legal research regarding relevant laws and child protection policies.

1. Witness Interviews

Our witness interviews were extensive. We spoke to officials at each parish and school where Fr. Shawn Ratigan was assigned throughout his priesthood, including several

individuals at St. Patrick's Parish and School. We interviewed officials at each parish and school where Fr. Michael Tierney was assigned for the last 13 years. The Firm met with victims of clergy abuse, the attorneys who have filed the majority of abuse litigation agains the Diocese, and representatives of victim advocacy groups, including SNAP (Survivors Network of those Abused by Priests) and Voice of the Faithful. We spoke to each member of the Diocesan Response Team and Independent Review Board ("IRB"), former IRB members, the former Vicar General, Fr. Patrick Rush, and the former Diocesan Victim Advocate, Sr. Jeanne Christensen. We spoke with numerous Diocesan employees, including but not limited to Bishop Finn, Msgr. Murphy, Msgr. Offutt, Vice-Chancellor Paula Moss, Director of Management Information Systems Julie Creech, Superintendent of Schools Dr. Dan Peters, and the Safe Environment Coordinator, Mary Fran Horton. Every Diocesan employee contacted, at the Chancery, parish and school levels, agreed to speak with us and cooperated fully.

2. Document Requests (Hard Copy and Electronic)

The Firm's first document and data request sought the production of 36 different categories of material. These included requests for both hard copy and electronic documents and other electronic data, including email communications. The requests covered several topical areas.

The Firm requested confidential priest personnel files and confidential "victim" or "incident" files; records of the Diocesan Response Team and Independent Review Board; any communications regarding concerns about interactions with children relating to Frs. Ratigan or Tierney; communications regarding the handling of claims against Frs. Ratigan or Tierney; background checks and psychiatric evaluation histories for Frs. Ratigan or

Tierney; records of training regarding child protection policies; audits regarding compliance on Diocesan policies; and records of the Victim Advocate. In addition, we requested documents directly from St. Patrick's Parish, the Victim Advocate, and the Society of the Precious Blood, an Order of priests that utilizes the Independent Review Board for complaints of abuse against minors.

With respect to each and every one of our 36 categories of request, the Diocese has certified to us that it has provided us access to every document in its possession, or has certified that it has no responsive documents. The Firm believes that the Diocese has fully complied with Bishop Finn's pledge to make the Diocese's employees and documents fully available for our investigation. In no case has the Diocese withheld or obstructed access to a witness or document.[1] The Firm has no reason to believe that the Diocese has failed to preserve, has lost, or has destroyed any materials subject to the Firm's preservation letter or its document requests. The Firm also found no evidence that the Diocese or its employees intentionally destroyed documents or records relating to Frs. Ratigan or Tierney which Diocesan employees had in their possession, custody, or control prior to the Diocese's receipt of our document preservation letter.

Among other documents, the Firm received ample access to confidential priest files and incident files. We also reviewed all audits conducted since 2003 by the Boston-based Gavin Group for the Diocese of Kansas City-St. Joseph; the audits assess Diocesan compliance with the specific requirements adopted by the Charter. Various witnesses provided documents before or after their interviews. Documents were produced by St.

[1] The Diocese has asserted well-grounded claims of legal privilege for specific documents pursuant to a protocol approved by the Firm and Diocesan counsel. The protocol required identification of each document by author, recipient, date, subject matter, and claimed privilege in a privilege log that, in our judgment, complies in every respect with the Missouri Rules of Civil Procedure.

Patrick's Parish and the Victim Advocate with appropriate redactions to protect confidentiality and the privacy of certain victims. The Society of the Precious Blood allowed us to review relevant priest files. Finally, the Diocese's outside counsel, Jon Haden, provided various litigation documents, records, and information regarding reports or claims of abuse.

The Firm also requested and received access to electronic data, including access to all responsive emails for Bishop Finn, Msgr. Murphy and other key individuals at the Diocese, including the individuals who (as discussed below in Section IV.C) viewed images on Fr. Ratigan's hard drive. (It should be noted that we did not uncover any images relating to Fr. Ratigan, as it appears that all such material has been turned over to criminal authorities.)

3. Research

Our research covered state and federal laws regarding child pornography and child abuse, mandatory reporting laws and Division of Family Services guidelines for handling reports. In addition to reviewing the U.S. Conference of Catholic Bishops' *Charter for the Protection of Children and Young People* (the "Charter"), the Bishops' *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (the "Norms"), canon law, binding guidance from the Holy See and recent correspondence from the Congregation for the Doctrine of the Faith ("CDF") in Rome, the Diocesan Sexual Misconduct Policy (the "Policy,"), and other related ethics codes and policies, we reviewed the sexual misconduct policies for many other dioceses throughout the country of similar size to the Diocese of Kansas City – St. Joseph. We also researched

the policies for various children's organizations including the Boy Scouts of America, Girl Scouts of America, YMCA and Big Brothers Big Sisters.

Our research helped us assess whether the Diocese complied with the law, the Charter and Norms, and the Diocesan Sexual Misconduct Policy, when it received reports of abuse, including those involving Fr. Tierney and Fr. Ratigan. Additionally, our review of other policies aided us in providing appropriate recommendations to the Diocese.

4. Conclusion

The Firm believes that its interviews and review of documents have yielded all or almost all information retained by Diocese officials regarding the handling of the reports regarding Fr. Tierney and Fr. Ratigan (with the obvious exception of the Fr. Ratigan images, which we understand are in the possession of law enforcement). The Firm also believes that it has compiled a list that is complete, or at least nearly complete and therefore representative, of complaints or reports regarding abuse of a minor by clergy since the enactment of the Charter in 2002. Finally, the Firm believes it has received the best available evidence, short of an in-depth and on-site audit of every parish and school in the Diocese, regarding Diocesan training programs and training compliance.

Based on all of this information and the conclusions we have drawn from our review, the Firm believes its recommendations can provide useful guidance to the Diocese as it seeks to understand how past reports of abuse have been handled and reassesses its process for handling reports of abuse.

Section IV

Findings

The Firm has organized Section IV, its factual findings and conclusions, into five subsections. Subsection A reviews the Diocese's policies and procedures for handling reports of child sexual abuse, and Subsection B reviews Diocesan training programs for avoiding, identifying, and reporting abuse. Subsections C and D, respectively, review the

Diocese's handling of reports involving Frs. Tierney and Ratigan. Finally, Subsection E summarizes the Firm's factual conclusions and anticipates the Firm's recommendations for changes to Diocesan policy.

Subsections A and B, which immediately follow, are important for understanding the Diocese's handling of Frs. Tierney and Ratigan. The Firm has reviewed Church law and the Diocese's sexual misconduct policies at some length because these guidelines were drafted very thoughtfully and deliberately in the wake of past reports of abuse, both in western Missouri and across the United States. This legal framework has been reviewed and revised over time based upon local experience and guidance from Rome. Local officials were well aware of the development of this framework and knew they were to follow it when they received reports of sexual abuse of minors. In the Firm's view, then, the policy framework not only helps to explain Diocesan officials' actions, it also provides at least one lens for evaluating their conduct. Additionally, because some Church law dictates the content of local policies, the Firm has had to consider this guidance to ensure that its recommendations are capable of being implemented by the Diocese. Therefore, although we ultimately conclude that no official's action or inaction was mandated by existing Diocesan policy or Church law, we urge readers to study Subsections A and B.

A. Policies and Procedures for Handling Reports of Child Sexual Abuse

1. Introduction

The Diocese's handling of reports of child sexual abuse has evolved over time. A watershed year—and the beginning of the period covered by this report—was 2002. In June of that year, an emerging national sexual abuse crisis led the United States Conference

of Catholic Bishops to adopt the *Charter for the Protection of Children and Young People* (the "Charter"). This document, which is periodically revisited and revised, most recently in June 2011, outlines certain goals and standards for dealing with the sexual abuse of minors. Its 17 separate articles were promulgated by the bishops as pledges for preventing and dealing with reports of abuse.

In November 2002, the bishops promulgated a more specific document, the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (the "Norms"). The Norms, both as originally drafted and as revised, receive *recognitio* from the Holy See.[2] This means that they have the force of law in all dioceses, including the Diocese of Kansas City-St. Joseph (the "Diocese").

Long before the bishops promulgated the Charter and Norms in 2002, the Diocese had created predecessors to many of the boards and positions that were eventually mandated in those later documents. In 2003, the Diocese revised its Policy Regarding Sexual Misconduct (the "Policy") to conform to the Norms and Charter. A Code of Ethical Standards for Priests (the "Code of Ethics"), prepared in 1997 under Bishop Raymond Boland, Bishop Finn's immediate predecessor, was also updated. In late 2008, the Diocese again revised its Policy and implemented other changes to which it had agreed in a settlement with victims of sexual abuse. Today, Diocesan employees and volunteers also have the guidance of more specific policies: the Diocese's Standards of Conduct for adult leaders who participate in events with youth, and various personnel policies relating to the prevention and reporting of child sexual abuse.

[2] The Holy See is essentially the central body that assists the Pope in governing the Church.

State and federal law defines and proscribes criminal behavior by Diocesan clergy, employees, and volunteers. These laws define child abuse and pornography and impose reporting requirements on certain individuals. Within the Church, canon law, a universal code of substantive rights and procedure, governs the priesthood and confers certain rights and responsibilities on bishops, priests, deacons, and other clergy.

Together, this collection of authorities controls the Diocese's policy on preventing and handling reports of child sexual abuse. Some of the authorities—such as civil and criminal law, the Norms, and canon law—actually dictate Diocesan policy; for that reason, we have treated them as immutable for purposes of this report. But even within the confines of these mandates, the Diocese has substantial policymaking latitude. As the Firm found in its review, significant variations in the policies adopted by other dioceses show that reasonable minds have differed. No single approach may be ideal, and given local differences, one size may not fit all. However, our review indicates that there is ample room for the Diocese to refine and improve its current set of policies based on its experience in handling reports of abuse since 2002.

2. The Diocese's Policies

a. Requirements of the Norms and Canon and Civil Law

The guiding principle behind applicable canon law and binding ecclesiastical statements is that the bishop retains ultimate responsibility and authority for determining the handling of child sexual abuse allegations in their preliminary stages. The bishop is expected to adequately inform himself and, where necessary, use expert resources. Once an allegation has been determined to have some level of support, the bishop must refer the allegation to a separate authority within the Church which is charged with handling grave

offenses, or "delicts." At all stages in the process, victims and the accused priests are to be treated with respect. A cleric who has sexually abused a child even once is precluded from engaging in public ministry.

Civil law emphasizes the protection of victims and, for certain individuals, the reporting of suspected abuse. It also prohibits the production and dissemination of child pornography. Civil law is consistent with Church law, and with recent revisions to the Norms and other sources of Church law, the standard definitions and triggers for reporting are essentially the same. The following section outlines the various substantive and procedural requirements imposed upon the Diocese by Church and civil law.

(1) What Offices Must the Diocese Create?

The Church's Norms must be viewed as a minimum set of requirements, or perhaps as a policy template subject to elaboration, but not modification, by each bishop according to the needs and circumstances of his local diocese. Nowhere is this more apparent than in the Norms' minimal structural mandates: only two diocesan offices are required by the Norms.

The first office can be a single person: "a competent person to coordinate assistance for the immediate pastoral care of persons who claim to have been sexually abused when they were minors by priests or deacons."[3] The second is a review board to "function as a confidential consultative body to the bishop/eparch in discharging his responsibilities."[4]

The first person's role is not further defined in the Norms or the accompanying Charter. The Charter emphasizes that dioceses are to "respond promptly to any allegation

[3] See Norm 3.

[4] A third body which exists outside of the diocese is the Congregation of the Doctrine of the Faith (the "CDF"), which must be notified "[w]hen there is sufficient evidence that sexual abuse of a minor has occurred." See Norm 6. And, of course, there is the office of the bishop himself.

when there is reason to believe that sexual abuse of a minor has occurred."[5] The Charter (but not the Norms, which alone are legally binding upon dioceses under Church law) also notes that the "first obligation of the Church with regard to the victims is for healing and reconciliation."[6] The Church views this obligation to encompass "outreach" in the form of "counseling, spiritual assistance, support groups, and other social services."[7] Nevertheless, the Norms do not mandate that dioceses engage in specific kinds of outreach. The Norms do require that after an allegation of sexual abuse by a minor is received, "a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively."[8] But nothing in the Norms suggests who should undertake that investigation—let alone mandates or requires that the person responsible for coordinating "immediate pastoral care" of victims also serve as an investigator. As will be discussed below, this is significant and has informed our Firm's recommendations on the role of the Diocesan Victim's Advocate.

Turning to the second office, the "confidential consultative" review board, it is noteworthy that the Norms assign it at least three functions which the bishop "may" (but, possibly, is not required to) ask it to discharge:[9]

(a) advising the bishop in his assessment of allegations of sexual abuse of minors and in his determination of suitability for ministry;

(b) reviewing policies for dealing with sexual abuse of minors; and

(c) offering advice on all aspects of abuse cases, whether retrospectively or prospectively.

[5] See Charter, Article II.
[6] See Charter, Article I.
[7] See Charter, Article I.
[8] See Norm 6.
[9] See Norm 4.

Not only do the Norms not require that the board perform each enumerated function, the functions do not appear to be exclusive to the board (and vice-versa). Nowhere do the Norms state that the three enumerated functions are the only roles the board may fill, and nowhere do the Norms state that only the board may fill these roles. Indeed, the Norms mandate only that the board exist and function as a "confidential consultative" body of the bishop, and that its membership meet certain individual and collective requirements.[10] Clearly, then, the Norms leave much room for dioceses to experiment and innovate with respect to the "competent person," the "board," and other offices or functions the bishop might choose to create.

(2) What Conduct Is Covered?

The next question is what the diocesan response apparatus should do when a report of abuse surfaces. A threshold matter is what type of conduct will trigger the application of the Norms.

First, it is clear that while the Norms generally apply only to "sexual abuse of minors by diocesan and religious priests or deacons,"[11] the Norms also require that dioceses create written policies that deal with abuse by "other church personnel."[12] For all practical purposes, then, most diocesan policies will apply to sexual abuse by all three categories of individuals: priests, deacons, and employees or volunteers.[13]

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[10] The board must be composed of at least five persons in full communion with the Church. The majority must be lay persons not employed by the diocese; one person must be an "experienced and respected" diocesan priest and pastor; and at least one member must have expertise in treating sexually abused minors. The terms are for five years and are renewable. The Norms state that "it is desirable" that the diocesan Promoter of Justice (a position under canon law roughly akin to a diocesan prosecutor) participate in the board's meetings.

[11] See Norms, Preamble.

[12] See Norm 2.

[13] The Norms also discuss matters of procedure under canon law. These portions of the Norms would not apply to non-clergy such as lay employees and volunteers.

The Preamble to the Norms states that "sexual abuse" of a "minor" encompasses "any offense by a cleric against the Sixth Commandment of the Decalogue with a minor as understood in CIC, canon 1395 section 2…"[14] In June 2011, however, the Norms were clarified to bring them into line with more recent modifications in Church law which seem to have expanded the definition of sexual abuse. Now, sexual abuse of a minor encompasses two categories:

(1) the violation of the Sixth Commandment (which prohibits adultery) with anyone under eighteen years of age, or with anyone who is over eighteen but "habitually lacks the use of reason;" and

(2) the "acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology."[15][16]

Arguably, before June 2011, it was unclear whether trafficking in pornographic images (as distinct from producing them or collaborating in their production, which could have constituted an independent violation of the Sixth Commandment) constituted a violation of the Norms. If any ambiguity existed, it has now been resolved.

Left undefined by the Norms is conduct which, at least on the surface, appears to stop somewhere short of overt sexual abuse, but which may signal that abuse is occurring or may imminently occur. This sort of conduct, which could include unusually intimate or focused touching or attention, might not itself constitute abuse (or might not obviously

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[14] That provision of canon law provides that "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants."

[15] See Norm 8, footnote 5 (citing *Sacramentum sanctitatus tutela* ("SST") article 6, sections 1 and 2).

[16] Oddly, the Charter, but not the Norms (which alone have the force of law), states that "child pornography" shall be defined to include images of children under the age of eighteen. See "NOTE" to Charter, paragraph 2. The Norms continue to use age fourteen as a cut-off for purposes of defining child pornography. The Charter states that it has adopted the age of eighteen because it is the "federal legal age." Id.

constitute abuse) but nonetheless could provide cause for further investigation. In the area of pornography, this sort of conduct could include materials which somehow fall just short of the legal definition of pornography, but which nonetheless seem to violate the Sixth Commandment. In cases such as these, the Norms recognize that it is the bishop's duty, "with the advice of a qualified review board," to determine "whether a specific act qualifies as an external, objectively grave violation…"[17] In that case, "the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained."[18]

As a corollary to this focus on the moral gravity of the accusation, the Norms make clear that the issue of removal from ministry is not to be determined solely by recourse to expert opinion. "Removal from ministry is required whether or not the cleric is diagnosed by qualified experts as a pedophile or as suffering from a related sexual disorder that requires professional treatment."[19] It is significant that the issue of gravity is to be considered by the bishop and review board. Because a bishop cannot summarily levy a permanent penalty on priests under the canon law, the Norms seem to be referring to the bishop's initial determination regarding the existence of a "grave delict against morals" involving sexual abuse of minors—a finding which would trigger the procedures set forth in the Norms and potentially require a temporary removal from ministry under the bishop's executive power. It is also significant that in making this decision, bishops are to judge a priest's conduct against the strictures of moral theology, not relying solely on the minimal requirements of civil law or the opinions of medical experts.

[17] Norms, footnote 5.
[18] Id.
[19] Id.

(3) When Is Action Required, and What Action Is Required?

If the type of conduct which triggers the application of the Norms is now reasonably clear, the next question is whether and when a report or allegation that seems to implicate this type of conduct will lead to further action and investigation. Norm 6 states that "[w]hen an allegation of sexual abuse of a minor by a priest or deacon is received a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively." Similarly, Norm 3 states that individuals who "claim to have been sexually abused when they were minors" may be assisted by the "competent person" designated by the diocese. Neither Norm suggests that an initial threshold of credibility must be met before an investigation or offer of "assistance" is initiated.

The Norms provide only general guidance regarding the conduct of the investigation and preliminary measures the bishop may undertake.[20] The investigation is to be "prompt" and "objective;" the accused enjoys the "presumption of innocence;" and "all appropriate steps shall be taken to protect his reputation."[21] The Norms allow the bishop to request a medical and psychological evaluation of the accused. Significantly, it does not appear that the bishop must await the results of even this preliminary investigation to take action—such as a contingent removal from public ministry or other restrictions—to protect children in the diocese.[22] Indeed, Norm 9, which discusses the bishop's executive and

[20] See Norms 6, 7, and 9.
[21] See Norm 6.
[22] *See* SST Article 19 (as revised by Pope Benedict XVI on May 21, 2010, and cited in footnote 4 of the Norms) and canon law section 1722. Section 1722 provides:

> To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid

administrative power to remove priests from office, remove or restrict faculties, or limit priests' exercise of ministry, states that bishops "shall" use this power to "ensure that any priest or deacon who has committed even one act of sexual abuse of a minor… shall not continue in active ministry."

After the conclusion of the preliminary investigation, the bishop is required to notify the Congregation of the Doctrine of the Faith ("CDF")[23] if there is "sufficient evidence" that sexual abuse "has occurred." (While the Norms state that the bishop "shall then apply" certain precautionary measures,[24] as discussed in footnote 22, this does not seem to exclude the possibility of applying those measures at an even earlier stage, at the onset of

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> residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

Notably, this section would seem to require the bishop to have "heard the promoter of justice and cited the accused" before taking any precautionary, administrative action. However, SST Article 19 clearly recognizes "the right of the Ordinary to impose *from the outset of the preliminary investigation* those measures which are established in can. 1722…" (emphasis added). This seems to indicate that the bishop need not wait for the preliminary investigation to conclude before taking precautionary action. Recent communications from the Congregation of the Doctrine of the Faith seem to support this interpretation:

> The accused cleric is presumed innocent until the contrary is proven. Nonetheless the bishop is always able to limit the exercise of the cleric's ministry until the accusations are clarified.

Circular Letter of the Congregation of the Doctrine of the Faith, May 3, 2011. Later, the letter also states:

> It remains the duty of the Bishop or the Major Superior to provide for the common good by determining what precautionary measures of *CIC* can. 1722 and *CCEO* can. 1473 should be imposed. In accord with *SST* art. 19, this can be done once the preliminary investigation has been initiated.

[23] CDF is one of several congregations, or departments, of the Roman Curia, and is responsible for promoting and safeguarding the doctrine of the Catholic faith and morals. Among its duties is the investigation of grave canonical offenses, or "delicts," which now include the sexual abuse of minors. The Roman Curia is similar to a cabinet for the Pope.

[24] See Norm 6.

the investigation.) Although the Norms do not state what quantum of evidence is "sufficient" for purposes of notifying the CDF, Article 16 of the SST, a binding apostolic letter,[25] explains that claims having "a semblance of truth" must be reported. At this point, the CDF will either assume the investigation or will direct the diocese on how to proceed.[26] As the CDF considers how to act on a bishop's notification, however, it is clear that if the bishop has not yet invoked his "executive power of governance" to remove a priest under the provisions of canon law cited under Norm 9, he is required at that point to invoke the precautionary measures set forth in section 1722 of the canon law.[27]

Finally, the CDF is required to consider the gravity of the specific offense for purposes of deciding on punishment, which can include "dismissal or deposition."[28] The consideration of gravity does not necessarily cut both ways, as the Norms include a "floor" of permanent removal from ecclesiastical ministry "when even a single act of sexual abuse" is either admitted or "established after an appropriate process in accord with canon law."[29] Significantly, however, the requirement of removal from active ministry applies only to an admission or finding that abuse has definitely occurred; it does not necessarily apply to precautionary or administrative decisions made by the bishop at the onset of, during, or at the conclusion of a preliminary investigation. Separate and apart from the issue of removal from active ministry is the question of "permanent penalties," which only the CDF levies.[30]

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[25] See footnotes 55, 22.
[26] SST Article 16.
[27] Norm 6 (citing canon 1722).
[28] SST Article 6, section 2.
[29] See Norm 8; see also Norm 9 (stating that the bishop "shall exercise [his] power of governance to ensure that any priest of deacon who has committed even one act of sexual abuse of a minor as described above shall not continue in active ministry.").
[30] Cannon law section 1342; SST Article 21, section 2.

(4) What Reports Must Be Made to Civil Authorities?

Without qualification, the Norms require that the diocese "will comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and will cooperate in their investigation. In every instance, the diocese/eparchy will advise and support a person's right to make a report to public authorities."[31]

(5) What Happens to Priests or Deacons Who Have Been Found to Have Committed Abuse?

The Norms provide that priests or deacons who have committed abuse cannot be transferred "for a ministerial assignment" to another diocese. In the case of transfers for residence, the transferring bishop must disclose "any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people." With respect to transfers involving religious communities, the major superior must inform the bishop in the new diocese of sexual abuse of minors or any other information indicating that he may be a danger to children in the new setting. The bishop may take this information into account in mandating safeguards for the religious order priest or deacon.

When a priest who has committed an act of abuse has retired, been removed from active ministry, or been laicized,[32] the Norms do not require that dioceses take specific measures, such as publishing the names or identities of priests or contacting local law enforcement to inform them that the priest is living in their community.

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[31] See Norm 11.

[32] Laicization is the permanent removal of ministerial functions using a canonical process.

b. Diocese-Specific Policies

As discussed above, the Diocese implemented the Norms primarily through its Policy Regarding Sexual Misconduct (the "Policy"). It also maintains a Code of Ethical Standards for Priests (the "Ethics Code"), and Standards of Conduct for adult leaders who participate in events with youth. Finally, various Diocesan personnel policies contain guidelines related to the prevention and reporting of child sexual abuse.

(1) What Offices Are Responsible for Handling Reports of Abuse?

The Diocese has established three distinct entities for handling reports of abuse: a Victim Advocate (who correlates to the "competent person" called for in the Norms); a Response Team (which has no corollary under the Norms); and an Independent Review Board (the "IRB," which correlates to the review board called for in the Norms).

(a) Victim Advocate

The Policy, echoing the Norms, states that the Victim Advocate "shall be a competent person to coordinate assistance for the immediate pastoral care of persons who claim to have been sexually abused or who claim to be victims of other sexual misconduct by any personnel of the Diocese."[33] "The Victim Advocate shall minister to the victim, victim's family or other persons affected. This may include making available professional and other resources to aid in the care of a victim or other person."[34]

(b) Response Team

The Policy assigns no other duties to the Victim Advocate. However, it lists eight mandatory duties for the Response Team, at least some of which overlap with the Victim Advocate's duties. These include both receiving and "analyzing" allegations of sexual abuse

[33] Policy, Section 2.2
[34] Id.

of minors, complying with civil reporting requirements (both to the Missouri Division of Family Services and to law enforcement), conducting a preliminary investigation that complies with canon law, offering assistance to the victim and his or her family, preparing reports for the IRB, and performing other duties assigned by the IRB or Bishop.[35] The Response Team is generally to "assist" the IRB in performing its duties.[36]

The Response Team is made up of at least three individuals who serve at the pleasure of the bishop. The first is either the Vicar General or Chancellor; the second is a licensed mental health professional; and the third is a mandatory reporter of child abuse under Missouri law. The Vicar General is "administrator" of the Response Team, and also responds to "telephone calls and any other initial communications regarding allegations of sexual abuse or other misconduct."[37] Additionally, all Diocesan employees, religious and lay, are required to report allegations of sexual abuse to the Vicar General.[38] Significantly, where the Vicar General receives "any claim or disclosure of sexual abuse or other sexual misconduct committed by personnel of the Diocese," he must report it to the Response Team and the IRB chairperson.[39] In combination, these policies make the Vicar General—and by extension, the Response Team—the initial repository and sounding board for all allegations of abuse. This structure is neither required by nor inconsistent with the Norms.

The Response Team, in essence, combines investigative authority (which otherwise remains with the bishop under the Norms) with victim response duties (which are shared with the Victim Advocate under the Policy and entrusted to the "competent person" under

[35] Policy, Section 4.6(c).
[36] Policy, Section 4.6
[37] Policy, Section 4.7.
[38] Policy, Section 4.2.
[39] Policy, Section 4.7.

the Norms). While nothing in the Norms contemplates that these functions would be combined, the Norms do not forbid it.

(c) The Independent Review Board (IRB)

The IRB is tasked to make "recommendations" to the bishop on the following points:

(i) consideration of "claims of sexual abuse or other misconduct conducted by personnel of the Diocese;
(ii) consideration of "the continuation of ministry of any priest or deacon who is the subject of an allegation of sexual abuse or other sexual misconduct;" and
(iii) the "return to ministry of a priest or deacon removed" because of an allegation of sexual abuse or misconduct.[40]

There is no question under the Policy, the Norms, or controlling canon law that the IRB (and other species of review boards) are consultative only,[41] and do not bind the bishop. However, while the Norms and recent CDF pronouncements seem to suggest that the bishop "may" use the diocesan review board, the Diocese's Policy is explicit that the IRB "shall" make recommendations to the bishop, who "shall" make determinations.[42]

Specifically, the IRB reviews and assesses "all claims of sexual abuse of minors by a priest or deacon," and "all other claims of misconduct brought by the Bishop, the Vicar General, the Victim Advocate, or a member of the [IRB] or Response Team." The recommendations "may" contain advice on "all aspects of the claims, whether retrospective or prospective, including the future status" of priests, deacons, or other religious.[43] The IRB's scope is almost identical to that envisioned by the Norms, except that the Policy

[40] Policy, sections 4.1 and 4.5.
[41] Policy, section 4.5(d)
[42] Policy, sections 4.1 and 4.5.
[43] Policy, section 4.5(g). The IRB has also been assigned supervisory authority over the Response Team. Finally, it can make recommendations for the operation of the Response Team, treatment programs for priests, and amendments to the Policy. Id. These duties are consistent with the duties outlined in the Norms.

allows matters other than sexual abuse of minors to be brought to the board. Additionally, as discussed above, the Policy mandates that the IRB make recommendations on all allegations of abuse, including allegations regarding the status of a priest.

The Policy requires that the IRB consist of between 6 and 9 members. In contrast to the 5-member, all-Catholic board outlined in the Norms, only 5 members of the IRB must be in full communion with the Church, and at least one must be non-Catholic.[44] The Policy mirrors the Norms' requirement that "an experienced, respected pastor of the Diocese" and a person with "particular expertise in the treatment of minors" serve on the board.[45] All other members must be lay persons not employed by the Diocese. The bishop appoints the chairperson, and there is no requirement that the Vicar General or any other Diocesan official sit on the IRB.[46]

(2) What Conduct Is Covered?

The Policy's coverage is both broader and narrower than that of the Norms. On the one hand, the Policy can be applied not only to the sexual abuse of minors by priests and deacons, but also to two other categories: (1) claims of sexual abuse of minors by other Diocesan employees or volunteers; and (2) "any other claim of sexual misconduct by a priest, deacon, pastoral administrator or diocesan officer."[47] Unfortunately, "sexual misconduct" is defined only as "sexual abuse and any other sexual conduct that is inappropriate under civil or moral law."[48] This could apply to either a very broad or very

[44] Policy, section 4.5(a).
[45] Id.
[46] Policy, section 4.5.
[47] Policy section 1.1. It is significant that these four offices are the same four offices subject to the Diocese's Code of Ethical Standards for Priests, Pastoral Administrators, Deacons, and Diocesan Officers (the "Ethics Code").
[48] Policy, section 1.6.

narrow swath of additional claims. Moreover, other statements scattered throughout the Policy seem to suggest that it could also apply to sexual or other misconduct committed by employees or volunteers outside of the discrete set of officials enumerated in the Policy's general provisions.

Adding to the confusion is the fact that the Policy defines "sexual abuse of a minor" by citing to language that can only be found in the preamble to an old version of the Norms. While this language bears some similarity to the formulation in the new Norms (*i.e.*, a violation of the sixth commandment with a person under eighteen[49]), it appears to leave to the bishop the question of "whether conduct or interaction with a minor qualifies as an external, objectively grave violation of the sixth commandment…"[50] The Policy then cites specific factors to be considered by the bishop and review board, counseling that the violation "need not be a complete act of intercourse. Nor, to be objectively grave, does an act need to involve force, physical contact, or a discernible harmful outcome…"[51] The old preamble also notes that "sexual abuse of a minor" includes "sexual molestation or sexual exploitation of a minor and other behavior by which an adult uses a minor as an object of sexual gratification."[52] In other words, the new Norms appear to have exchanged vague standards in the old Norms for bright-line rules, and the Policy is now out of step.

This does not mean that the Policy is under-inclusive or in conflict with the new Norms. Indeed, the very ambiguity of the old Norms means that the Policy could apply to more cases, the same number of cases, or fewer cases than are contemplated under the recent Norms and guidance from the CDF. On the one hand, the old Norms' reference to

[49] See Norms, footnote 5 (citing SST, article 6).
[50] Policy, footnote 2 (citing the preamble of a previous version of the Norms).
[51] Id.
[52] Policy, section 1.5.

non-intercourse, acts which do not involve contact or "discernible harmful outcome," and any use of a child for "sexual gratification" are quite broad. They clearly anticipate that "sexual abuse of a minor" could include the production of and trafficking in pornography or certain acts that are often called "boundary violations."[53] On the other hand, the older formulation used in the Policy does not automatically require that violations of the sixth commandment with minors be considered grave violations; the new Norms do. Further, the new Norms provide the advantage of a bright-line rule: they explicitly forbid the use or trafficking in pornography and explicitly consider mentally challenged adults as minors. These important refinements are absent from the old Norms, and, therefore, the Policy. In conclusion, as currently drafted, the scope of the Policy's coverage is uncertain, but in important respects, could well be narrower than the coverage mandated in the new Norms.

(3) When Is Action Required, and What Action Is Required?

As discussed above, the Norms are quite direct in requiring a preliminary investigation after an allegation of abuse is made; no procedural requirements or threshold "credibility" or "plausibility" judgments may be made before an investigation begins. That is not to say that the investigation could not be quite short or could not be conducted without the use of a review board—two practices that are technically consistent with the Norms. The Policy is generally consistent with the Norms, and if anything, is more stringent and specific in its requirements for investigation.

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[53] This construction of the Policy would also be consistent with the Diocese's pre-existing Ethics Code. While the Code is presented as a set of standards and not as bright-line rules, its provisions help to define the types of conduct that constitute either sexual abuse or "sexual misconduct." For example, under Section 2.2, "Physical contact with youth beyond a handshake… should only occur under appropriate public circumstances." Under Section 3.1, "Church leaders must not exploit another person for sexual purposes." Under Section 3.5, "Church leaders must become knowledgeable of [state child abuse regulations] and follow the proper reporting requirements as outlined in [an appendix to the Code]."

Under the Policy, all allegations which reach the Diocese must eventually make their way to the Response Team.[54] The Policy does not allow for any exceptions other than, perhaps, for certain cases in litigation.[55] Even anonymous allegations must be investigated so long as they contain "enough information to permit reasonable inquiry."[56] If reasonable inquiry is impossible or is quickly exhausted, the Response Team must nonetheless report the allegation at the next IRB meeting and allow the IRB to review its actions.[57] When the Response Team learns of an allegation "through the media or in some other fashion," it must still make "appropriate inquiries and proceed substantially in the same manner as it would in connection with any other allegation it receives."

Additionally (generally speaking), the unwillingness of a victim or reporter to abide by particular procedures of the Response Team cannot provide a reason to discontinue the investigation. Multiple members of the Response Team, or the Vicar General, must attend certain initial or subsequent meetings with victims, for example, but this need only be done "whenever feasible."[58]

Finally, the Response Team is required to make various recommendations and evaluations. First, it is to evaluate whether safety of children requires immediate removal of an accused person from his or her assignment, and to communicate this recommendation to the Bishop. Second, it must make a preliminary assessment of the

[54] See section ___, supra.
[55] See section 4.10(d)
[56] See Section 4.9(c)
[57] Id.
[58] Policy, section 4.10(b).

"credibility" of the allegations. Third, it must notify the Board of its preliminary assessment and prepare a report for the Board.[59]

The IRB, in turn, considers the recommendations of the Response Team, both with respect to the credibility of the allegations and with respect to any recommendations regarding the withdrawal of the accused from ministry or other assignments. It considers any other actions by the Response Team and can provide it further direction. If the IRB directs further action or investigation by the Response Team, the Team may interview witnesses and review documents. This analysis must be included in summary reports prepared by the Vicar General as administrator of the Response Team. If, on the other hand, the IRB is prepared to make a recommendation to the Bishop, it must do so. As set forth above, the recommendation includes a determination as to whether "sufficient evidence" exists of sexual abuse or misconduct, and if so, recommendations regarding removal from ministry and other safety precautions. The IRB has the discretion to make supplemental reviews.[60]

Significantly, the Diocese committed to change one element of its Policy in 2003 in response to an annual performance audit of its handling of reports of sexual abuse. Under the change, the IRB was required to make its recommendations to the Bishop in writing, and the Bishop was required to make his responses and findings in writing.[61] While this specific requirement is not inconsistent with the current Policy, which was revised in late 2008, it is not described within its text.

[59] Policy, section 4.10(g)-(j).
[60] See generally Policy, section 4.11.
[61] *See* IRB Minutes for September 24, 2003; Working file for 2003 Audit of the Gavin Group.

Finally, the Policy recognizes that the Bishop has authority to take precautionary acts during the pendency of the investigation. When there is "sufficient evidence" of abuse, the Bishop must notify the CDF. The Bishop is to ensure that when even a single act of abuse is admitted or established under canon law procedures, the priest or deacon is permanently removed from ecclesiastical ministry. Permanent canonical penalties, as was noted above, can only be dispensed by the CDF. In all of these respects, the Policy is consistent with (and generally restates) the requirements of the Norms and Church law.

(4) What Reports Must Be Made to Civil Authorities?

The Policy is more specific than the Norms in assigning the reporting duty to a specific body, the Response Team. The Policy is quite clear that reporting must happen immediately: "Upon receipt of an allegation, the Response Team shall: (a) Comply with all civil reporting requirements relating to sexual abuse of a minor."[62] Under the Policy, the agency to receive the report is the Missouri Division of Family Services ("DFS").[63]

The Policy admits few exceptions. First, the Policy states that DFS has advised the Diocese that reporting to DFS is required only where the victim is still under 18 at the time the Diocese first suspects or learns that abuse is occurring.[64] But even this exception is limited: if the Response Team deems the allegation to be "credible" and the victim or his or her family so requests, the Response Team "shall" make a report to DFS.[65] Second, an allegation received by the Diocese need not be reported if it appears "baseless."[66]

[62] Policy, section 4.10(a).
[63] Id.
[64] Id.
[65] Policy, section 4.10(c).
[66] Policy, section 4.10(a).

Interestingly, an addendum to the Ethics Code (which is not a part of the Policy) contains guidance on reporting for priests, deacons, parish administrators, and diocesan officers. The addendum appears to accurately state Missouri law on reporting to DFS. It echoes the Policy in stating that any reports also be made to the Vicar General. Reports of past abuse, where the victim is above the age of 18, need not be reported to DFS but should be reported to the Vicar General. Finally, the Code states that DFS will take the responsibility of contacting law enforcement if it "considers the claimed abuse serious enough to constitute a crime."

(5) What Happens to Priests Who Are Found to Have Committed Abuse?

Like the Norms, the Policy requires the Bishop to inform dioceses receiving Diocesan priest/transferees of information concerning past abuse or "any other information indicating that the priest or deacon has been or may be a danger to the children or young people."[67] For priests transferring in to the Diocese, the Bishop is required to obtain this same information, including information on "any past act of sexual misconduct."[68] Because "sexual misconduct" is a broader term than "sexual abuse" under the Policy, this obligates the Bishop to obtain information on a range of information that may not typically be conveyed in transfer forms that were designed only to comply with the Norms.

(6) Recent Changes

Since 2008, the Diocese has made certain changes and additions to its Policy. The first set of changes was implemented in late 2008 in order to harmonize the Policy with the 19 non-monetary provisions of the Diocese's settlement with 47 abuse victims. The

[67] Policy, 5.6
[68] Policy, 5.7

Diocese has published two statements detailing its performance of these obligations. The first statement was published shortly after the settlement, and the second statement was published on June 20, 2011.

The second set of changes is still in process and may include the Diocese's adoption of some or all of the recommendations set forth in Section V of this Report. First, in the wake of the news of Fr. Ratigan's arrest, the Diocese announced a "5-Point Plan." The Plan stated as follows:

> 1. Immediate appointment of former national co-chair of the Department of Justice Child Exploitation Working Group and former U.S. Attorney to conduct an independent investigation of events, policies and procedures,
>
> 2. Appointment of an independent public liaison and ombudsman to field and investigate any reports of suspicious or inappropriate behavior,
>
> 3. Reaffirmation of current diocesan policy and immediate commencement of an independent review of the policies for Ethical Codes of Conduct and Sexual Misconduct,
>
> 4. An in-depth review of diocesan personnel training regarding the Ethical Codes of Conduct and the policy on Sexual Misconduct,
>
> 5. Continued cooperation with local law enforcement.

The Diocese hired the Firm pursuant to points 1, 3, and 4. With respect to point 2, on June 30, 2011, the Diocese engaged Jenifer Valenti, a former prosecutor who specialized in domestic violence and abuse cases, to serve in the newly created role of Ombudsman. Under current Diocesan policy, the Ombudsman "has the responsibility and authority to receive and investigate reports of suspicious, inappropriate behavior or sexual misconduct by clergy, employees or volunteers in the diocese."[69] The Diocese represents that "In

[69] On June 30, 2011, and July 15, 2011, the Diocese made publicly announcements regarding the hiring. The information contained in this paragraph can be found in the Diocesan website at http://www.diocese-kcsj.org/news/viewNews.php?nid=159.

discharging her duties, she will consult with law enforcement agencies as appropriate and will focus particularly on reports relating to children and youth."[70]

A visit to the home page of the Diocesan website on Saturday, August 20, 2011, confirmed that a link for "Reporting Abuse" is prominently displayed in 14-point font as the first of a series of "quick links" on the right-hand side of the page. That link leads directly to a page dedicated to the Ombudsman, which, next to a picture of Ms. Valenti, contains the following text:

> To make a make a confidential report, please contact:
>
> Jenifer Valenti
>
> Public Liaison Officer Ombudsman 816.812-2500
>
> *The ombudsman receives and investigates all reports of inappropriate behavior or sexual misconduct by clergy, employees or volunteers in the Diocese of Kansas City ~ St. Joseph.*

To the left of this text are a series of links to Diocesan policies and other information about abuse and abuse reporting. Additionally, the Diocese has begun distributing wallet-sized cards with Ms. Valenti's contact information in its regular "Protecting God's Children" workshops. Dozens of such cards were distributed at an August 22, 2011 workshop at Visitation Parish.

Aside from the appointment of Ms. Valenti, the Diocese took another step on June 30, 2011: the appointment of Fr. Joseph Powers as Vicar for Clergy.[71] The Diocese has represented that Fr. Powers' duties would involve serving as a "liaison" for diocesan priests, overseeing assignments and "pastoral effectiveness." The Diocese stated that he

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[70] Id.

[71] Id. See also http://www.diocese-kcsj.org/news/viewNews.php?nid=156, the June 22, 2011 announcement of Fr. Powers' appointment.

would "assist the bishop with any allegations of clerical misconduct and [would] serve as an ex officio member of the [IRB]."[72]

The duties encompassed in Fr. Powers' new office had been within the purview of Msgr. Robert Murphy as Vicar General. Concomitant with Fr. Powers' appointment, Msgr. Murphy resigned his position on the IRB and, in accord with the new policy, will have no further responsibility for dealing with abuse issues. However, Msgr. Murphy will continue to serve as Vicar General, which involves a variety of other general administrative and oversight duties within the Diocesan offices and the Diocese itself.[73]

As of the date of this report, the various sexual abuse reporting and policy links on the Diocesan website direct reports of abuse to the Ombudsman rather than to Vicar General Msgr. Murphy.[74] Victims of past (not ongoing) abuse who seek counseling and

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[72] Id.

[73] Id.

[74] A link to the Ombudsman's office appears on the left-hand side of the main Diocesan page dealing with sexual abuse reporting and procedures. Under a sub-link entitled "Working with the Obudsman," the following explanation appears:

The Ombudsman receives and investigates all reports of inappropriate behavior or sexual misconduct by clergy, employees or volunteers of the Diocese of Kansas City ~ St. Joseph.

The Ombudsman is not your legal counsel, the Diocese's legal counsel, and speaking with her is not a substitute for professional or legal advice. Should you have questions about your rights, you are free to consult with an attorney.

Making a report to the Ombudsman is not a substitute for making a report to the police or pursuing a civil cause of action. The Ombudsman's role is to address your concerns within the Church and to ensure that all reports are investigated. The Ombudsman's investigation will help to bring clarity to decisions about the continued suitability for ministry or employment of any person accused of wrongful conduct.

The Ombudsman also serves on the Diocesan Response Team, whose members pledge to keep confidential any information that you may share.

The Ombudsman is not an employee or agent of the Diocese.

other support are advised to contact the Victim Advocate, Leslie Guillot. In all cases, victims are advised to contact "civil authorities," including DFS. The DFS hotline number is provided under the "Reporting Abuse" tab on the left-hand side of the main Diocesan page for abuse policies and procedures. Finally, a review of the website's roster of members of the IRB and Response Team indicate that the Ombudsman and Vicar for Clergy are now listed as ex officio members of each body.[75]

3. The Diocese's Compliance with Its Written Policies

The Firm has investigated the Diocese's compliance with its own policies between 2002 and July 2011. The time allotted for our investigation limited our ability to completely investigate every area of compliance. Additionally, certain aspects of the Diocese's compliance with the Charter have been subject to an annual audit every year since 2002. Especially for less recent events, the audits themselves were the Firm's best source of information. On the one hand, the Firm has avoided simply paraphrasing or restating past audit results. On the other hand, to avoid a potentially endless inquiry, the Firm has focused its investigation on the handling of complaints or reports of actual or suspected abuse during this time period.

a. Quantitative Summary of the Handling of Reports

Our review indicates that during this 9-year period, approximately 109 reports or allegations of sexual abuse of a minor, involving 22 current or former priests who had

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See http://www.diocese-kcsj.org/content/protecting_children/reporting_abuse/ombudsman/working_with_the_ombudsman/.

[75] See http://www.diocese-kcsj.org/content/protecting_children/safety_policies/

some connection to the Diocese, were made by some means.[76] This statistic reflects reports relating to current or former priests who were still living, whether made by anonymous phone call, communication to a Diocesan employee, demand letter, or the filing of a lawsuit.

These 109 reports can be divided into five categories:

- Five involved telephone messages or emails that did not provide details or the name of any priest, and could therefore not be investigated.

- Seventy-four reports (or roughly 70% of all reports) came in the form of demand letters or lawsuits received by diocesan counsel. Each of these were resolved through litigation or settlement, or are still pending. Almost none of these reports related to priests who were in any form of active ministry.

- Eleven reports were not received through a demand letter or the filing of a lawsuit and involved priests who were still alive but had either permanently retired or resigned from the priesthood.

- Nineteen reports were not received through a demand letter or the filing of a lawsuit, and identified a priest who was involved in some form of active ministry. (Fr. Ratigan is listed in this category, as the Diocese had knowledge of much of Fr. Ratigan's conduct before criminal and civil litigation commenced.)

- Of the nineteen reports involving priests who had even minimal activity at the time of the report, one was for Fr. McGlynn, one was for Msgr. O'Brien, two were for Fr. Muth, two were for Fr. Cronin, four for Fr. Tierney, one for

[76] In cases where a lawsuit was brought by multiple victims against multiple priests, we considered each victim-priest match to count as one report. Further, in cases where a victim made multiple contacts with the Diocese or Diocesan attorneys, we have not counted each contact as a separate report. Our accounting is necessarily approximate because in some cases, follow-up communications or contacts were made with Diocesan officials relating to specific instances of abuse that had already been reported or that had already been alleged in a lawsuit. It was not always possible to match up these contacts with earlier (or later) reports or lawsuits. In other cases, it appears that the instance of abuse (or even the victim) was new, but the priest was deceased. In these cases, there was no opportunity for action by the Bishop (or, therefore, for the IRB), but the Response Team or Victim's Advocate did frequently provide counseling, spiritual support, or other assistance. With these qualifications, and given the short time in which we had to review a variety of records, no single set of which contained a complete accounting of the handling of reports of abuse, we believe that our account is a reasonably accurate and complete review of the types of reports that were made, and the way in which they were handled, during the relevant 9-year period.

Fr. Ratigan, two for Fr. Urbanic, and one each were for Frs. Honhart, Ward, D., Hoppe, and for three priests of the Precious Blood Order).

Of these nineteen reports involving priests who were engaged in even a minimal form of active ministry, in three cases, the Response Team was not involved or the IRB was not timely asked to make a recommendation. In the case of the 2009 allegation against Fr. Cronin, it does not appear that the IRB was notified until a lawsuit was filed in 2010, although the IRB had found an earlier allegation not to be credible in 2004. In the case of the first report against Fr. Tierney in 2009 (in the form of a legal demand letter), it does not appear that the IRB was presented with the report until almost a year later. Finally, the IRB was not notified about any of the circumstances involving Fr. Ratigan until after his arrest. It is instructive to review the details of the nineteen reports which were not made by way of litigation and involved a priest who was still alive and subject to IRB action:

- The first such report was received by Fr. Rush on April 25, 2002, regarding Fr. Francis McGlynn. The IRB recommended that Fr. McGlynn be removed from active ministry, and he was removed in July, 2002. The reporter initiated litigation and reached a mediated settlement with the Diocese in September 2007.

- On May 7, 2002, a victim, possibly anonymous, made contact with the Diocese regarding Fr. Thomas O'Brien. The first allegation against Fr. O'Brien had been made in 1983, at which time he was removed from any contact with children. He retired in 1994 and continued to work part-time at St. Joseph Health Center until April, 2002. After the May 2002 report, the IRB recommended that Fr. O'Brien be further restricted.

- In April 2002, a report was received against Fr. Ward involving abuse from the 1960s. The Response Team was notified and the IRB conducted an investigation. It failed to substantiate the allegations and voted to recommend that the priest, who had retired for health reasons in 1996, be restored to full faculties. Two years later, the reporter sued the priest and diocese. The case was settled as part of the August 2008 settlement.

- Also in April 2002, a report was received against another priest, Fr. D. The victim spoke with IRB members on April 23, 2002. The IRB recommended

removing the priest from active ministry. Bishop Finn's predecessor, Bishop Boland, so informed Fr. D. in a series of letters between May and July 2002. The priest retained a canon lawyer and vigorously contested Bishop Boland's action. Ultimately, in 2005, an agreement was negotiated with Fr. D. allowing him to celebrate Mass only in unusual circumstances and with the approval of the Bishop.

- In May, 2002, a report was received regarding Fr. Sylvester Hoppe, who retired in 1991 and died in November 2002. Also during that month, an attorney from California called on behalf of an unspecified victim and made a demand. After these reports but before Fr. Hoppe's death, the IRB heard evidence and recommended removing Fr. Hoppe's faculties. (Two lawsuits were filed regarding Fr. Hoppe in 2005, three years after he had died.)

- In 2002, a report of abuse was received regarding Fr. Tom Cronin, who had been on loan to the Diocese of Reno, Nevada, since 1996. On November 5, 2002, the IRB concluded there were insufficient grounds to discipline or remove Fr. Cronin, but recommended that certain restrictions be placed on his involvement with young people after expressing concerns about boundary violations. The Diocese notified Fr. Cronin and the Diocese of Reno. In 2004, Fr. Cronin retired. In February and April 2009, another report was received by Msgr. Murphy regarding Fr. Cronin. The victim received counseling from the Diocese, but it does not appear that the IRB or Diocese of Reno was contacted. In October 2010, the same individual filed suit against the Diocese. Two weeks after the suit, the Diocese of Reno expressed a desire to act and investigate by letter to Msgr. Murphy. Msgr. Murphy contacted the IRB, which did not make a finding on credibility due to the absence of information, but recommended that Fr. Cronin be placed on leave pending the outcome of the lawsuit. This was communicated to the Diocese of Reno on October 21, 2010. Fr. Cronin protested the allegations and the actions, but on March 30, 2011, Bishop Finn reaffirmed that Fr. Cronin should stay on administrative leave unless and until an IRB investigation was able to find the allegations unsubstantiated.

- In 2004, two allegations were made against a Byzantine/Latin Rite priest on loan from the Eparchy of Parma, Ohio, Fr. Muth. The Response Team was notified, Vicar General Fr. Patrick Rush notified DFS, and the IRB conducted investigations while Fr. Muth was placed on administrative leave. In both cases, the IRB found no basis in the allegations to remove Fr. Muth's faculties but suggested that Fr. Muth be advised on his exercise of judgment and on other issues. A lawsuit involving Fr. Muth was filed on March 31, 2006, in Jackson County Circuit Court, by the previous reporter, and Fr. Muth was again placed on leave. The case was removed to federal court and all claims against the priest and Diocese were dismissed on April 27, 2009. However, due to continuing concerns with Fr. Muth, the IRB recommended that his

Latin Rite faculties be removed by Bishop Finn in April 2006. Bishop Finn accepted the recommendation, removed his faculties, and notified Fr. Muth's bishop in Parma.

- Four reports involved Fr. Michael Tierney. On October 27, 2009, counsel for a victim, John Doe BP, issued a demand letter reporting an instance of abuse by Fr. Michael Tierney dating from 1971 and making a substantial monetary demand. In 2008, the same victim had been in contact with Msgr. Murphy about similar conduct which did not appear to Msgr. Murphy to rise to the level of abuse. However, the IRB was not presented with the John Doe BP complaint until three weeks before a lawsuit—alleging a slightly more serious version of the incident—was filed almost a year later, on September 29, 2010. Again, the Response Team was notified. The IRB found that the claim of abuse was not credible. John Doe M.S. filed a lawsuit which referenced Fr. Tierney, but did not make an allegation of sexual abuse against him, on February 17, 2011. In April or May 2011, another victim approached Msgr. Murphy, the Vicar General, and the report was considered at the May 19, 2011 meeting of the IRB. The IRB tentatively found the report to be credible. At the IRB's June 1, 2011, meeting, another report had surfaced, and the IRB determined that the reports were credible. A third report came forward on June 9, 2011. The IRB recommended that Fr. Tierney be removed from ministry, and Bishop Finn accepted the recommendation. Two civil lawsuits were filed on June 28 and 30, 2011.

- In May 2010 and then in December 2010 (as discussed in more detail in Section IV.C, *infra*), the Diocese received information regarding Fr. Shawn Ratigan which, for purposes of this analysis, can be considered a report.

- On February 3, 2011, a male victim living in the Diocese of Scranton, Pennsylvania, reported to his Diocese that he was abused by Fr. Mark Honhart, who was then a priest in the Diocese of Kansas City-St. Joseph but is now a priest in Scranton. The IRB in this Diocese was notified. Fr. Honhart was removed from his Pennsylvania assignment and sent to Philadelphia for evaluation.[77]

- On June 29, 2011, a Diocesan priest received two reports of abuse by Fr. James Urbanic, the outgoing Provincial (or local leader) of the Precious Blood order, which had occurred in the 1970s. The priest made his report to Bishop Finn, who contacted Fr. Joseph Nassal, the incoming Provincial. Fr. Nassal made an investigation and presented facts to the IRB. The IRB

[77] A second report was made by John Doe MF's filing of a lawsuit on August 25, 2011. Because John Doe MF seems to be someone other than the individual who made the first report, the Firm has counted this recent lawsuit as one of 74 litigation-initiated reports.

recommended that Fr. Urbanic be removed from the active ministry with some limited exceptions. Bishop Finn accepted the recommendation.

- Finally, between 2002 and the present, three priests of the Precious Blood Order who were subjects of past reports of sexual abuse of a minor in other dioceses have been granted limited faculties to say mass in the Diocese pursuant to "safety plans." The IRB has approved each safety plan; for purposes of this report, each presentation to the IRB has been counted as one report.

Again, these statistics are significant because they show that of the 109 separate reports of abuse received by the Diocese since 2002, 74 (roughly 70%) cases were historical and involved litigation. Only 19 involved priests with even some active ministry. Of those, only three priests were subject of reports that were late or, worse, not made at all. Two of those three are Frs. Tierney and Ratigan, the primary subjects of this report.

b. Evidence Regarding the Handling of Reports

(1) Structure and Operation of the Response Team, Office of the Victim Advocate, and Independent Review Board

The Firm could not compile data on meetings of or specific activities of the Response Team, although IRB minutes make several references to work done by one or more members of the team. Fr. Patrick Rush, who served as Vicar General from 1994 until 2005, indicated that 2002 was perhaps the busiest year for sexual abuse reports. For that reason, Fr. Rush created a second Response Team which existed for about a year until the flow of reports subsided.[78] The Response Teams seem to have been very active[79] during this period.

[78] Interview of Fr. Patrick Rush

[79] As many of the allegations Rev. Rush dealt with were very dated, he was asked how he handled those complaints dealing with retired or deceased Priests. He advised that if a Priest was retired, he would still address the complaint in the same way: conduct an investigation, gather the facts and then present it to the Board. If a Priest were deceased, he advised that he and the Response Team

After 2005, however, it appears that the Response Team was rarely used, at least as a team. This is due in large part to the fact that far fewer reports regarding active priests were being made. Not counting requests for counseling that were made only to (and dealt with confidentially and solely by) the Victim Advocate, there appear to have been only five instances since 2005 in which the Response Team could have been used: with Fr. Muth in March 2006; with Fr. Tierney in 2008 or 2009; with Fr. Cronin in 2009; with Fr. Ratigan in 2010; and with Fr. Honhart in 2011. Two of these, Frs. Cronin and Honhart, involve priests who are geographically far removed from the Diocese, have not ministered in the Diocese for some time, and are facing allegations from decades ago. While a Kansas City-based IRB review of evidence is somewhat practicable, there is at least some question regarding the benefit of utilizing a Kansas City-based Response Team to investigate, gather evidence, and interview witnesses who are centered in another part of the country. Further, IRB minutes from September 2010 indicate that the Fr. Cronin victim would not meet with the Response Team. Nonetheless, it remains the case that the Response Team was not used in dealing with the lawsuit filed against Fr. Muth in 2006, Fr. Tierney during the period 2008-2011, or Fr. Ratigan in 2010-2011.

It is also notable that several members of the Response Team indicated that they had not been contacted for several years. Margaret Lima, who was recruited to the Response Team by Fr. Patrick Rush in 2004, indicated that she had only been to one Response Team meeting, and that she had failed to attend the one meeting that had been

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were always willing to meet with the complainant, take notes, offer apologies (if warranted) and to offer to arrange for and/or pay for counseling if needed.

held between 2006 and the present.[80] Ms. Lima was able to produce notes indicating that she had spoken on the phone with Msgr. Murphy regarding Fr. Tierney in the fall of 2009. Otherwise, she has not been contacted by the Vicar General to investigate or provide victim assistance. Similarly, Response Team member Paul Roder indicated that he had no records of any meeting of the Response Team since 2004. Since that time, he believed he had had telephonic contact with Msgr. Murphy on a few occasions relating to the reports regarding Fr. Tierney.[81] Leslie Guillot, the Victim Advocate and also a member of the Response Team, did not remember Response Team activity since approximately 2005.[82] However, she produced handwritten notes indicating telephone conversations with Msgr. Murphy in the fall of 2010 regarding reports of abuse by Fr. Tierney.

Based upon all of this, it seems likely that various members of the Response Team were consulted or polled with respect to the version of the Fr. Tierney allegations that had been received by the fall of 2010. There is no other documentary or other evidence suggesting that the Response Team functioned as a team after 2005. Instead, it appears that during this period, reports of abuse were received either by the Vicar General, diocesan legal counsel, or Victim Advocate.[83] These individuals would relay the results of

[80] Interview of Margaret Lima
[81] Interview of Paul Roder
[82] Interview of Leslie Guillot
[83] An instructive view of the interaction of the Response Team, Vicar General, Victim's Advocate, and IRB during this time can be found in a January 28, 2010, email from the Victim's Advocate, Leslie Guillot, to Monsignor Murphy (the Vicar General), copying Jon Haden (Diocesan counsel) and IRB members Jim Caccamo and Fr. Robert Stewart. Ms. Guillot apparently reviews the latest version of the Diocesan Sexual Misconduct Policy that had been distributed to IRB members at its October 15, 2009, meeting, and compares the Policy to recent practice. Among other things, Ms. Guillot states that "[t]he Vicar General should report allegations or claims to the Response Team and the chairperson [of the IRB]. I don't think this has been done. I don't think I have reported all calls to the Chairperson but I have contacted the Vicar General. I don't know if the Vicar General has contacted the Chairperson. I don't think the Response Team needs to be notified but I do think the chairperson needs to have this information." Later, Ms. Guillot comments that Response Team

conversations with victims (or, as was increasingly the case, with counsel for victims) to the IRB, and the IRB would act on these representations.

The Victim Advocate, Leslie Guillot, does appear to have been active during the entire course of our review period. Ms. Guillot's primary duty was in meeting with potential victims or arranging for their counseling. Ms. Guillot's records indicate that she made approximately 22 contacts with victims or family members or friends/advocates of victims between December 2004 and 2010. During that period, Ms. Guillot billed the Diocese for just over 112 hours of time, including attendance at IRB meetings, attendance at Voice of the Faithful meetings, and conferences with Diocesan officials. Ms. Guillot also served as a member of the IRB or as an occasional advisor to Msgr. Murphy, providing comments on policies or on individual cases.

However, Ms. Guillot's billing data indicates that the Victim Advocate has not received a substantial number of calls during the referenced time frame. She has billed the Diocese for slightly less than 20 hours a year, and as mentioned above, a substantial portion of this time involves meetings and deliberations with the IRB and other non-victim work related to her position. It appears, therefore, that the Victim Advocate has received very few contacts from victims, and, comparing this data to reported determinations of the IRB, it does not seem likely that a substantial number of victims have approached the Diocese from this portal without also making a report (or directing that a report be made) to the IRB.

Finally, the IRB appears to have met on the following dates:

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meetings with victims or families should trigger "an immediate meeting of the [IRB]," and states that she is "[n]ot sure we have done this." With respect to the IRB, Ms. Guillot asks, "Shouldn't there be at least one meeting a year (even if it means to review this Policy?"

2002: April 10; May 7; August 22; September 26; November 4; December 16

2003: May 7; September 24; November 6

2004: February 18; April 21; October 13;

2005: April 6; July 20

2006: April 11

2007: February 5

2008: September 4; November 6

2009: October 15

2010: April 22; September 8

2011: May 18; June 1; June 9; June 29[84]

After a burst of activity in 2002-2004, the IRB met less frequently until 2010 and 2011. In fact, the IRB did not meet for over a year after the February 5, 2007, meeting. Minutes and agendas for 2002-2004 and 2008 indicate a substantial focus on reviewing Diocesan policies and procedures. As discussed above, the IRB had very few cases to review in the period after 2004. But also as discussed above, in the cases of Frs. Cronin, Ratigan, and Tierney, the IRB was not timely notified of the allegations.

Significantly, it appears that under both bishops and their vicars general, the IRB relied upon the vicar general to provide the impetus or call for a meeting. The rationale seems to have been that, by virtue of the vicar general's position as administrator (or even *de facto* member) of the Response Team, the vicar general was in the best position to know

[84] This accounting is based upon a review of IRB minutes and agendas produced by the Victim's Advocate, a review of Victim's Advocate time and billing statements, and a file of IRB minutes produced by the Vicar General. The Vicar General's file consisted of only the following meetings: November 6, 2008; October 15, 2009; September 8, 2010; and June 1 and June 9, 2011. It also contained a December 2010 email discussion among IRB members regarding a discussion of the Fr. Tierney situation which had occurred at the September 2010 IRB meeting.

when a new case or series of cases required an IRB determination and, therefore, a meeting. During the period before 2004 when reports were more frequent, this practice allowed for sufficiently frequent IRB meetings.

However, the practice of allowing the vicar general to set or provide the impetus for meetings is not grounded in the Policy. In fact, it is the chairman of the IRB (an appointee of the bishop) who is to convene and preside at meetings.[85] The IRB and its chair are not required to wait for the vicar general to call for or suggest a meeting, and are free (and perhaps required) to schedule meetings based upon their own independent judgment. There is no record that either of the bishops or vicars general required the IRB to wait for the vicar general to call for meetings (or, for that matter, that they forbade the IRB to meet without prior approval of the bishop); it simply appears that the IRB fell into this pattern during a period of heavy reporting, and failed to schedule its own meetings as the number of reports (and therefore the need for meetings to deal with specific cases) dramatically decreased after 2004.

The IRB appears to have already recognized the need to hold regularly scheduled meetings, regardless of whether specific cases have surfaced requiring a report. As IRB Chair Jim Caccamo told the Firm, such meetings could be used to monitor and review Diocesan compliance with its Policy.[86] In Mr. Caccamo's view, the very fact that an in-person meeting is scheduled, an agenda will have to prepared, and meeting time will have to be occupied with discussion will encourage the Response Team, Vicar General, or others to discuss with the IRB information and communications they have received about possible abuse, even if the Vicar General or Response Team members believe that the information

[85] Policy, Section 4.5(c)
[86] Interview of Jim Caccamo

they have received is preliminary or does not rise to the level of a credible allegation of sexual abuse. (Of course, regular meetings only open a new opportunity for notification; they are not by themselves a substitute for a definite and rigorous policy of reporting and disclosure.)

Finally, it appears that for some time during the period between 2007 and 2008, Msgr. Murphy and other IRB members had difficulty in finding replacements for members who had resigned.[87] There was substantial turnover of board membership after Bishop Finn took office. Members resigned for a variety of reasons, but two members—including a chairperson of the IRB—resigned because of what they perceived as the Bishop's lack of interest in the work of the IRB. New members were eventually recruited, and by 2010 and 2011 the IRB was meeting more frequently again. However, during that same period, as discussed above, instances began to emerge in which the Vicar General failed or was slow to notify the IRB of reports and failed to use the Response Team to investigate. IRB minutes and the Firm's interviews of IRB members indicate that several members are disappointed with this lack of notification and have expressed their dissatisfaction to Bishop Finn.

(2) Adherence to the Proper Scope of Inquiry

Once it has received reports of abuse, the IRB has adhered to the proper scope of inquiry under the Norms, even if it has occasionally accepted other types of cases under the Diocese's Policy. The IRB seems to have understood that under the Policy, the Bishop would not require it to make a recommendation with respect to cases involving priests who were no longer active in the ministry. Minutes of the November 6, 2008, meeting

[87] See footnote 82, *supra*.

show that this topic was discussed after IRB members asked Msgr. Murphy about the Diocese's recent settlement of 47 victims' claims. As discussed above, all or almost all of those claims involved priests who were not even minimally active in ministry.

The same minutes reflect a report from Msgr. Murphy that, after having conferred with Bishop Finn, the Bishop had decided that the IRB's jurisdiction would be limited to allegations of sexual abuse of a minor. While the precise context of this statement is unclear, it appears only to restrict the IRB from considering conduct that is something other than sexual abuse of a minor. It does not appear to limit the IRB from reviewing allegations that clearly fall within the subject matter of sexual abuse of minors, but appear merely to be lacking in detail or support on some crucial element. For example, sexual abuse that occurred with a young person whose precise age was unclear, or conduct with a minor that may or may not have met the definition of sexual abuse, would still fall within the IRB's limited and clarified jurisdiction.

One consideration in favor of this understanding of the Bishop's decision is that it would confirm the understanding that was apparently long-held by the IRB. Five years earlier, during the tenure of Vicar General Rush, the IRB specifically amended its November 6, 2003 minutes to include the following statement: "To protect the public even minimal evidence of sexual abuse by a minor should be discussed by the Review Board."

Additionally, the Policy (which was not revised after Msgr. Murphy communicated the Bishop's decision regarding scope to the IRB) continued to contain a broad definition of "sexual abuse of a minor," and continued to task the IRB with making determinations and recommendations regarding allegations of "sexual misconduct."[88] Given this, the Bishop's

[88] See Policy, Section 4.11(c).

statement could be understood to limit the use of the IRB for conduct that did not involve minors, but it could not be reasonably understood to limit the IRB's ability to learn of and request further investigation into allegations which seemed to implicate improper conduct with minors. To the extent the IRB or Vicar General believed that the IRB should not be informed of conduct merely because it did not clearly meet all of the elements of a strict definition of "sexual abuse of a minor," their belief appears to have been in contravention of the Policy and the IRB's own recommendations as recorded in its minutes.

Finally, it is notable that at its June 9, 2011 meeting, the IRB met with Bishop Finn. The IRB's minutes indicate that the Bishop asked the IRB to consider how its responsibilities might be expanded. The IRB's Chairperson, Jim Caccamo, advised the Bishop that the IRB would consider taking on new duties, and that it was not only available to provide general advice, but would also be available to make recommendations on a case-by-case and emergency basis.

(3) The Actions Recommended by the Response Team and IRB, and the Bishop's Exercise of His Authority

There is no record of specific Response Team "recommendations" as to credibility during the review period, despite the fact that the Policy calls for the Response Team to make such a recommendation in a report to the IRB. Individual members of the Response Team likely attended IRB meetings or were individually polled by the Vicar General to opine on the facts and credibility of witnesses. To the extent the Victim's Advocate, Ms.

Guillot, can be considered a Response Team member, Ms. Guillot was occasionally asked to (and did) provider her opinion regarding certain facts and accusations.[89]

On those occasions where the IRB did meet to make recommendations regarding priests who were at least minimally active in ministry, the IRB appears to have presumed the innocence of the accused, using something approximating a preponderance of evidence standard. (In his interview, Board Chair Jim Caccamo volunteered that this was the standard he used in determining the credibility of reports.) On several occasions, such as with Fr. Muth (in 2004 and again in 2006), Fr. Cronin (in 2002 and 2009), and Tierney (in 2010), the IRB was presented with evidence and declined to find that a credible report of abuse had been made. But in the cases of Frs. Muth and Cronin, the IRB was sufficiently troubled by the allegations that it recommended that the Bishop take certain precautionary administrative measures.

On the other hand, with respect to Fr. Urbanic, the IRB seems to have found the allegation credible, but stopped short of recommending that Fr. Urbanic's faculties be completely removed. This prompted Bishop Finn to write Jim Caccamo, the IRB Chair. Bishop Finn questioned the IRB's decision, which seemed to contravene the Policy and Norms. However, the IRB's decision can be explained; it appeared to the IRB that Fr. Urbanic would not in fact be engaging in active ministry and would retire.

This should be contrasted with the allegations the IRB received regarding Fr. Tierney, which emanated from multiple sources and involved similar conduct occurring on several different occasions. In more than one meeting (including one meeting that

[89] Ms. Guillot noted during her interview that because she is tasked with providing support to victims, she has at times questioned whether it is appropriate for her opinion to be solicited regarding their credibility.

occurred before the IRB was aware of the incident involving Fr. Ratigan), the IRB ultimately determined that these reports were credible and (implicitly) that they met the definition of "sexual abuse of a minor."

In each of the cases in which the IRB has made a recommendation to the bishops since 2002, it appears that the bishops have given due regard to its considered recommendation. As mentioned above, when Bishop Finn received a decision from the IRB regarding Fr. Urbanic that did not appear to be logically consistent, he questioned the IRB Chair in writing and received a response.

Finally, it should be noted that not all communications between the IRB and bishops have been in writing, a practice recommended by the Gavin Group after a compliance audit in 2003. The IRB adopted this recommendation at its November 2003 meeting, but it appears that it has not been consistently followed by the bishops or the IRB. Further, the IRB has not consistently kept and maintained minutes in an easily-accessible format.

(4) Reporting to Public Authorities

Since 2005, neither the Vicar General nor any other officer or board member has kept records of reports to DFS or law enforcement regarding suspected abuse. In 2004, the IRB expressed support for a "protocol" for reporting to the Kansas City Police Department which was negotiated between Diocsean counsel and the department. However, there is no evidence that this protocol was finally approved, implemented, or followed.

The only two reports to law enforcement or civil authorities which are apparent from the record since 2005 are (1) Msgr. Murphy's contact of the police regarding Fr. Ratigan's computer on May 12, 2011; and (2) Fr. Rush's call to the DFS hotline regarding Fr. Muth after the 2004 allegations surfaced. The reports regarding Fr. Ratigan and Fr. Muth

are the only two incidents involving suspicions of current sexual abuse with victims under 18 years old.

4. Conclusion

Between 2002 and 2011, most reports of sexual abuse of minors involved priests who were deceased or who were not even marginally active in ministry, and the vast majority of these reports were initiated through counsel by lawsuit or demand letter. There is no indication that the Diocese or its Victim Advocate failed to follow its policy of providing counseling or offering pastoral or other assistance in response to this category of reports.

In contrast, the Diocese and its Victim Advocate received very few new reports of abuse regarding a living priest who was even marginally engaged in ministry. Most of these reports were timely investigated and reported to the IRB for its recommendation; the IRB generally made its recommendations, and the bishops considered the recommendations in considering the ongoing ministry of the accused priests. For this reason, we cannot conclude that the Diocese frequently handled reports in violation of the Policy or Norms.

However, of those reports regarding "active ministry" priests that were received in 2008, 2009, and 2010, a pattern does emerge. In each case, the Vicar General essentially assumed the duties and work of the Response Team, and relied almost entirely on interactions with Diocesan counsel or the Victim Advocate for information and advice. In part, this was due to the fact that initial reports of abuse increasingly were received by means of demand letters sent by legal counsel representing victims, which could be viewed as limiting (but certainly not precluding) the ability of the Response Team to gather facts.

In the cases of Frs. Tierney and Cronin, the IRB was not timely advised of initial allegations, and was therefore unable to direct additional investigation. In these two cases, it should be noted, it is unclear even in hindsight whether IRB involvement would have actually led to a more complete initial investigation or earlier recommendations regarding limitations on the ministry of either priest. On the other hand, in the case of Fr. Ratigan, it seems reasonable to believe that bringing additional points of view and professional resources on the Response Team or IRB would have led to a more reasoned response, such as an additional investigation or a recommendation to the Bishop of even more stringent precautionary measures.[90]

It appears that even after it does receive reports, the IRB may not be functioning as intended. First, without a more complete investigation by the Response Team, the IRB is often asked to work with limited information. Second, the IRB has issued recommendations, particularly with regard to Fr. Urbanic and the three Precious Blood priests who are on "safety plans," which, while reconcilable with the Policy and Norms, might lead one to question whether the IRB has received proper guidance and training regarding the types of conduct that require a priest's complete removal from active ministry.

Finally, the Diocese has not in recent times seemed to follow a clear protocol for timely reporting suspected sexual abuse of minors to DFS. It also seems that there is no clear practice or custom of notifying law enforcement regarding reports of past sexual abuse where the priest is still alive and active, but the victim is over the age of eighteen. Because there have been few occasions for the Diocese to make either type of report,

[90] See also Section IV.C of this report, which fully considers Fr. Ratigan.

however, it is difficult to draw additional conclusions about the extent of the Diocese's overall compliance or non-compliance with legal reporting requirements.

B. Training for Avoiding or Reporting Child Sexual Abuse

1. Findings

Between 2002 and 2011, the Diocese provided sexual abuse training to three distinct groups:

(1) children at Diocesan schools ("schools")

(2) children in parish schools of religion ("PSRs")

(3) priests, deacons, teachers, parish or school staff, volunteers, or other employees who regularly come into contact with minors.

The Diocese has provided these three categories of training in order to comply with the Article 12 of the Charter, which requires "safe environment" training for "children, youth, parents, ministers, educators, volunteers, and others." Article 12 also requires that standards for conduct of clergy "and other persons in positions of trust" be made clear to the entire community. Finally, the Charter's Article 13 requires (among other things) background checks for all paid and unpaid personnel "whose duties include ongoing priests engaged in ministry."

While almost all United States bishops have made an episcopal commitment to follow these Charter provisions, no Norm or element of the Diocese's local Policy specifically requires training. However, as discussed above, the Diocese has promulgated (1) Standards of Conduct for adults who work with youth and (2) Diocesan Policies for Coordinators of Youth Ministry and Adult Volunteers Serving in Ministry With Youth. Training and education of children and adults is targeted to avoidance and mitigation

(through reporting to the proper source) of child sexual abuse. The training and education does not encompass the details of the Policy, the Ethics Code for priests, or the special Diocesan policies for adults serving in youth ministry.

The Diocese began to implement training programs shortly after the adoption of the Charter in 2002, serving as a pilot diocese for a VIRTUS adult training program. Over the next three years, the Diocese continued to provide training in its schools and required certain adults and volunteers to take various forms of the training program.[91] Outside audits continued to find the Diocese's training programs to be in compliance with the Charter during this period. However, in 2005, the requirements for compliance with the Charter changed, and dioceses were required to ensure that children in PSRs (not merely children in parochial or Diocesan schools) receive training. Because the Diocese had not yet settled on a program at the time of the audit, no program was implemented and the Diocese was found to be out of compliance with Article 12 of the Charter. The following year, a board of clergy and lay experts recommended the adoption of a curriculum for use in PSRs, the Diocese implemented the curriculum, and the audit found the Diocese to be in

[91] Since 2003, dioceses have been subject to annual audits of their compliance with various Charter provisions. The Firm reviewed annual audit reports for each year between 2003 and 2010, inclusive. (The 2011 audit is ongoing and was not complete at the time this report was prepared.) The form of the annual audits changed over time, but generally consist of working papers and documents detailing compliance at each parish and school, summary reports and charts, communications between the auditors and Diocesan officials, conclusions, and follow-up responses from the Diocese. Because of the size and scope of these audits, the Firm has not been able to assess the audits or test the audit conclusions against the underlying data submitted by parishes, schools, and other sources. However, on the surface, the audits appear to be *bona fide* examinations of Diocesan policy and practice regarding training. As the audit reports and working papers are by far the best available records of Diocesan training programs, the Firm has relied on its review of the audit reports. The Firm has also interviewed several parish administrators, school officials, and priests regarding the training programs and Diocesan compliance with its training goals.

compliance. Every successive year, the Diocese's training programs have been found in compliance with the Charter.[92]

The curriculum used by Diocesan parishes and schools has changed over time. Currently (and for the majority of the period reviewed by the Firm), PSRs and schools covering the grades pre-K-6 use some age-appropriate version of the "Circle of Grace" program.[93] High schools generally use a Praesidium program, "To Protect for Youth." Adults, teachers, and volunteers take a VIRTUS program, "Protecting God's Children."[94] Only schoolteachers and PSR directors are required to view monthly VIRTUS updates and reminders; adult volunteers (including PSR teachers who serve in a volunteer capacity) do not receive monthly VIRTUS updates.

Before 2005, no single Diocesan employee was responsible for assisting parishes and schools with implementing and reporting compliance with safe environment programs. In 2005, the Diocese hired Mary Fran Horton, a former principal of the Christ the King parish school and an educator with many years of experience as principal of

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[92] The Firm reviewed individual parish and school reports of compliance. In these reports, the pastor or principal reports the numbers of children and adults who are eligible for and have received training. The forms also state whether any parents have decided to "opt out" of training for their children; in this case, informational materials are distributed to parents for home use. Notably, our review of the report of St. Mary's Parish for 2006, the first year that PSR sexual abuse training was mandated Diocese-wide, indicates that its PSR had the highest number and rate of opt-outs for any parish in any year. Fr. Ratigan was pastor of St. Mary's in 2006. The Diocese followed up with St. Mary's regarding the reason for the high number of opt-outs, and was informed that many parents home-schooled their children and wished to use the at-home materials. The number of opt-outs dramatically decreased at St. Mary's in later years.

[93] In 2008, this program replaced an earlier program, "Talking About Touching," which met with negative reviews. The Circle of Grace program was developed in the Archdiocese of Omaha, Nebraska.

[94] Diocesan policy provides that all volunteers serving in youth ministry meet three requirements. First, they must complete a screening form which allows for a background check. Second, they must be provided with and review the Standards of Conduct for youth ministers. Third, they must attend a "Protecting God's Children" (VIRTUS) training session. Pastors are ultimately responsible for ensuring that each of these three requirements are met.

elementary schools in the Shawnee Mission, Kansas, school district, to assume the role of Coordinator of Safe Environment Programs. Since her hiring, Ms. Horton has been responsible for selecting safe environment curricula and assisting parishes in reporting their compliance with the training requirements.

The Firm interviewed Ms. Horton. She advised that she is not a compliance officer and therefore has no authority to perform spot-checks of compliance or training participation rates by parishes or schools. Ultimately, responsibility for identifying students, teachers, and adult employees and volunteers who must take training classes, and then ensuring that the training is taken, rests with principals and pastors.

While compliance with training requirements can be relatively easily monitored at parish schools, Ms. Horton acknowledged that it may be more difficult to ensure that adults who sporadically or occasionally volunteer for parish-based youth ministries are identified and provided with VIRTUS training. Further, because of high rates of turnover for both paid and unpaid parish staff, some parishes may not have the institutional knowledge necessary for ensuring compliance. For these reasons, Ms. Horton has urged that each parish identify a safe environment coordinator who will be responsible for identifying individuals who must receive training and reporting compliance for the annual audit. Some parishes already have a person who has informally filled this role. However, parishes with fewer resources may face challenges in ensuring that all adult volunteers receive training.

Ms. Horton also related that it was recently discovered that some Diocesan priests (all of whom have taken the VIRTUS class) had fallen behind in their review of monthly VIRTUS updates. Diocesan officers and, ultimately, Bishop Finn contacted priests who had fallen especially far behind in their review of monthly updates. These primarily included

elderly priests or priests for whom English is a second language. While this problem seems to have been remedied, Ms. Horton suggested that a Diocesan official be tasked with continuing to monitor priests' compliance with the monthly review requirements.

Aside from priests and the Bishop, it does not appear that VIRTUS training is required for Diocesan officers and employees who work at the Catholic Center. Further, it is not clear that all IRB and Response Team members have taken VIRTUS training. It also appears that there is no separate training curriculum regarding the Norms, the Policy, or the Ethics Code for priests.

Ms. Horton advised that she has recently considered additional measures to ensure that adults make required reports to civil authorities. VIRTUS training for adults and teachers covers reporting of abuse. Additionally, placards are distributed which display phone numbers for the Missouri Division of Family Services (DFS), the Diocesan Vicar General and the Diocesan Victim's Advocate. Ms. Horton displayed a prototype of a business-sized card that she plans to distribute to all the employees in the Diocese (and which are, in fact, being distributed at VIRTUS workshops). On one side of the card is information related to abuse of a minor with the phone numbers for the DFS "Hotline" and the new Diocesan ombudsman. On the other side of the card is information related to, and the phone number of, the Diocesan Victims' Advocate. The card was designed to be carried in a person's wallet or purse for immediate access to information regarding the Diocesan reporting process involving the abuse of children and others.

2. Conclusion

The Diocese appears to have thoughtfully chosen its training curriculum, as the Firm received few complaints or concerns regarding the substance of the training. Compliance

with the Charter's training requirements seems to be strongest at Diocesan schools. While audits disclose that parish compliance is very high, obvious problems with staff turnover and the difficulty in identifying and securing compliance by all adult volunteers makes it likely that at least some portion of adult volunteers (and possibly, even paid staff) at the parish level are not taking the required VIRTUS training. Nonetheless, parishes and schools have documented that over 20,000 people have received training since 2002. Considering all of the volunteers and staff who deal with youth in parish and schools in the Diocese, it seems much more likely than not that any given adult has received VIRTUS training. Further, the vast majority of youth have received repeated training and education throughout their contact with the Diocese, either through schools or through PSRs and high school/confirmation youth programs.

It is difficult to assess the effectiveness of this training in actually helping children and adults to avoid or report abuse. The most obvious and testable data point is that of Fr. Ratigan at the St. Patrick's parish school. Many parents and teachers who had taken VIRTUS training were able to identify questionable behaviors by Fr. Ratigan and report them to Principal Julie Hess. Principal Hess reported these behaviors to the Vicar General and, at his request, recorded them in a detailed memorandum. While some argument can be made that Principal Hess or others could have called DFS (which is, after all, the final step in identifying and reporting abuse), the fact remains that parents and teachers at the school were trained to observe and report Fr. Ratigan's conduct to the principal. School officials and the Vicar General were made aware of Fr. Ratigan's conduct. Any failure by Diocesan officials to further investigate or report Fr. Ratigan's conduct to civil authorities was not a failure in training.

C. Father Michael Tierney

1. Background and Initial Complaints

Ordained in 1969, Father Michael Tierney has served at numerous Diocesan parishes over his forty-year priesthood. The allegations against Fr. Tierney first surfaced as he approached the end of his fourth decade in ministry and spanned the early 1970s to the early 1980s—roughly his first decade in the ministry.

During this time, Fr. Tierney was assigned to St. Elizabeth's Parish (1971 to 1978), St. Patrick's Parish (1978 to 1981), and St. Mary's Parish in St. Joseph, Missouri (1981 to 1984). After twelve years as a generally well-regarded pastor at Holy Spirit Parish in Lee's Summit, Missouri, Fr. Tierney was assigned to Christ the King in October 2009 and served there until his removal on June 2, 2011.

The Firm interviewed employees of Holy Spirit and employees at Christ the King parish and school. Our interviews revealed no allegations, suspicions or concerns about Fr. Tierney's behavior around children at those parishes. In his recent assignments, he was generally a well-liked and respected priest.[95]

Sometime in 2008, Msgr. Murphy received a call from a complainant, later known as plaintiff John Doe BP[96], alleging some type of inappropriate behavior by Fr. Tierney when the complainant was a child[97]. According to Msgr. Murphy, John Doe BP told him that he

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[95] We uncovered an isolated suspicion regarding Fr. Tierney's presence at the school which was expressed by an employee at Christ the King. However, we were unable to corroborate those suspicions when we spoke with school staff having more direct knowledge of Fr. Tierney's conduct. Notably, this suspicion was not reported to the Chancery and was not raised until after Fr. Tierney's removal.

[96] Victims' names are not used to protect their identities and respect their privacy.

[97] Rebecca Randles previously told Diocesan counsel Jon Haden that she had made a report regarding Fr. Tierney in 2008, during the time that she was negotiating settlements for many plaintiffs against the Diocese. Mr. Haden advises that she told him a client had asked whether any

and Fr. Tierney had wrestled when he was approximately 13 years old, but he now believed it may have been sexual in nature. Msgr. Murphy offered to have the complainant meet with the Diocesan Response Team or the Independent Review Board, but the complainant declined the offer. The complainant did accept Msgr. Murphy's offer to pay for counseling for the complainant pursuant to Diocesan policy. Msgr. Murphy reported to the Firm that because the complainant declined to meet with the Diocesan Response Team or the Independent Review Board (IRB), and because he believed the allegation was rather vague and did not specifically allege sexual contact or abuse, he decided not to notify the IRB. Nonetheless, Msgr. Murphy did decide to question Fr. Tierney, who denied the allegation.

Several months to a year later, on October 27, 2009, Diocesan attorney Jon Haden received a demand letter from John Doe BP, who had now apparently retained counsel. The demand letter alleged that while Fr. Tierney was a priest at St. Elizabeth's in 1971, he asked the plaintiff to come to help him move some items at his (Tierney's) mother's house. When the plaintiff arrived at the residence, the complainant alleged, Tierney did not ask him to help move any items but instead asked him to accompany him upstairs. Fr. Tierney then tackled him and started "rubbing his body in progressively more overt sexual contact." The letter demanded settlement from the Diocese in the amount of $1.2 million. [98]

Diocesan counsel Jon Haden responded to John Doe BP's attorney, Rebecca Randles, on November 24, 2009. First, outlining the process for removal of a priest, Mr. Haden

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reports had been made against Fr. Tierney, however, she did not allege any sexual abuse or name any client or victim that would make such a claim.

[98] Demand letter from counsel for plaintiff John Doe BP dated October 27, 2009.

asked the plaintiff to meet with three or more members of the Diocesan Response Team[99] and invited him to meet with Bishop Finn in addition to, or in lieu of, the Response Team. Mr. Haden received no response until June 8, 2010, when he received a new demand letter from Ms. Randles dated June 1, 2010. The new letter, which now demanded settlement in the amount of $2.2 million,[100] did not offer further details regarding the allegations against Fr. Tierney and did not respond to Mr. Haden's letter. Mr. Haden's June 25, 2010, response noted that Ms. Randles had never answered his letter from the previous November.[101] After Ms. Randles' office contacted Mr. Haden's office to report that they had no record of having received his November letter, Mr. Haden resent the letter on July 2, 2010. On August 16, 2010, Ms. Randles responded that John Doe BP was not willing to meet with the Response Team, but would be willing to meet with Bishop Finn.[102] According to Mr. Haden, however, John Doe BP did not follow up regarding the meeting with the Bishop prior to filing his lawsuit.

IRB minutes reflect that this case was not discussed at a meeting until September 8, 2010, just shy of one year after the original demand letter to Bishop Finn and perhaps as many as two years after Msgr. Murphy received John Doe BP's first contact. At the IRB's September 8, 2010 meeting, Mr. Haden reported the plaintiff's allegations as follows:

> "A 52 year old male who is a current parishioner suffers from "true oppressed memory" (sic) thinks that when he was 13 in 1971 he wrestled with an active priest in the priest's mother's house. The male now thinks this was of a sexual nature. No clothes were removed nor was there any report of sexual touching. The male will not meet with the Response Team. The Diocese is currently paying for counseling." [103]

[99] Letter from Jon Haden to Rebecca Randles dated November 24, 2009.
[100] Demand letter from counsel for plaintiff John Doe BP dated June 1, 2010.
[101] Letter from Jon Haden to Rebecca Randles dated June 25, 2010.
[102] Letter from Rebecca Randles to Jon Haden dated August 16, 2010.
[103] IRB meeting notes dated September 8, 2010.

While meeting minutes are not verbatim transcripts, the demand letter to Bishop Finn did in fact allege "rubbing of a sexual nature," a phrase which seems inconsistent with the minutes' statement that there had been no report of sexual touching. When asked about this inconsistency, Mr. Haden stated that he was relying on the report the claimant originally made to Msgr. Murphy, rather than the language in the demand letter.

Although the IRB's minutes do not record what determination was made, IRB members advised the Firm in interviews that they found the allegation was not credible based on the limited information available: the allegation simply involved wrestling, there was only one allegation from nearly 40 years ago, no sexual contact was specifically alleged, and they believed the plaintiff may be motivated by a monetary settlement. IRB members believed the allegation stated only a boundary violation and that any inappropriate touching was likely inadvertent. Accordingly, the IRB recommended that Fr. Tierney remain at Christ the King.

On September 29, 2010, plaintiff John Doe BP filed a lawsuit and the allegation became public. Msgr. Murphy notified IRB members via email, stating:

> "I believe you remember that we discussed the case involving the present pastor of Christ the King Parish in Kansas City, Fr. Michael Tierney. PB John Doe (sic) alleges that when he was 13 (some 40 years ago) and a student at St. Elizabeth's parish Fr. Tierney invited him to move some boxes at the home of Fr. Tierney's mother. The boy alleges there were no boxes. He told Fr. Tierney that the kids called him Fr. Pumpkinhead and Fr. Tierney grabbed him and they wrestled. He now alleges he was groped."

Msgr. Murphy asked whether they remembered discussing the allegation and if they still believed that Fr. Tierney should not be removed. Four board members responded that they recalled the discussion and continued to recommend that Fr. Tierney remain at Christ

the King; one did not respond; and one believed they had made no recommendation previously and that it was a "wait and see" situation[104]. Following the filing of the lawsuit and the Board's renewed finding that the allegation was not credible, Fr. Tierney continued at Christ the King. The parish generally supported him.

2. Three New Complainants Come Forward

A second person, "UF," reported an allegation in May 2011. After this complainant (who was already known to Msgr. Murphy) contacted him directly, Msgr. Murphy notified the IRB, Bishop Finn and Fr. Tierney. [105] The IRB met on May 18, 2011 to address the new allegation. According to the agenda, four of the six board members were present: Capt. Rick Smith, Daniel Haus, Jean Tadokoro and Fr. Robert Stewart, as well as Msgr. Murphy. Absent were IRB Chair Jim Caccamo, John Larsen and Victim Advocate Leslie Guillot. The complainant appeared at the meeting and related his account of abuse by Fr. Tierney from his childhood roughly 40 years earlier. When UF was approximately twelve years of age he went to Fr. Tierney's mother's house to play ping-pong. Fr. Tierney suggested that they wrestle, and while wrestling, Fr. Tierney thrust his hand down UF's shorts and fondled him. The complainant stated that he had come forward only to lend credibility to the report of John Doe BP, that this was not a repressed memory, and was an incident he had discussed with family members previously. He told the IRB members he was not seeking any monetary settlement.

Fr. Tierney also appeared at the meeting and addressed the IRB. Multiple board members reported that although Fr. Tierney denied the allegation, he also made a statement which troubled them: "I haven't done anything bad in a long time."

[104] Emails from Msgr. Murphy to IRB members dated December 2, 2010 and their responses.
[105] Email from Msgr. Murphy to Bishop Finn dated May 10, 2011.

IRB members who were present believed the new allegation was believed to be credible because the complainant was not seeking money; the allegation was similar in nature to John Doe BP's report; and Fr. Tierney's statement amounted to a kind of admission. However, because they would be likely recommending removal, they thought it was important for the full board to meet. Msgr. Murphy emailed all IRB members and asked for the full board to meet on June 1, 2011, to determine the credibility of the new allegation against Fr. Tierney and recommend whether he should remain in ministry. [106]

Meanwhile a third person came forward, and the IRB considered his report at the June 1st meeting. The new complainant, NM, reported that his son had been abused by Fr. Tierney. With his son's permission, NM contacted IRB Chair Jim Caccamo and described the incident in which Fr. Tierney had abused his son, UM, as a teenager. He reported that Fr. Tierney took his son to a parish in St. Joseph on an overnight trip to give him an opportunity to meet other Catholic youths. Arriving at the residence, however, Fr. Tierney told UM that they had to sleep in the same bed because he did not want to disturb the other room. Fr. Tierney tried to fondle UM while he was sleeping. UM moved away from him and stayed up the rest of the night to avoid any further contact by Fr. Tierney. While showering the next morning, UM caught Fr. Tierney watching him in the shower.

Jim Caccamo related the complainant's account to the IRB members. Once again, the complainant was not seeking any monetary compensation, and once again, Fr. Tierney addressed the IRB and denied the allegations. Following this presentation and a discussion

[106] Email from Msgr. Murphy to IRB members dated May 18, 2011.

of the previous complainant's (UF's) account, the IRB found the allegations credible and recommended that Fr. Tierney be removed from ministry.[107]

Msgr. Murphy immediately told Fr. Tierney that the IRB had recommended removal and that as a result, he could not return to Christ the King. Jim Caccamo notified Bishop Finn in writing of their findings and recommendation, which the Bishop promptly accepted. Fr. Tierney was removed from Christ the King on June 3, 2011, has retained a canon lawyer, and is appealing the decision. [108]

When the IRB met again on June 9th, a fourth complainant, "KT" had come forward. KT reported that Fr. Tierney had invited him to a lake house as a reward for working at a priests' dinner party. When they arrived and Fr. Tierney said that they would have to sleep in the same bed, KT agreed. As KT slept, Fr. Tierney touched him inappropriately two times, forcing KT to leave and sleep on the couch. The Board did not take any formal action regarding this allegation because Fr. Tierney had already been removed from ministry, but noting its similarity to the UF account, felt this additional evidence supported its earlier decision. Jim Caccamo informed the Bishop of the additional allegation in writing. By mid-June, then, accusations against Fr. Tierney had been made by four separate complainants.

3. Conclusion

The IRB's handling of complaints against Fr. Tierney was generally appropriate. However, there was a significant delay between 2008, when Msgr. Murphy received initial phone calls from John Doe BP, and September 2010, when the IRB first learned of the allegation at its meeting. Although claimant John Doe BP did not wish to meet with the IRB, Msgr. Murphy could and should have notified the IRB members of the new allegation. As

[107] Email from Jim Caccamo to other IRB members dated June 2, 2011.
[108] Bishop Finn's letter to Fr. Tierney dated June 1, 2011.

one of the only allegations of sexual abuse against an active priest during a several-year period, the initial phone call report was an objectively significant development.

A claimant's unwillingness to meet with the IRB (as with John Doe BP) certainly presents difficulties in determining credibility. Nevertheless, other investigation could still be undertaken using the information reported by an unwilling reporter, and the fruits of even a very limited investigation can and should be timely provided to the IRB. Indeed, the IRB has demonstrated its ability to be flexible in taking evidence. The third allegation against Fr. Tierney was reported to Jim Caccamo by the complainant's father, and neither the complainant nor his father was required to appear in order for the IRB to consider the allegation. The issue of considering allegations where the complainant is not willing to meet with the IRB is addressed in Section V of this report, the Firms' recommendations.

Additionally, it is important for the IRB members to receive complete and accurate information from all Diocesan employees and professionals. Here, the summary of the initial complaint against Fr. Tierney was provided by Diocesan attorney Jon Haden. These reports could become commonplace. Because victims increasingly retain counsel before making contact with the Diocese, the first notice the Diocese receives of a report is often through an attorney's demand letter or the filing of a lawsuit—channels of communication which lead directly and exclusively to Diocesan counsel. For that reason, Diocesan counsel will often be the only source—at least initially—of information regarding a report. Even after additional sources are developed, Diocesan counsel will have obtained important information that has been developed through the litigation process or from other communications with the victim's counsel. This information must be relayed to the IRB.

Diocesan counsel walks a fine line in relaying this information during meetings. This is because the role of Diocesan counsel is distinct from that of the Response Team or other individuals tasked with reporting to and assisting the IRB. The Diocesan counsel is ethically required to zealously defend the Diocese and, within the bounds of the law, to prevent it from incurring legal liability for conduct identified in reports. On the other hand, the Response Team has been required to provide a disinterested and objective summary of the facts to the IRB, an independent body tasked with making a recommendation to the Bishop in accord with the Policy, Norms, and canon law. Unlike Diocesan counsel, the Response Team and IRB do not consider issues of liability for the Diocese. When Diocesan counsel reports to the IRB,[109] therefore, it must do so as a disinterested provider of information and not as an advocate;[110] only this will protect the independence of the IRB and allow it to receive the impartial account of any complaints or other information it needs to make its recommendation to the Bishop.

Finally, it is significant that the final allegations against Fr. Tierney were handled promptly. The IRB met shortly after complainant UF contacted Msgr. Murphy. Although

[109] In contemplating that Diocesan counsel may continue to report certain information directly to the IRB to assist in the information-gathering portions of its meetings, the Firm does not mean to suggest that counsel should not also make a complete disclosure of all information in counsel's possession to the Ombudsman. This exchange and sharing of information must occur in order to guard against the danger that, because Diocesan litigation counsel would frequently have the most current and complete information when reports are initiated by litigation, the Ombudsman's responsibilities gradually accrete to Diocesan litigation counsel. The Firm recommends that Diocesan counsel and the Ombudsman develop a protocol for the sharing of information without compromising work product and attorney-client privileges that will apply to the Diocesan counsel's litigation-focused investigation.

[110] In Fr. Tierney's situation, based on interviews with IRB members, it is very likely that even if their September 2010 meeting had included a precise and verbatim account of all phone calls and written correspondence from 2008 and 2009, they would still have found that the initial complaint was not credible. In fact, even after a lawsuit clearly alleging "groping" was filed, the IRB continued to find that the allegation was not credible. Based on the very limited information available to the IRB, the initial determination that the original complaint was not credible was reasonable.

the police were already investigating Fr. Ratigan at the time of the May 18th meeting, it is important to note that the IRB members, with the exception of Capt. Rick Smith, were unaware of the Ratigan situation when they made the preliminary determination that the accusations against Fr. Tierney by UF were credible. The IRB met roughly two weeks later with all members present to make a formal credibility determination. Although the IRB was aware of the issues with Fr. Ratigan at this point, there were now three separate complaints against Fr. Tierney, similar in nature. Additionally, several IRB members noted that Fr. Tierney's statement that he had not "done anything bad in a long time," amounted to an admission. The credibility determination and removal were appropriate and consistent with the Charter and the Diocesan Sexual Misconduct Policy. The proximity in time to Fr. Ratigan's arrest was coincidental, and based on our review it did not materially affect the Board's recommendation to remove Fr. Tierney.

D. Father Shawn Ratigan

1. Early Assignments

Shawn Ratigan came to the priesthood relatively late in life, but at his June 4, 2004, ordination, his thirty-eight years made him a relative youth among Diocesan priests who served western Missouri parishes. First assigned as an associate pastor at St. Thomas More Parish in Kansas City, Missouri, from June 2004 to June 2005, Fr. Ratigan was generally well-liked. Part of his appeal was his regular interaction and seeming rapport with school children. Indeed, the Firm's interviews with school and parish officials indicate that during Fr. Ratigan's ministry at St. Thomas More, no one raised concerns or suspicions about his behavior around children.

Parishioners and their administrators readily recalled that Fr. Ratigan took many pictures and commonly carried a camera. After observing from some of his personal landscape photographs that Fr. Ratigan had an apparent affinity for photography, parish staff solicited his assistance in taking photographs of group activities and school events for the parish pictorial directory. This, they reasoned, would also provide their newly-minted priest with an easy introduction to parish activities and would help him meet parishioners.[111] His hobby does not seem to have been viewed with suspicion at the time, although after Fr. Ratigan's arrest, many parishioners understandably raised concerns about the frequency of his photography. The Firm's review, however, revealed no reports of abuse or suspicious activity to parish, school or Diocesan employees during Fr. Ratigan's assignment at St. Thomas More.

After one year at St. Thomas More, Fr. Ratigan was assigned as pastor of St. Mary's Parish in St. Joseph, Missouri. Concurrently assigned to St. Joseph's Parish in rural Easton, Missouri, Fr. Ratigan pastored both parishes from June 7, 2005 to July 1, 2009. Also during this time, Fr. Ratigan was Chaplain for Bishop LeBlond High School in St. Joseph. He lived at the rectory at Co-Cathedral in St. Joseph for a short time and regularly visited the Co-Cathedral School throughout his time at St. Joseph's and St. Mary's. The Firm spoke to witnesses at St. Mary's, St. Joseph's, Bishop LeBlond and Co-Cathedral.

Parishioners, administrators, teachers, and students generally liked Fr. Ratigan. He seemed to genuinely enjoy—and even prefer—spending time with children. One witness from St. Joseph's recalled a habit of Fr. Ratigan's that, in retrospect, seems significant. Fr. Ratigan frequently attended functions in which both adults and children were present.

[111] Fr. Ratigan was not asked to take individual pictures.

Engaged in conversation with a group of adults, Fr. Ratigan would take notice when children passed by and spontaneously leave the conversation to interact with the children.[112] Again, however, Fr. Ratigan was generally well received at St. Joseph's parish; parents, parishioners, school teachers and parish staff were happy to have a young parish priest who displayed an interest in youth ministry and the well-being of the community's youngest members.

Fr. Ratigan did not restrict his interest to activities on church property or church-sponsored events. At every parish, he befriended families with children and visited their homes frequently. And while Fr. Ratigan frequently took pictures with his camera or cell phone, it only seemed to occur at appropriate times: school or parish events, or at parties, with groups of children playing. He posted pictures of parish activities and events on bulletin boards, a practice that could reasonably lead parishioners to believe that his photography was normal. His behavior around children was generally not viewed as suspicious or otherwise concerning.

There is reason to believe that during his time in and around St. Joseph, most of Fr. Ratigan's conduct would not have aroused suspicion. Parish and school officials were trained to identify warning signs of abuse and seem to have handled concerns appropriately. For example, during one of his frequent visits to Co-Cathedral school, Fr. Ratigan told a teacher that two 8th grade students had attempted to grab his cell phone from his pants pocket and asked how he should handle the situation without "hurting their feelings." The teacher sensibly advised Fr. Ratigan to firmly tell the girls "no," and informed the principal of the situation. When the two educators discussed the incident with the girls,

[112] Interview of M. Fisher, July 15, 2011

they confirmed that the incident was as Fr. Ratigan had described and that Fr. Ratigan had done nothing inappropriate. In response, the principal and teacher reminded the students that according to their abuse training, personal space must be respected; reaching for Fr. Ratigan's pockets was a boundary violation. When a parent later raised the incident with a teacher, the teacher was able to provide assurance that school staff had already addressed the situation with the students.[113] Although this was an isolated boundary violation, it appears that the school promptly addressed the issue and ensured that nothing more serious had occurred.

Although some of the anecdotal evidence the Firm received from this period could be viewed as indicating that there was little reason to suspect abusive behavior, a recently filed lawsuit against Fr. Ratigan and the Diocese claims that the Diocese received a "report" regarding Fr. Ratigan as early as 2006. After reviewing the lawsuit, the Firm attempted to identify individuals who related any suspicions or concerns regarding Fr. Ratigan in his early assignments. The only evidence suggesting that anyone reported a suspicion regarding Fr. Ratigan's behavior around children is an alleged conversation between two former parish employees.

The Firm interviewed Angela Hurst, Office Manager at St. Mary's Parish since August 2007. Ms. Hurst related that shortly after Fr. Ratigan's arrest, she received a phone call from Cheyenne Nightingale. Ms. Nightingale was a former secretary at St. Mary's Parish. She worked at St. Mary's from approximately 2005 to 2006 and then worked for Fr. Ratigan at St. Joseph's Parish in Easton, Missouri, from 2006 until approximately July 2009.

[113] Interview with M. Burgess July 14, 2011

Ms. Hurst recalled that she and Ms. Nightingale had recently had a telephone conversation regarding the police investigation and recent arrest of Shawn Ratigan. When Ms. Hurst told Ms. Nightingale that she was shocked by his arrest, Ms. Nightingale replied that sometime in 2005 or 2006 she had spoken to Laurie Todd, at that time the office manager of St. Mary's Parish, and had mentioned to Ms. Todd some general concerns about Fr. Ratigan's behavior around children. Ms. Nightingale did not offer specific information about the concerns she relayed to Ms. Todd. The call ended abruptly at this point, and Ms. Hurst assumed it was a dropped call from a cell phone. Neither Ms. Nightingale nor Ms. Hurst re-initiated the call and at the time of our interview, they had not discussed the issue again.

The Firm was ultimately unable to verify whether the Todd-Nightingale conversation took place, nor could we confirm the nature of the concerns Ms. Nightingale actually conveyed. Laurie Todd passed away in 2007, and although we contacted Ms. Nightingale, she was not willing to speak with us. If the conversation did occur, there is no evidence to suggest that Ms. Todd or Ms. Nightingale ever discussed any specific concerns with anyone else or with the Diocese.

In conclusion, the Firm's interviews with parishes and schools indicate that Fr. Ratigan was well liked in his assignments prior to St. Patrick's Parish. While he was noted for his frequent photography and interest in children, his behavior was generally not concerning to parishioners, parish employees, school staff, or school families. Perhaps this is because while he was in the St. Joseph area, he split his time between two parishes, neither of which had schools. And although he did visit the Co-Cathedral and Bishop LeBlond schools, his visits were somewhat irregular. Once Fr. Ratigan was assigned at St.

Patrick's, however, he began to have regular, daily interactions with children. As discussed below, it was during this period that parents and teachers began to take notice of his irregular behavior.

2. St. Patrick's Parish

Fr. Ratigan was assigned as Pastor of St. Patrick's Parish and School in Kansas City, North, in July of 2009. He was also assigned as Chaplain of St. Pius X High School. Continuing the pattern he established at St. Thomas More and in the St. Joseph area, Fr. Ratigan was very interested and involved with the school children and took many pictures. He spent a significant amount of time at St. Patrick's School and Day Care Center. While Fr. Ratigan was initially well received, it did not take long for parents and teachers to begin noticing "boundary violations" in his interactions with school children.

One of the first issues raised was Fr. Ratigan's Facebook page. In August 2009, a school employee notified St. Patrick's Principal Julie Hess that Fr. Ratigan's Facebook page had pictures with children sitting on his lap and a photograph of him swimming in a lake with a young girl. Principal Hess passed on this concern to Diocesan Safe Environment Coordinator Mary Fran Horton. Ms. Horton assured Principal Hess that she would pass the information on to the Chancery.

In making this initial report, Principal Hess asked that her name not be used. In a parish school setting, the pastor is the ultimate authority and has the power to fire the school principal. Principal Hess told the Firm that she requested anonymity because she did not want to begin her working relationship with the new pastor on a bad note. Shortly after she contacted Ms. Horton, the Facebook pictures were taken down, but Fr. Ratigan openly complained in the parish school office that someone had raised an issue about the

pictures. When he directly asked Principal Hess if she had notified the Diocese about the pictures, she responded that she "didn't even have Facebook."

In the fall of 2009, Principal Hess and school faculty began to have other concerns with Fr. Ratigan's conduct—not all of which can be classified as boundary violations. Principal Hess noted that at an early school faculty meeting, Fr. Ratigan told the faculty he "was a rock star with kids and they flocked to him wherever he went." Many of the faculty told Principal Hess that they found this comment very unusual. But Fr. Ratigan did not simply wait for children to flock to him; he also went to them, making frequent and unannounced classroom visits during instructional time. While these visits did not constitute violations of personal boundaries and it seems likely that Fr. Ratigan and the students enjoyed these welcome and unexpected diversions, teachers found these violations of protocol to be disruptive. Visits in the middle of a math or English class diverted the students' attention.

Based on the complaints she received from teachers and parents and her own observations of Fr. Ratigan, Principal Hess believed that he did not use good judgment. However, Principal Hess also informed the Firm that she was not aware at this time that Fr. Ratigan had committed any abusive behavior. Rather, she reasoned that because this was the first time he was the pastor of a parish with a school, he was perhaps naïve about boundary issues and inappropriate interruptions.

Throughout the 2009 – 2010 school year, though, parents and teachers continued to discuss concerns and boundary violations with Principal Hess. Finally, several specific and more disturbing complaints in May 2010 compelled her to formally report his behavior to

the Diocese. A written report from Principal Hess (dated May 19, 2010) outlined these complaints, as well as other concerning behavior reported to her over the school year[114].

3. The May 19, 2010 Report of Principal Hess

On May 13, 2010, Fr. Ratigan attended a school fishing trip. Almost immediately, Principal Hess learned that on the trip, Fr. Ratigan had allowed a girl to sit on his lap for at least five minutes. When Fr. Ratigan would not move the girl, concerned teachers walked over and pointedly stood next to him until he finally moved. Following the field trip, Fr. Ratigan offered to stay with another girl who was waiting alone for her ride home. Seeing that Fr. Ratigan would be alone with her, another teacher volunteered to assume supervision, but Fr. Ratigan insisted on staying and the teacher remained until the girl's ride arrived. This was not lost on Fr. Ratigan, who later complained that the teacher was being unnecessarily critical about his desire for close interaction with children. To Principal Hess, Fr. Ratigan's complaints aggravated rather than alleviated her concerns; the teacher had only been following basic child protection guidelines that had been previously communicated to clergy and teachers alike.

More disturbing were reports from Girl Scout parents who helped their daughters plant flowers at Fr. Ratigan's townhome. One father had been startled to witness Fr. Ratigan rubbing his daughter's back. Incensed, he immediately moved her out of reach. Others parents were troubled to find that Fr. Ratigan's home seemed tailor-made for children. It was well populated with stuffed animals, contained a large fish tank, and the kitchen was adorned with towels shaped like doll clothes. Even more distressing, a pair of young girl's panties was found in a back yard planter.

[114] Letter from Julie Hess to Msgr. Murphy dated May 19, 2010

Although Principal Hess had by now received objectively serious reports, many families at the parish were unaware of Fr. Ratigan's boundary violations and, like families at Fr. Ratigan's previous parishes, appreciated his interest in the parish school and youth. She was resolved to share her information with Diocesan officials, but thought it prudent to first discuss the complaints at a meeting with Deacon Mike Lewis and Office Manager Gidge Wurzer, the parish administrative team. Fr. Ratigan was absent. Upon hearing her concerns, Deacon Lewis advised her to document and report the complaints to the Chancery.[115] Accordingly, she prepared a letter outlining the various "boundary violations" and other concerning behavior which was reported to her.

Notably, Principal Hess did not at this time (or at any later point) contact the Missouri Division of Family Services ("DFS") or the Children's Division. Principal Hess told the Firm that this was because she did not suspect abuse. As an educator and school administrator, she stated she was familiar with the mandated reporter law. She understood that in order for DFS to address a complaint, she must have a suspicion of abuse.

Missouri's mandated reporter law requires that, among others, health professionals, social workers, day care center workers, teachers, principals, ministers and law enforcement officers, shall immediately report to the Children's Division/DFS when such person has reasonable cause to suspect that a child has been or may be subjected to abuse

[115] The Chancery is the main administrative office for the Diocese. Formerly located at 35th Street and Gillham Boulevard, the Diocese moved its offices to the New York Life Building in March 2011. The new building consolidates several different Diocesan offices and is now called the Catholic Center. For the sake of consistency, unless a specific geographic location is implied, when this report uses the term "Chancery," it refers to the top officers, clergy, and administrative staff of the Diocese.

or neglect.[116] Reasonable cause to suspect abuse means a standard of reasonable suspicion, rather than conclusive proof[117]. According to Principal Hess, she personally believed that Fr. Ratigan had exhibited nothing more than boundary violations at this point.

As Deacon Lewis suggested, Principal Hess did follow through with her decision to make a report to the Chancery. However, it took some time for her report to settle on the desk of a responsible official. Principal Hess' first point of contact was Sheri Dishong, then the associate superintendent of the Catholic Schools Office. Principal Hess described the nature of complaints regarding Fr. Ratigan. According to Principal Hess, after hearing the description, Ms. Dishong told Principal Hess to contact Rhonda Stucinski, Human Resources Director for the Diocese. Upon hearing Principal Hess' statement that she had an issue with a priest, Ms. Stucinski promptly referred her to the Vicar General, Monsignor Robert Murphy.[118]

Monsignor Murphy, the second-ranking officer in the Diocese after Bishop Finn, was responsible for a variety of administrative tasks. In addition, he was (and is) pastor of a local parish. During his two days a week in the Chancery, Msgr. Murphy handled the load of Diocesan business that came with his high office. Those duties included complaints and personnel issues regarding priests. A subset of those duties (as discussed in Section IV.A of this report) involves serving as administrator of the Response Team for investigating sexual abuse of minors, and working with the Independent Review Board ("IRB"), which makes recommendations to the Bishop regarding findings of sexual abuse of minors. Ms.

[116] Mo. Rev. Stat. Ann. 210.115.1
[117] Id.
[118] Interview with Rhonda Stucinski July 20, 2011

Stucinski had directed Principal Hess to the right person. When Msgr. Murphy received the principal's call, the two talked briefly and set a meeting.

On May 19, 2010, just six days after the school fishing trip that had helped motivate Principal Hess to report her concerns, she met with Msgr. Murphy at the Chancery. She had prepared her written report in advance of the meeting and brought it with her. Principal Hess and Msgr. Murphy both recall that at the meeting, they generally discussed the letter's contents. When, at the meeting's conclusion, Msgr. Murphy suggested that the two of them confront Fr. Ratigan, Principal Hess expressed her discomfort; Fr. Ratigan was, after all, her boss. Nonetheless, satisfied that Msgr. Murphy's plan would work, Principal Hess assented to the plan and the meeting ended. Principal Hess had laid the folder containing her letter on the table in front of Msgr. Murphy during the meeting. As it ended, he pushed it back to her.[119]

Following the meeting, Principal Hess had second thoughts. Emailing Msgr. Murphy to tell him she could not attend the meeting to confront Fr. Ratigan,[120] she attached her five-page report, copying Sherry Dishong, her initial contact in the Schools Office. Although it appears Ms. Dishong received the report, no further action was taken by Ms. Dishong or the Schools Office.

Msgr. Murphy forged ahead with his meeting, calling in Fr. Ratigan on May 26, 2010[121]. Msgr. Murphy now recalls that he spent approximately half an hour recounting Principal Hess' concerns, then admonished Fr. Ratigan to respect appropriate boundaries

[119] Additionally, Sheri Dishong told the Firm that Ms. Hess had informed her after the meeting with Msgr. Murphy that he had pushed the letter back to her. Another former Diocesan School Office employee told the Firm that Principal Hess informed him that Msgr. Murphy had pushed the letter back at the end of the meeting stating "He did not want it and didn't want that news."

[120] Email from Julie Hess to Msgr. Murphy dated May 20, 2011, cc: Sheri Dishong

[121] Email from Julie Hess to Msgr. Murphy dated May 20, 2010 and Msgr. Murphy's response.

with children. Msgr. Murphy does not believe Fr. Ratigan provided an explanation for the girl's panties found in the planter, but remembers that Fr. Ratigan explained that his home was decorated with an eye toward regular visits from nieces and nephews. Fr. Ratigan also maintained that he did not have a good relationship with Principal Hess and he thought that priests needed to be friendlier with children. By the end of the meeting, however, Fr. Ratigan had acknowledged the seriousness of the concerns and agreed to change.

According to both Msgr. Murphy and Bishop Finn, this was the first instance during their tenure in which a parish school principal had raised concerns about a priest's behavior around children. Also according to both, Msgr. Murphy verbally notified Bishop Finn of his meeting with Principal Hess shortly after his meeting with Fr. Ratigan; Msgr. Murphy told the Bishop that he had already discussed Principal Hess' concerns with Fr. Ratigan.

Msgr. Murphy believes he made mention of a written report to Bishop Finn; Bishop Finn cannot recall whether Msgr. Murphy mentioned that he had actually received something in writing. Regardless, Bishop Finn stated that he could specifically recall three items from Msgr. Murphy's verbal summary: 1) he was swinging kids around on the playground; 2) little kids were seen hugging his legs; and 3) a girl was sitting on his lap and someone told her to move. Neither Bishop Finn nor Msgr. Murphy could recall whether Msgr. Murphy offered Principal Hess' report to Bishop Finn. At any rate, Bishop Finn did not ask whether there was a written report (or ask to see any written report) and, until more serious events came to light several months later, took no further action regarding what he understood to be Principal Hess' concerns.

However, Fr. Ratigan did take action. Following what Msgr. Murphy recalled as their discussion and mutual understanding, Fr. Ratigan complained to Deacon Lewis back at St. Patrick's that he had been summoned to the Chancery to discuss boundary issues. Asserting that "I never had these problems in St. Joseph," he was certain that Principal Hess was "out to get me." But Fr. Ratigan did not find an ally in Deacon Lewis, who recalls that shortly afterward, he told Msgr. Murphy that he did not believe Fr. Ratigan appreciated the seriousness of Principal Hess' complaints. Deacon Lewis remembers that as he and Msgr. Murphy discussed the possibility of notifying the IRB, Msgr. Murphy expressed hesitation because the IRB could exaggerate the issue, causing them to "lose control" of the situation.[122] Msgr. Murphy recalls, however, that he did not notify the IRB because the Hess report did not involve sexual abuse, there was no victim, and he believed it was simply a case of boundary violations, placing the matter beyond the IRB's jurisdiction. Regardless, the IRB was not notified. Although Deacon Lewis appreciated the serious nature of the boundary violations reported, he shared Msgr. Murphy's and Julie Hess's belief at that time that Fr. Ratigan's behavior consisted of boundary violations only and not abuse.

While Fr. Ratigan had privately expressed his disappointment with Principal Hess to Deacon Lewis, he presented a different face in an email addressed to the Principal and the rest of St. Patricks' teachers.[123] Fr. Ratigan wrote as follows:

> Teachers and Ms. Hess, I write with a heavy heart. The reason it is heavy is because I have caused many of you many problems this year and I would never do this on purpose. My heart is heavy because I love the kids and I would never do anything to harm them. I had meetings yesterday that brought many things to my attention that I wish would have been brought to my attention earlier. I appologize [sic] if I have done anything this year to

[122] Interview of Michael Lewis, July 22, 2011

[123] See Email of Fr. Ratigan to Toni Eads for forwarding to "Julie [Hess] and the teachers only," dated May 19, 2010.

> bring any discomfort to you and I promise that nothing will happen again. I am always available to the teachers and the children. If you want me to teach in the class for religion let me know via the e-mail, if you want me to come to an event, just let me know. I will not be interrupting classes unless you want me there. May God continue to bless this school and parish with many newe [sic] families. God Bless you in all that you do for our young ones in protecting them, teaching them, and bringing their faith in God to higher places. Fr. Shawn.

Ms. Hess recalls that Fr. Ratigan avoided the school for the short period in May 2010 before summer break. When school resumed in the fall of 2010, she felt that Fr. Ratigan's behavior had improved, with fewer class disruptions and concerns from parents and teachers. She remembers the fall as uneventful: "business as usual." The Firm's review revealed no further complaints regarding Fr. Ratigan during this period. At this point, however, no one had seen Fr. Ratigan's computer.

4. Nude Photos of Children Are Discovered on Fr. Ratigan's Laptop

In December 2010, Gidge Wurzer, St. Patrick's Parish Office Manager, received an unexpected call from Fr. Ratigan complaining of problems with his personal laptop. She suggested he call the parish's computer contractor, Ken Kes. Ms. Wurzer provided contact information, and very shortly, Mr. Kes called to arrange for the pick-up of Fr. Ratigan's computer at the parish office. Mr. Kes picked up the computer on December 16, 2010 and took it to his home office in Grandview, Missouri.

As Mr. Kes began to service the computer, he noticed that its memory was full. He contacted Fr. Ratigan for permission to delete some files to free up some memory and speed the computer's operation. Fr. Ratigan agreed. As Mr. Kes opened various files to delete unnecessary material, he made a startling discovery. The files contained strange pictures of young girls. Mr. Kes found the pictures troubling because they were not family

photo album material: they focused on the torso and crotch areas of the children. The shots did not show the children's faces, covering only their shoulders to their knees.

Then Mr. Kes opened a file that caused him grave concern. It contained a picture of a nude young girl from the waist down.

Deeply concerned, he first sought the advice of his brother. Over the telephone, his brother advised him to take the computer to the Grandview Police Department. A second brother said the same. His pastor at Crosspoint Baptist Church was in accord. Finally, Mr. Kes called his wife. She advised him that under his contract with the parish he was to return all property, and was concerned that if he did not return the computer he might be sued. Mr. Kes decided to return the computer to St. Patrick's. After receiving Mr. Kes' call that he had found some disturbing pictures and was returning the computer, Gidge Wurzer informed Deacon Lewis. When Mr. Kes arrived bearing the computer, she directed him into Deacon Lewis's office.

Deacon Lewis and Mr. Kes both remember that as Mr. Kes attempted to show Deacon Lewis what he had found, his hands were shaking. The experienced technician, nearly unable to operate the laptop, directed Deacon Lewis to the nude photo he found. According to Deacon Lewis, the picture showed a very young girl in a diaper, from the waist down to approximately the knees, with the diaper pulled away to expose the girl's genitals.[124] Deacon Lewis advised Mr. Kes that he would take care of the computer and turn it over to the proper authorities. At no time did any parish official tell Mr. Kes not to contact police.[125]

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[124] The photograph is now in the possession of prosecutors. The Firm has not seen any pictures that were found on the laptop.

[125] Interview with Ken Kes, July 22, 2011

Deacon Lewis immediately called Msgr. Murphy from his office. According to Msgr. Murphy, Deacon Lewis notified him that Fr. Ratigan's laptop contained a nude picture of a young girl; Deacon Lewis told the Firm that he said only that the computer contained "disturbing images." In any event, they agreed that Deacon Lewis would bring the laptop to the Chancery without delay.

Because Fr. Ratigan was expected at the parish at any moment and Deacon Lewis did not want him to regain possession of the laptop, he gathered up the machine and drove directly to the Chancery, a journey of no more than fifteen minutes. While in his car waiting for a traffic light at the intersection of 31st and Broadway, Deacon Lewis received a call from Fr. Ratigan. Fr. Ratigan asked Deacon Lewis to tell Msgr. Murphy that someone else had given him the laptop. Deacon Lewis arrived at the Chancery approximately five minutes later.

5. Monsignor Murphy Receives the Laptop

In the short time it took Deacon Lewis to drive south from St. Patrick's, Msgr. Murphy made several phone calls from his office at the Chancery. First, he called Kansas City Police Department Captain and Independent Review Board member Rick Smith. Msgr. Murphy recalls that he contacted Capt. Smith before he had received the computer from Deacon Lewis. According to Msgr. Murphy, he told Capt. Smith of the "nude" image of a little girl, and believes he informed Capt. Smith that the photo came from a priest's laptop. After describing the picture, he asked Capt. Smith whether it constituted child pornography.

Capt. Smith told the Firm that Msgr. Murphy informed him of the following facts: that a computer belonging to a priest contained a single picture of a nude girl; that it was a

family member or a niece; and that it was not a sexual pose. However, Msgr. Murphy told the Firm that based on his recollection, he did not tell Capt. Smith that the picture depicted a priest's niece or family member or that it was not a sexual pose.

Whatever the precise facts Capt. Smith received from Msgr. Murphy, he felt unable to provide an immediate answer and replied that he would have to make some inquiries before calling back. Capt. Smith turned to Sergeant Mike Hicks, formerly of the Crimes Against Children Section, who advised him that a single photo in a non-sexual pose might meet the definition of child pornography but would not likely be investigated or prosecuted.

Capt. Smith then called Msgr. Murphy back. Msgr. Murphy believes that Capt. Smith called him back before Deacon Lewis arrived bearing the laptop. According to Capt. Smith, he advised Msgr. Murphy that the photo might meet the definition of child pornography, but he did not think it would based on the description he was given. According to Msgr. Murphy, in this second conversation, Capt. Smith stated that the law was strict: a pornographic image must depict *a sexual act*, as too many parents were getting into trouble for taking nude or partially nude photos of their children in bathtubs or other similar scenarios. Notably, a memorandum prepared by Msgr. Murphy on or about December 16, 2010, recounts the same conversation, but states that Capt. Smith's advice was slightly different: that a pornographic image must be merely *sexual in nature;*[126] a picture of "a naked little girl standing there" would not constitute child pornography. When the Firm asked Msgr. Murphy about this apparent difference, he stated that he could not recall what words Capt. Smith used. At any rate, it appears that Capt. Smith provided no further advice

[126] Internal memo by Msgr. Murphy dated December 16, 2010.

after this conversation. Msgr. Murphy has confirmed that he never actually showed the photo to Capt. Smith or provided any further description of the photo to him after the laptop and images were received at the Chancery.[127]

Msgr. Murphy made two more calls before Deacon Lewis arrived from St. Patrick's with the laptop: he notified the Diocesan Director of Management Information Systems, Julie Creech, that images had been found on Fr. Ratigan's laptop and that he wanted her to review them, and he called Fr. Ratigan.

Msgr. Murphy explained to Fr. Ratigan that a computer technician had found a nude photo of a little girl on his laptop and asked for permission to have the computer searched. Assenting, Fr. Ratigan told Msgr. Murphy that the laptop had been given to him by another person and he did not know what might be found. When Msgr. Murphy asked Fr. Ratigan to identify the girl in the nude photo, Fr. Ratigan said he did not know who it was. According to Ms. Creech, Msgr. Murphy told her that Fr. Ratigan—who apparently did not know that Deacon Lewis was already driving down with the laptop from St. Patrick's—offered to personally deliver it to the Chancery. Ms. Creech also recalls that (in what must have been a very early conversation) Msgr. Murphy asked her whether he should allow Fr. Ratigan to bring the computer in himself. Ms. Creech told the Firm that she advised Msgr. Murphy to let Deacon Lewis deliver the computer to prevent the possibility that Fr. Ratigan might destroy the images.

Deacon Lewis arrived at the Chancery to find Msgr. Murphy and Ms. Creech waiting to receive the laptop. According to Deacon Lewis, he told Msgr. Murphy two things: first, that the person who owned the computer didn't have a clue how serious the photos were;

[127] From interview with Msgr. Murphy, August 3, 2011

and second, this was going to be a "time bomb" and needed to be handled immediately. Msgr. Murphy told Deacon Lewis that Ms. Creech would review it, and Ms. Creech recalls him adding—apparently for her benefit—that there had been prior complaints about this priest as being too "touchy-feely."

The same day, December 16, 2010, Msgr. Murphy also told Bishop Finn about the recovery of Fr. Ratigan's laptop computer and its contents, although neither could remember precisely what details were provided or whether certain conversations regarding the laptop occurred on December 16, 2010 or December 17, 2010. Also on December 16, Msgr. Murphy mentioned the computer to Rebecca Summers, Diocesan Director of Communications, and stated that it contained a disturbing image of a naked girl whose face was not visible.

6. What Was Found on the Laptop

Ms. Creech took the laptop to her office and turned it on. Because it was running very slowly and began to lock up, she removed the hard drive and connected it to an external device that would allow her to look at the data through another computer's operating system. She then reviewed Fr. Ratigan's "My Documents," "My Pictures," "Temp Files," "Desktop" and "Bookmarks," folders.

Ms. Creech found hundreds of photographs of young children, primarily girls. Although these were clothed images, she found them disturbing. There were, for example, photographs of girls in swimsuits climbing up the ladder of a slide that had been taken from below, focused on the girls' crotch areas. Other photographs had been taken from underneath a table, focusing on girls' crotch areas. Yet other photos depicted short-wearing girls who were in a squatting position with their legs spread apart, focused on the

girls' crotch areas. According to Ms. Creech, the girls in these photos appeared to be from eight to ten years old.

Ms. Creech then found a file marked "- - - - - -." Opening it, she found a group of "staged" photos of a very young girl who appeared to be two to three years old. The first photo showed a little girl, face visible, standing and holding a blanket. In a "staged sequence," the photos depicted the girl lying down in a bed, from the waist down, and focused on the crotch. The girl was wearing only a diaper, but with each photo, the diaper was moved gradually to expose her genitals. By the last photo, her genitals were fully exposed. According to Ms. Creech, there were approximately six to eight pictures in this sequence of photos; two displayed fully exposed genitals and one displayed her fully exposed buttocks. The little girl's face was not visible in the staged sequence, but due to her apparent physical size and the fact the photos were in the same file, Ms. Creech assumed the photos were of the same little girl whose face appeared in the initial picture.

Ms. Creech also found a set of approximately two dozen photos of a sleeping girl who appeared to be approximately seven to eight years old. The girl's face was visible in the photos. In these photos, the girl's position appeared to have been moved while she was sleeping. Although the girl was fully clothed, Ms. Creech advised that she felt the photos were disturbing and sexual in nature. Ms. Creech was not able to determine whether the photographs had been taken by Fr. Ratigan or downloaded from the Internet because she did not have that forensic capability. However, she noted the pictures had been named and organized in a manner consistent with the way in which many people save their own original snapshots.

Ms. Creech also found information regarding Internet sites that had been visited. She determined that "Flickr," an online photo sharing website, had been visited. Within this website's history were bookmarks saving a path to a file displaying children in swimsuits. Other bookmarks led to a website for two-way mirrors and spy pens, small cameras disguised to look like ballpoint pens. Checking Fr. Ratigan's Facebook page, Ms. Creech found many paths and connections to other Facebook pages, primarily those of young girls.

After working until the early evening of December 16, 2010, Ms. Creech called Msgr. Murphy to describe what she had found. Ms. Creech recalls that he asked her what to do and that she advised him to call the police; Msgr. Murphy told the Firm that he does not recall the conversation. Similarly, Communications Director Rebecca Summers remembers calling Msgr. Murphy that evening and telling him to give the computer to the police and ask for their help. Again, Msgr. Murphy did not recall that conversation. According to Ms. Creech, at the conclusion of her conversation with Msgr. Murphy, he said that he would call the police and Diocesan legal counsel Jon Haden. He then left for the evening.

Even after Chancery staff returned home on the night of December 16, Diocesan officials continued to discuss the images via telephone. Reflecting on her findings and her conversations with Msgr. Murphy later that evening, Ms. Creech realized that she was still troubled. She called Ms. Summers. After discussing the nature of the pictures, Ms. Creech expressed concern that Msgr. Murphy did not fully understand how serious the pictures were. This led Ms. Summers to call Msgr. Murphy again; this time, the two discussed the pictures Ms. Creech found. According to Ms. Summers, he responded that he planned to consult with a police officer about the pictures.

After calling Ms. Summers, Ms. Creech also called her immediate supervisor, Paula Moss, Vice-Chancellor for Stewardship and Development. After she informed Ms. Moss of the day's events and of her discomfort in having to review the computer and photos, Ms. Moss agreed to meet her the next morning to review the computer with her as her supervisor.

The next morning, Friday, December 17, 2010, Ms. Creech and Ms. Moss met at the Chancery to review the laptop together. Ms. Creech continued to have difficulty with the hard drive, and concerned that the computer would crash, made a copy of the materials on a flash drive. Ms. Creech then showed Ms. Moss the various images and Internet sites she had found. The two women prepared a memorandum outlining the contents of the laptop as they reviewed it together, [128] attaching a few of the most egregious photos to a hard copy of the memo with they delivered to Msgr. Murphy that day.[129] The memo stated, in relevant part:

> Julie found the following: hundreds of photos of girls mostly under the age of 10 with some clothing (swimsuits, underwear, etc), photos of one female between 2-3 years of age showing full vaginal exposure and full buttocks exposure, multiple saved Flickr links, multiple links to young female Facebook pages, a "favorite" to a spy pen that allows you to take photos (looks like a ballpoint pen) and a "favorite" for two way mirrors (no longer a valid website so we were not able to identify purpose of site).
>
> In the hundreds of photos it became obvious the viewer is focusing on the female pelvic region. It is also obvious that some photos were taken from a camera positioned under a table in which girls were sitting in their swimsuits or under playground equipment in which girls were climbing above. There is also a photo with a little girl sleeping and someone has changed the location of her hand and clothing while she sleeps to take the photos. It appears that 4-5 photos were downloaded while the others seem to have been taken from a personal camera…

[128] Memo from Julie Creech to Msgr. Murphy dated December 17, 2010.
[129] Interview with Julie Creech, August 2, 2011

> The photos of the 2-3 year old female "------" were in a separate folder titled with her name. These photos are the only photos that were found in which you see full vaginal shots and a buttocks shot.

7. Father Ratigan's Attempted Suicide

Elsewhere on the morning of December 17, likely as Julie Creech and Paula Moss were beginning to review the laptop together, Deacon Lewis received surprising news as he sat at St. Patrick's Parish Office: Fr. Ratigan had not shown up for the 8:30 a.m. mass. Concerned, Deacon Lewis hurried to the sanctuary and performed a short communion service for the waiting parishioners. While he had stepped away, Fr. Ratigan's sister had contacted the parish office to alert them to a troubling text message Fr. Ratigan had sent her and expressed concern for his well-being. Returning to the parish office, Deacon Lewis was informed of the sister's call. Hurrying to Fr. Ratigan's townhome, near the parish, Deacon Lewis saw that Fr. Ratigan's car was out front and the lights were on, but no one would answer the door. Fearing the worst, Deacon Lewis called 911. The fire department arrived within a few minutes. Responders found Fr. Ratigan unconscious on the floor of his garage with his motorcycle running, a rosary in one hand and a cell phone in another.

There was also a note left at the scene. The police kept the note but allowed Deacon Lewis to see it. Deacon Lewis could not remember its specific words, but recalled that Fr. Ratigan said he was sorry and hoped God would forgive him. Deacon Lewis recalls that he specifically checked the note to see if there were any references to children's or families' names, and he did not see any.[130]

[130] The Firm has learned from second or third-hand information that the note contained an apology "to" or "about" or "for" the children or for what Fr. Ratigan "did" to children. For example, Bishop Finn believes he heard that Fr. Ratigan's note expressed that he was "sorry for the harm caused to the children or you." However, we have been unable to confirm that the note actually contained such a statement. Deacon Lewis is the only witness interviewed by the Firm who read the note. He

Deacon Lewis visited Fr. Ratigan and his family at the hospital later on the day of the 17th and recalls that he fully informed his brother, Brian Ratigan, of the laptop, the nature of the images, and the circumstances of the suicide attempt that morning. Shortly after the attempt, the Diocese released a statement to inform St. Patrick's Parish of Fr. Ratigan's medical situation. The statement was intentionally vague about the circumstances of his hospitalization as the Diocese wanted to respect the privacy of Fr. Ratigan and be sensitive to his family's wishes about any information that was released.

As events were unfolding on the day of the suicide, the Chancery was holding its annual Christmas party for employees. As a result, the Bishop, Msgr. Murphy, Msgr. Bradley Offutt, the Diocesan Chancellor (essentially the third-ranking official in the Diocese) and others had only sporadic discussions about the situation with Fr. Ratigan; there was no extended, group discussion that day. Msgr. Murphy told the Bishop of Fr. Ratigan's suicide attempt, the situation with the laptop, and Ms. Creech's findings, although he did not give the Bishop a copy of her memorandum and it is not clear what details Bishop Finn was provided. Bishop Finn states that he never viewed the photos from the laptop, but they have been described to him.[131] However, it appears that Msgr. Murphy did tell Bishop Finn about his conversation with Capt. Rick Smith.

8. Monsignor Murphy Contacts Diocesan Counsel

On December 17, 2010, Msgr. Murphy contacted Diocesan legal counsel Jon Haden. According to Mr. Haden, Msgr. Murphy provided him with the laptop, the memorandum

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could not exclude the possibility that the note contained an additional phrase, but he could also not confirm it.

[131] Additionally, neither Msgr. Offutt nor Ms. Summers reviewed any photos from the laptop.

from Julie Creech and Paula Moss, and the attached photos.[132] Msgr. Murphy asked Mr. Haden—who at the time was not aware that Msgr. Murphy had consulted with Capt. Smith—whether he believed the pictures constituted child pornography. Mr. Haden recalls that he reviewed the Missouri statute on child pornography and, either on December 17 or early the next week, advised Msgr. Murphy that for the picture to be considered child pornography, it had to depict sexual conduct, sexual contact, a sexual performance, or sexually explicit conduct.[133] In his legal opinion, because the picture was of a nude child but did not show sexual conduct, contact, performance, or sexually explicit conduct, it was not child pornography.

> Missouri law defines the term "child pornography" in § 573.010(2), RSMo, as:
>
> (a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or
> (b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:
>
> > a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
> > b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
> > c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct.

[132] Mr. Haden has stated that in rendering legal opinions to the Diocese, he viewed only those images that had been printed and attached to the Creech and Moss memorandum, which were only a subset of all of the images viewed by Ms. Creech and Ms. Moss and described in their memo.
[133] Ms. Creech recalls that she had a conversation with Mr. Haden on December 17, 2010, and that he offered her the same opinion, *i.e.*, that the pictures did not constitute child pornography. Mr. Haden could not recall this conversation.

Sexually explicit conduct is defined at § 573.010(18). The term includes "lascivious exhibition of the genitals or pubic area of any person[134]." The federal statutes defining child pornography and sexually explicit conduct mirror the Missouri statutes.[135] Reported Missouri cases show that defendants have been successfully prosecuted and convicted of possession of child pornography for pictures focused on the nude genitalia of children, even where the children were not engaged in sexual acts[136]. Although the Firm has never viewed the images, it is our opinion that images of the type described by Ms. Creech and Ms. Moss would constitute the "lascivious exhibition of the genitals" of at least one very young girl.

In his interview, Mr. Haden recalled that Msgr. Murphy's sole request for advice related to the question of whether the images constituted child pornography. Neither Msgr. Murphy nor the Bishop asked him what they should do regarding the laptop or whether they should go to the police. When Msgr. Murphy suggested that Mr. Haden should review the laptop himself, Mr. Haden recalls responding that since he understood that Julie Creech had already reviewed it, a second review was unnecessary. (Ms. Creech had previously advised Msgr. Murphy that because her ability to review the laptop was limited, technology professionals might uncover images on the computer that were beyond her reach.)[137] Mr. Haden also advised Msgr. Murphy that an in-depth forensic analysis would require engaging a third party vendor. Msgr. Murphy did not immediately or

[134] RSMo § 573.010(18)(e).
[135] 18 U.S.C. § 2256.
[136] *State v. Helgoth*, 691 S.W.2d 281 (Mo. 1985); *State v. Oliver*, 293 S.W. 3d 497 (Mo. en banc 2009).
[137] Msgr. Murphy recalls that he asked Bishop Finn what the Diocese should do to recover any additional images given Ms. Creech's difficulties, and Bishop Finn advised he should let the attorneys "take the lead." However, Mr. Haden informed the Firm that it was not until months later, in May 2011, that he became aware that Julie Creech had expressed concern about her ability to retrieve data on the hard drive.

thereafter respond to this suggestion, and no Diocesan official ever requested Mr. Haden to take this step. Mr. Haden retained possession of the laptop, flash drive and a copy of the memorandum and pictures from that point forward.[138]

In the week following the suicide attempt, in separate conversations, Msgr. Murphy informed Paula Moss, Bishop Finn, Chancellor Offutt and Rebecca Summers that he had consulted with the police and Jon Haden and that the pictures, although disturbing, did not constitute child pornography. At a much later meeting in late May 2011 after Fr. Ratigan's arrest, all four individuals indicated that they believed Msgr. Murphy had actually shown the picture to Capt. Smith or another police officer.[139] However, it is clear that only Mr. Haden, and not Capt. Smith, viewed the images. Aside from the contact with Capt. Smith and Mr. Haden, the Diocese did not take further action during these first few days to address the laptop and the images that were found.

9. The Diocese's Actions As Father Ratigan Recovered

Notably, doctors initially advised that Fr. Ratigan was unlikely to survive the suicide attempt. Bishop Finn, Msgr. Murphy, and others aware of the laptop were not contemplating a decision to remove him from ministry or otherwise address the situation as his medical prognosis was so bleak. This, however, began to change. Within a few days it was reported that Fr. Ratigan would likely live, but that he might be permanently

[138] Sometime prior to the Chancery's move to the new location in downtown Kansas City, the laptop was given to Fr. Ratigan's family. According to Bishop Finn he was under the impression that the family had requested the laptop back, although the family has since disputed that they requested it. Bishop Finn discussed returning the laptop to the Ratigan family with Mr. Haden. He advised that because they had a copy of all the material from the laptop on a flash drive there would be no potential for destruction of evidence. The laptop was then delivered from Lathrop & Gage back to the Chancery, where it was picked up by a Ratigan family member.

[139] Additionally, Msgr. Murphy had informed Deacon Lewis that he had consulted with police and the picture did not constitute child pornography, leaving Deacon Lewis with the impression that the police had seen the photograph. Not until after Fr. Ratigan's arrest did Deacon Lewis learn that the police had never viewed the picture.

mentally impaired; within roughly ten days, his diagnosis had improved so much that it was expected he would make a full recovery.

With Fr. Ratigan's improved health, he was moved to the psychiatric unit at KU Medical Center. Bishop Finn then decided to refer him for a psychiatric evaluation to a Pennsylvania doctor, Dr. Richard Fitzgibbons, who specializes in treating priests for a variety of mental health issues. Bishop Finn had previously referred priests to Dr. Fitzgibbons for other issues, such as alcoholism.

According to Bishop Finn, the purpose of the evaluation was to determine whether he should remove Fr. Ratigan from ministry or grant him limited faculties. A December 23, 2010, email chain between Bishop Finn and Msgr. Offutt confirms that Bishop Finn already expected to remove Fr. Ratigan from St. Patrick's, but, deciding that the canon law provisions for administrative leave cited by Msgr. Offutt did not apply, seemed to believe that additional information or analysis was necessary to determine how Fr. Ratigan's case should be treated pursuant to the *Charter for the Protection of Children and Young People*. A December 29, 2010, email from Bishop Finn to Dr. Fitzgibbons seems to indicate that as the year drew to a close, Bishop Finn had decided that the doctor's analysis would be used to determine the Diocese's course of action.

Fr. Ratigan traveled to Pennsylvania on January 9, 2011, for his initial evaluation, returning to Kansas City on January 11, 2011. Dr. Fitzgibbons received a faxed copy of Principal Hess' report regarding Fr. Ratigan's behavior around children. Following his initial meetings with Fr. Ratigan, Dr. Fitzgibbons advised Bishop Finn that Fr. Ratigan was suffering from loneliness and depression caused in part by the fact that Principal Hess was "out to get him."

Several weeks later, after he had already prepared an initial conclusion, Dr. Fitzgibbons requested a copy of the laptop pictures. Bishop Finn contacted Mr. Haden regarding the request and Mr. Haden then sent a CD of the pictures to Dr. Fitzgibbons via Federal Express. Even after receiving all of this material, Dr. Fitzgibbons seems to have ultimately advised Bishop Finn that Fr. Ratigan was not a pedophile and that his pornography problem was a result of his previously-identified depression. Fr. Ratigan continued to confer with Dr. Fitzgibbons, and Bishop Finn updated Dr. Fitzgibbons regarding continuing reports of Fr. Ratigan's Facebook and Internet usage and boundary violations.

There is no evidence that Dr. Fitzgibbons' opinion changed during this period. Msgr. Murphy recalls that he questioned the opinion and suggested to Bishop Finn that a second evaluation be performed at other psychiatric evaluation centers[140]. Bishop Finn did not recall Msgr. Murphy suggesting a further evaluation. Several months later, by way of email, Msgr. Offutt also advised that Bishop Finn should consider further clinical analysis.[141] No further evaluation was ever performed.[142]

Weeks before Dr. Fitzgibbons' evaluation had been completed, Ms. Summers had asked Msgr. Murphy if he was going to try to identify the child in the photo. Around the same time, Jon Haden also advised Msgr. Murphy that it was important for the Diocese to determine the identities of the children in the photographs. Because no one had been able

[140] Internal memo from Msgr. Murphy dated December 29, 2010.
[141] Email from Msgr. Offutt to Bishop Finn, Duty Bound
[142] When Dr. Fitzgibbons was later told that Fr. Ratigan had been arrested and that the arrest was based in part upon images appearing on the hard drive that Dr. Fitzgibbons had been provided several months earlier, Dr. Fitzgibbons responded by denying that he had seen any child pornography on the drive.

to determine whether the photos were downloaded from the Internet or taken by Fr. Ratigan, there was a distinct possibility that the children in some of the photographs had been abused by Fr. Ratigan in the process of taking the pictures or at other times. Mr. Haden further questioned whether DFS had been notified and advised that DFS should certainly be notified if any of the children were from the Diocese. According to Msgr. Murphy and Bishop Finn, no steps were taken to identify any of the children in the photographs. In addition, DFS was never notified.

Further, the IRB was not notified. According to both Msgr. Murphy and Bishop Finn, the IRB was not notified because no identifiable victim was making a complaint. Obviously, however, subjects such as the two to three year-old child in the nude photo were in no position to make a complaint. The nature of the photographs, combined with the fact that no one had ruled out the possibility that Fr. Ratigan, an avid and frequent photographer, had taken at least some of them, gave rise to at least a suspicion of child abuse that should have been investigated.

Bishop Finn also suggested during the Firm's interview that the IRB might not have agreed to review the case because it had turned away matters in the past that it deemed were outside its jurisdiction, and this case involved pornography rather than child abuse. However, the only times the IRB had declined to consider a matter were in cases of adult sexual misconduct or adult pornography.

Moreover, the Diocese made no effort to notify the parents and families at St. Patrick's Parish or other parishes were Fr. Ratigan had been assigned. Bishop Finn advised that he felt that notifying the parents at St. Patrick's of the photos found on the laptop

"would be like yelling fire in a crowded theater."[143] However, as discussed below, the lack of notification could have enabled Fr. Ratigan to continue to have contact with unwitting parish families and children.

10. Assignment to Vincentian Mission House

After Fr. Ratigan returned from his initial evaluation in Pennsylvania, Bishop Finn discussed possible placements for him with Dr. Fitzgibbons. Fr. Ratigan lived with his family in Eastern Jackson County until a formal placement through the Diocese could be determined. Bishop Finn had suggested placing him at the Vincentian Mission House, which housed several older Vincentian priests, in Independence, Missouri. It is conveniently located across from the Franciscan Prayer Center where several older members of the Franciscan Sisters of the Holy Eucharist live and work. Bishop Finn believed this would be an appropriate setting because its isolation meant that Fr. Ratigan would have limited contact with children. Bishop Finn recalled that Dr. Fitzgibbons had agreed that it would be suitable, including a recommendation for the placement in his formal evaluation report.

Bishop Finn formally notified Fr. Ratigan of the restrictions he was to follow in a letter dated Febuary 10, 2011[144]. The restrictions were as follows:

- Fr. Ratigan will continue to work with a counselor[145] to support his determination to faithfully live chastity.
- Fr. Ratigan will establish and keep contact with a spiritual director.
- Fr. Ratigan will not do any priestly ministry beyond the Franciscan Sisters in Independence without a written agreement from the Bishop or his designate.

[143] In her interview, Principal Hess was asked whether the Diocese should have notified St. Patrick's parents about the laptop. She voiced similar concerns about the impact of such an announcement on the school.
[144] Letter from Bishop Finn to Father Shawn Ratigan dated February 11, 2011
[145] Fr. Ratigan continued to have counseling sessions with Dr. Fitzgibbons via conference call.

- Fr. Ratigan will be allowed to participate in priest gatherings and to concelebrate at these.
- Fr. Ratigan will avoid all contact with children. On a preliminary "trial" basis, Fr. Ratigan may celebrate Holy Mass for youth or student groups at Franciscan Prayer Center in Independence, if requested, but he will not participate in individual or group sessions with minors.
- Fr. Ratigan will not use any computer until, or unless, there is a valid provision for oversight, e.g. Covenant Eyes[146], etc.
- Fr. Ratigan will use a camera only in limited circumstances. No photos of children should be taken.

Bishop Finn discussed Fr. Ratigan's situation with Sister Connie Boulch, Vicar General for the Franciscan Sisters, and Sister Lucy Lang, Sister Servant (Superior), and suggested assigning him to say mass for them and work with them. He notified them of the suicide attempt and the laptop, and specifically told Sister Boulch of the Diocese's conclusion that the pictures were not legally child pornography. He also informed them verbally of the restrictions he had placed on Fr. Ratigan. Sister Boulch and Sister Lang approved of Fr. Ratigan saying mass for them and working with them in their warehouse, which provides for the needs of the poor. Originally, Bishop Finn intended to restrict Fr. Ratigan from any contact with children, but after the Sisters pointed out that sometimes parents with children or school retreat groups were present at the Franciscan Center for mass, the Bishop modified the restrictions to allow Fr. Ratigan to say mass when children were present.

At the request of Bishop Finn, Msgr. Offutt asked the Vincentian leaders, Fr. Dick Gielow and Fr. Michael Mulhearn, if Fr. Ratigan could live at the Vincentian Mission House. They agreed. According to Bishop Finn, he advised Frs. Gielow and Mulhearn of the circumstances regarding the laptop, Fr. Ratigan's suicide attempt, and the restrictions Fr.

[146] Covenant Eyes is a computer software program whereby a counselor receives a report of any internet sites visited by the computer user.

Ratigan was to follow. However, according to Frs. Gielow and Mulhearn, they were not informed of the circumstances of the laptop or the restrictions. According to Fr. Mulhearn, the Vincentians were under the impression that Fr. Ratigan was still under a doctor's care following the suicide attempt and he was just living with them while he recuperated and until he was able to return to work at a parish. At some point Fr. Ratigan informed the Vincentians that he had a pornography problem, but specifically told them it only involved adult pornography. In interviews by the Firm, Frs. Gielow and Mulhearn both stated that if the Vincentians had known the circumstances of Fr. Ratigan's laptop, they would not have agreed for him to live with them.[147]

Bishop Finn stated that no one with the Vincentian Mission House or the Franciscan Prayer Center was asked to supervise Fr. Ratigan to ensure he was abiding by the restrictions; rather, Fr. Ratigan was on the "honor code " regarding the restrictions. While Bishop Finn believed that Fr. Ratigan posed a potential danger to children, he felt the isolated living arrangement and restrictions were sufficient.

11. A Flag of the Reddest Color

Within a month after Fr. Ratigan moved in to the Vincentian Mission House, reports surfaced regarding violations of the restrictions set by Bishop Finn. The first report was that Fr. Ratigan was using Facebook. Bishop Finn stated that when he asked Fr. Ratigan whether he was using Facebook, Fr. Ratigan responded that he was only checking his email. Additionally, Msgr. Murphy relayed to Fr. Ratigan by email that he was not to use Facebook. However, it does not appear that any other effort was made to monitor Fr. Ratigan's Internet usage. In his interview, the Bishop acknowledged that he had never checked to

[147] Interviews with Fr. Michael Mulhearn and Fr. Dick Gielow, August 16, 2011

see if Fr. Ratigan had Covenant Eyes (the program referenced in Bishop Finn's written restrictions) or any similar program installed on a computer to track his Internet use.

On March 12, 2011, Fr. Ratigan attended the Snake Saturday parade in North Kansas City. St. Patrick's Parish had a float in the parade, a magnet for families and children. Fr. Ratigan interacted with many parishioners and children, at the parade. He also attended a child's birthday party in March 2011.

Deacon Lewis notified Msgr. Murphy of these events in an email dated March 28, 2011[148]. The email also informed Msgr. Murphy that Fr. Ratigan had been telling parish families that one reason he was no longer at St. Patrick's was Principal Hess, who was still "out to get him." Msgr. Murphy forwarded this email to Bishop Finn on March 31, 2011, stating that he questioned whether Fr. Ratigan was being fully candid with Dr. Fitzgibbons in his counseling sessions. Bishop Finn recalls that although he had still not read the report from Principal Hess, that evening, he forwarded this email to Dr. Fitzgibbons and explained that Deacon Lewis, the person raising the concerns, had not been unfairly critical of Fr. Ratigan[149]. Bishop Finn continued:

> "I am quite concerned about him attending the six grade girl's party. I think this is clearly an area of vulnerability for Fr. S. I will have to tell him he must not attend these children's gatherings even if there are parents present. I had been very clear about this with him already."

Fr. Ratigan's recent contact with children was discussed at a regularly scheduled meeting of Diocesan officials on April 7, 2011. The next day, Msgr. Offutt emailed the Bishop to reiterate the serious nature of his continued contact with children[150]. He stated:

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[148] Email from Deacon Mike Lewis to Msgr. Murphy March 28, 2011
[149] Email chain from Bishop Finn to Dr. Fitzgibbons, March 31, 2011
[150] Email from Msgr. Offutt to Bishop Finn, April 8, 2011, Subject: Duty Bound Comment

> "Fr. Ratigan's recent attendance at a young girl's party and recent participation on Facebook … is an alarming occurrence. I am not sure what the options are for addressing this, but plainly something needs to be done to limit Diocesan liability and protect children. I am somewhat relieved that you said you would talk to him. I wonder if he, and by way of extension the diocese, would benefit from more detailed clinical analysis? …Whatever his diagnosis his recent behavior relative to children and on the computer are a flag of the reddest color."

Bishop Finn spoke to Fr. Ratigan the same day. When Fr. Ratigan acknowledged he had been present at the parade and birthday party, Bishop Finn reminded and admonished him that he was to have no contact with children. Fr. Ratigan retorted that the Bishop "didn't want him to have a life." Bishop Finn responded that his life had changed as a result of his actions and that Fr. Ratigan would have to figure out a way to adjust.

It is apparent that even as Fr. Ratigan's conduct outside of his living quarters was coming to light, he was having prohibited contact with children through retreats at the Franciscan Center itself. A number of student groups visited the Franciscan Center for retreats—including overnight trips—while Fr. Ratigan was saying mass for the Sisters. Although he was restricted from participating in individual or group sessions with minors, Fr. Ratigan did have contact with the children during these retreats. On April 11, 2011, just three days after Bishop Finn admonished him again to have no contact with children, Fr. Ratigan heard individual confessions of minors at the Franciscan Prayer Center on retreat[151]. Additionally, while living at the Vincentian House, Fr. Ratigan hosted an Easter party/family reunion on the property. Several young children were present. Fr. Ratigan is charged in the federal indictment with attempting to produce pornography by taking additional pictures of a young girl aimed up her shorts on Easter Sunday.

[151] Email chain with Becky Summers to Jon Haden, May 25, 2011

Fr. Ratigan grew bolder. He attended a track meet for Bishop LeBlond High School on May 7, 2011[152], and around the same time, Fr. Ratigan had contact with at least one family from St. Joseph's Parish in Easton, Missouri. Fr. Dick Gielow of the Vincentian Order contacted Msgr. Murphy in late April or early May to report that Fr. Ratigan was accessing the Vincentian guest computers.[153]

During his interview, Bishop Finn told the Firm that by this time, he had not formulated a plan to further address Fr. Ratigan's behavior if he continued to violate the restrictions. Although he was considering assigning Fr. Ratigan to the Archives Department of the Chancery, where he would not have contact with children, Bishop Finn had not determined a "breaking point" at which he would remove Fr. Ratigan from ministry or take other more serious remedial action.

12. Report to Police and Arrest

On April 19, 2011, Msgr. Murphy contacted Capt. Rick Smith and advised him that he needed to discuss an issue with him following his upcoming knee surgery. According to Capt. Smith, on the morning of May 11, 2011, he met with Msgr. Murphy to discuss the issue, not knowing what it involved. Msgr. Murphy opened the conversation by stating that regarding the laptop, "there were hundreds of photos." Capt. Smith stated that he was shocked and told Msgr. Murphy, "that's not what you told me." Capt. Smith advised him that at this point, the Fr. Ratigan incident was a criminal matter and he needed to turn the laptop over to the police. When Murphy promised to have the laptop returned from Lathrop and Gage (the offices of Diocesan counsel), Capt. Smith advised Msgr. Murphy to leave the laptop at the law firm and obtain its consent to have the police arrange a

[152] Email from Solon Haynes to Msgr. Murphy, Becky Summers, May 24, 2011
[153] Interview of Msgr. Murphy, August 3, 2011

voluntary pick-up. Because Msgr. Murphy said he was due to meet with Bishop Finn immediately after that meeting, Capt. Smith told Msgr. Murphy he would give him until the afternoon to call him back and notify him of Lathrop and Gage's consent to have the laptop picked up. Significantly, Msgr. Murphy apparently did not notify Bishop Finn in his upcoming meeting or any other time that day that he had discussed this issue with Capt. Smith.

The next morning, on May 12, 2011, having not heard back from Msgr. Murphy, Capt. Smith notified the Crimes Against Children Division of the situation. That same day, Msgr. Murphy contacted Jon Haden, who sent the flash drive to Msgr. Murphy to provide to the police. That afternoon, Msgr. Murphy called Capt. Smith and told him that although a disc had been made to preserve the material on the computer, the laptop itself had been given to Bishop Finn, who gave the computer to Fr. Ratigan's brother. Fr. Ratigan's brother had destroyed it. After this call, police responded to the Chancery to pick up the flash drive, and Msgr. Murphy notified the Bishop that same day that he had contacted the police regarding Fr. Ratigan.

When asked why he decided to contact police at this point and whom he consulted, Msgr. Murphy told the Firm that he made this decision on his own and did not discuss it with anyone beforehand. Bishop Finn was in Washington, D.C., on May 12th for a conference.[154] According to Msgr. Murphy, he decided to contact police because he was

[154] Msgr. Murphy and Bishop Finn met to discuss Msgr. Murphy's decision after he had called the police. Both men recall that Bishop Finn expressed surprise at Msgr. Murphy's decision. Bishop Finn told the Firm that he was surprised because he had been under the impression that the police had already seen and appraised the photographs, and did not understand why they would change their minds. He also felt that Msgr. Murphy should have first contacted and solicited the advice of Diocesan counsel Jon Haden. Msgr. Murphy told the Firm that he remembers that the Bishop asked him why he had not followed counsel's advice. Both men appear to have believed that Diocesan

concerned that, in addition to taking pictures, Fr. Ratigan may have sexually abused children. Additionally, he had come to believe that Fr. Ratigan was in denial and could simply not take ownership for his actions. Msgr. Murphy was concerned there might be future victims if Fr. Ratigan were allowed continued contact with children.

The next day, May 13, 2011, Det. Maggie McGuire contacted Julie Creech, the Diocesan IT Director, to investigate the matter. Bishop Finn directed that the Diocese and all parishes cooperate fully with the investigation.

The following week on May 20, 2011, Diocesan officials met to discuss the facts and chronology of the matter, including Msgr. Murphy's initial contact with Capt. Rick Smith and Fr. Ratigan's eventual arrest. At the meeting, Bishop Finn asked Paula Moss, Rebecca Summers and Msgr. Offutt if they were under the impression that the laptop pictures had actually been shown to Capt. Smith. All four individuals, including the Bishop, stated that they were under that impression.[155] Msgr. Murphy then acknowledged that he had only told Capt. Smith of the photo over the phone. He said he had advised them only that he had "consulted" with Capt. Smith regarding the photo.

St. Patrick's Parish gathered the night Fr. Ratigan was charged to discuss the crisis their community faced. Bishop Finn contacted the parish and asked to come and address the concerned and angry families. Parishioners expressed sharp criticism of Bishop Finn and the Diocese for its handling of the Fr. Ratigan matter. Two additional listening sessions followed, first at St. Thomas More and then at Co-Cathedral in St. Joseph.

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counsel had expressly or implicitly advised that no additional actions needed to be taken to report the images on the laptop to the police.

[155] Interviews of Paula Moss, Msgr. Offutt and Rebecca Summers

At the listening session at the Co-Cathedral, participants were asked to write a "hurt" and a "hope" on cards which would be read aloud. Among the "hurts" conveyed were two anonymous comments:[156]

> "The images of my daughter's private areas that the FBI showed me, they are forever burned into my brain. … Shawn Ratigan was in my house, around my children in February, and I thought my children were completely SAFE!!"
>
> "You let one of your priests hurt my children and you saw the pictures and decided to cover it up. That monster was in my house in February 11' to prey on my children and I let him in, since you felt you were above the law and made that decision not to turn in photos of my kids."

These comments indicate that, as was later revealed in criminal complaints filed in state and federal court, Fr. Ratigan did take pictures of parish children and did continue to have access to families even as he lodged at the Vincentian House and began to violate his restrictions. The failure to take stronger action with Fr. Ratigan had real and direct consequences for Diocesan families.

13. Conclusions

a. The Hess Report

The Diocese's handling of reports regarding Fr. Ratigan was flawed from the outset. Initially, it would have been prudent to give greater attention to Principal Hess' report. According to Bishop Finn and Msgr. Murphy, this was the first instance during their tenure in which a school principal complained of a priest's—let alone the parish pastor's—behavior around children. Although abuse was not alleged, numerous boundary violations were reported. As all Diocesan clergy and employees and volunteers who work with youth

[156] Email from Rebecca Summers to Jon Haden, June 20, 2011

learn in the VIRTUS "Protecting God's Children" workshop, a pattern of even minor boundary violations is a red flag because it demonstrates that an adult is unwilling or unable to respect the personal space of children. Fr. Ratigan exhibited other red flags as well, including recriminations against those who attempted to enforce the rules and misplaced appeals to the children's welfare and purported need to be around him. Finally, some of Fr. Ratigan's boldest moves, including prolonged or close physical contact with young girls that constituted serious boundary violations, could reasonably be seen as grooming behavior.

While parents at St. Patrick's apparently had little difficulty discussing these problems among themselves and with Principal Hess, and Principal Hess was satisfied with her own report to Msgr. Murphy and the plan he devised—which, as far as she could tell, worked—it is clear that Msgr. Murphy's plan did not go far enough. The concept of "boundary violations" exists because it describes behaviors which, while well-intentioned in certain cases, are warning signs that an adult may be sexually abusing a child. The proper reaction to warning signs is enhanced caution, enhanced supervision, further investigation and communication with others to share information, and at times, reporting to civil authorities. By not at least sharing Principal Hess' memo with other members of the Response Team, the IRB, or even Bishop Finn, Msgr. Murphy took upon himself sole responsibility for making difficult judgments about how Fr. Ratigan should be monitored and further investigated. There was no one available to provide him advice, make recommendations, or suggest a different course of action. The IRB was created, of course, for precisely this reason.

At the very least, Msgr. Murphy should have advised the IRB regarding the matter and asked for its advice. It may well have recommended further investigation. While such an investigation could have simply uncovered additional boundary violations and probably would not have revealed Fr. Ratigan's pornography addiction, it might well have spurred communication with a broader range families at St. Patrick's and other parishes, allowing parents to take precautionary measures and more closely monitor Fr. Ratigan's activities in the final months before his arrest. Finally, in the interest of erring on the side of caution in protecting children, the number and degree of Fr. Ratigan's boundary violations leads the Firm to conclude that while it was not legally required, the Children's Division should have been notified.

b. Fr. Ratigan's Laptop

As soon as the photographs were discovered on Fr. Ratigan's laptop, police should have been formally notified. Although various individuals undoubtedly believed that someone else would make the call, the fact remains that a phone call could have been made by anyone and everyone with knowledge of the pictures. Diocesan policy must encourage all employees to contact police where they suspect child abuse or other criminal activity involving children; this step should never be left to someone higher up in the food chain who is presumed to have special knowledge or expertise in reporting or crisis management.

In this case, the mistake was compounded when Msgr. Murphy informally notified an IRB member who happened to be a high-ranking police officer. Msgr. Murphy had not even viewed the image when he described the nude picture to Capt. Rick Smith over the phone, and his neutral description seems to have elicited only a general opinion from Capt.

Smith. He should have disregarded or asked someone to revisit this general opinion after he saw the images and learned they were far more serious than a "naked girl standing there." And although Capt. Smith offered a general opinion without seeing the picture, as an IRB member, he could have suggested that Msgr. Murphy bring the situation to the Board. The most unfortunate result of the Murphy-Smith communication is that it allowed Msgr. Murphy to believe that he had performed an adequate analysis of the law and the images. Worse, when Msgr. Murphy reported this conversation to other Chancery officials, they all formed the mistaken impression that Capt. Smith had actually seen the images and had opined that they were not pornographic. The leadership team seems to have labored under this seriously false impression until after Fr. Ratigan's arrest. In some respects, it would have been better had Msgr. Murphy not spoken with Capt. Smith at all.

The second most serious failing was the decision by Msgr. Murphy (and the apparent acquiescence by Bishop Finn) not to report the laptop incident to the Response Team or the IRB. It is true that Fr. Ratigan's health and survival was uncertain for several days after his suicide attempt. But by the time he was released, when it became apparent that the Diocese would find some place for him to reside outside of a parish, the IRB should have been notified and consulted regarding the pictures. Instead, Msgr. Murphy and later, Bishop Finn, conducted their own investigation by relying upon trusted professionals. While the use of such professionals is understandable, it is the Firm's opinion that in this case, the legal and psychiatric opinions the Diocese received were insufficient and incomplete.[157] Msgr. Murphy and Bishop Finn were not well-equipped to direct the

[157] The Firm recognizes that when Diocesan counsel rendered its legal opinion, counsel possessed both the full set of electronic images and the hard copy images that were attached to the Creech and Moss memorandum. Unlike the Firm, Diocesan counsel was actually able to view the hard copy

investigation, failed to adequately question the advice they received, and inappropriately relied on technical legal opinions in place of their own good judgment. It seems likely that the IRB would have been more deliberate and, by bringing a broader range of opinions to bear and a critical eye to questionable legal and psychiatric opinions, might have helped the Diocese avoid some of its investigative missteps and oversights.

The Firm has identified two key investigative mistakes. First, because the police were not involved, the Diocese should have investigated the matter further and attempted to identify the children in the photos. As discussed above, Diocesan counsel Jon Haden suggested that the Diocese take this step, but it appears that its investigation ground to a halt after the Diocese decided that it could not determine which images had been taken with a camera. At any rate, parents at St. Patrick's School and other parishes that might have been affected should have been notified so that they could determine if their child was abused and if so, take steps to provide their children with care and counseling. Parents would also have been able to protect their children from future contact with Fr. Ratigan.

Second, as discussed above, Msgr. Murphy relied on an opinion regarding pornography from an officer who had not seen the images, and this conversation led Diocesan leadership who had not seen the images to falsely believe that a knowledgeable source had found the images to not be pornographic. Both Msgr. Murphy and Bishop Finn also relied on legal advice regarding the definition of child pornography under Missouri law that, in the opinion of the Firm, was insufficient and incomplete. Finally, Bishop Finn relied on psychiatric advice from a single source who later turned out not to have

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images; as discussed above, the Firm was unable to view any of the images because they are now in the possession of law enforcement. The Firm nonetheless offers its legal opinion based upon its own review of the relevant statutes and case law, its review of the Creech and Moss memorandum, and its interviews of witnesses who had seen the images several months ago.

recognized that Fr. Ratigan's hard drive, which he had been allowed to view for evaluative purposes, contained child pornography or at the very least, deeply disturbing images. In each case, Diocesan leadership allowed the judgment of professionals who had presumably viewed the images to substitute for their own review of the images and their own judgment. It is possible but unlikely that the IRB would have made these same mistakes.[158]

Finally, again perhaps because no recommendation was solicited from the IRB, Bishop Finn prepared a safety plan which, while removing Fr. Ratigan from most interactions with children, relied too heavily on Fr. Ratigan's honesty and ability to control himself. Although the Vincentian House is in a somewhat isolated location, Fr. Ratigan was free to leave whenever he wanted and continued to contact families from his former parishes. Additionally, children frequently visited the Franciscan Center for retreats. After initial reports of Fr. Ratigan's recalcitrance surfaced, some on-site supervision should have been provided. While Bishop Finn met and spoke with Fr. Ratigan several times during the spring of 2011 to admonish him and secure promises of compliance, it does not seem that any back-up plan was in place to deal with Fr. Ratigan's pattern of escalating violations.

Ultimately, it was Msgr. Murphy's decision to contact police. Although his contact came five months too late, it probably protected families and children from additional misconduct by Fr. Ratigan. The Diocese should have more closely monitored Fr. Ratigan after the Principal Hess report, should have contacted the police in December 2010, and

[158] As discussed in Section IV.A.2.a(2), above, the Norms already seem to charge bishops with soliciting advice from their qualified review boards and avoiding overreliance on technical experts in abuse cases: "it is the "responsibility of the [bishop], **with the advice of a qualified review board**, to determine the gravity of the alleged act. Removal from ministry is required **whether or not the cleric is diagnosed by qualified experts** as a pedophile or as suffering from a related sexual disorder that requires professional treatment." *See* Norms, Article 8, footnote 5 (emphasis added).

should have used the procedures in its own Policy to investigate Fr. Ratigan and consider options to protect Diocesan children and families. Each of these mistakes was a decision-making failure, not a policy or training failure. But as discussed in Section V of this Report, these types of decision-making failures are less likely to occur if the scope of conduct that must be reported is broadened and the "gatekeeping" decisions which necessarily occur at the start of the process are placed in the hands of an independent ombudsman who is solely responsible for child sexual abuse reports and is subject to direct IRB reporting.

E. Conclusions

Our findings indicate that although the Diocese has implemented well-conceived policies and training programs, individuals in positions of authority reacted to events in ways that could have jeopardized the safety of children in Diocesan parishes, schools, and families. Their reactions were not compelled by inherently flawed policies, but changes to the Diocesan sexual misconduct policy will make it less likely that these problems reoccur.

First, the gatekeeping function became consolidated in a single office, the Vicar General. The Vicar General performs a wide array of functions for the Diocese, and the priest occupying the office during most of the relevant period—Msgr. Murphy—was the busy pastor of his own parish. Msgr. Murphy gradually came to function as a one-person Response Team, receiving reports of abuse, conducting his own investigation, and making his own judgments. In these functions, he was subject to little oversight. There were not adequate checks on Msgr. Murphy's almost unlimited discretion to interpret the scope of the Policy and, potentially, fail to report abuse to civil authorities or fail to notify the IRB.

Second, the Vicar General failed to follow the Policy. Most seriously, this manifested itself in the failure to fully report the images on Fr. Ratigan's laptop to the police on

December 16, 2010. But it is also apparent in the failure to make timely reports of allegations to the IRB in at least three cases, those of Frs. Cronin, Tierney, and Ratigan. Msgr. Murphy also seemed to share Bishop Finn's misapprehension that the IRB could not become involved if there was no identifiable "victim" or "allegation" of child abuse. While the IRB's role is limited, the Policy contains no provision which forbids the IRB from learning of serious boundary violations—such as those identified in the Hess report—which could themselves justify further investigation or precautionary administrative action by the Bishop. Nor does the Policy prohibit notifying the IRB merely because a victim cannot be identified, or because troubling pictures of children have failed to meet a rigid definition of "child pornography." Because Msgr. Murphy served as a gatekeeper, there was no one to second-guess his judgments.

Third, both the Vicar General and Bishop Finn erred in relying upon the legal and psychiatric judgments of only a few select professionals instead of requesting the IRB to undertake a more broadly-conceived inquiry. The IRB would likely have viewed the images on Fr. Ratigan's laptop (if they had not already been reported and turned over to police) and would have closely questioned any professional who opined that Fr. Ratigan was not a pedophile or had not compiled child pornography. Further, it is doubtful that the IRB would have allowed answers to such technical questions to become outcome-determinative for purposes of deciding whether to undertake precautionary measures such as reporting to civil authorities or temporarily removing Fr. Ratigan from ministry or dangerous situations. Finally, the IRB might have pressed forward with a more vigorous effort of outreach to affected parish families in order to identify victims and protect children from further harm. By simply consulting professionals on specific, narrowly-

defined questions, Msgr. Murphy and Bishop Finn failed to react to the big picture. Church law mandates the existence of the IRB precisely because it can bring broad experience and wisdom to bear on questions that are not easily resolved by one or two people with substantial demands on their time and energy. The IRB was not allowed to do its job.

Fourth, Bishop Finn was too willing to trust Fr. Ratigan to voluntarily comply with his restrictions and summon the strength to deal with the depression and addiction that Dr. Fitzgibbons had diagnosed. Even as Fr. Ratigan demonstrated that he could not live within the restrictions, Bishop Finn did not ask to examine past evidence that his subordinates had compiled, and did not seek additional professional opinions to test the implicit assumptions upon which the entire plan for handling Fr. Ratigan had been based. Further, Bishop Finn had not developed a backup plan in the event that Fr. Ratigan's treatment failed or his violations further escalated. All of these decisions would have been better informed with the aid of an active and knowledgeable IRB.

In issuing his public apology, Bishop Finn stated, "Things must change. I also have to change." The facts bear out the Bishop's statement. It was Msgr. Murphy who failed to make reports to civil authorities and to notify the IRB. But at least to some degree, Msgr. Murphy's failures were ratified by Bishop Finn and other Diocesan leaders. Their actions and failures were not compelled by Diocesan policy. But by making key improvements—expanding the scope of the sexual misconduct policy and moving the gatekeeping and investigative functions to a person who is accountable to the IRB and handles reports on a full-time basis—the Diocese can ensure that it lives up to the spirit of the Charter, Norms, and its own prior policies. The safety and well-being of the children and faithful of the Diocese demand no less.

Section V

Recommendations

A. Introduction

Based on our findings and conclusions, the Diocese failed to properly react to information and reports it received regarding Frs. Tierney and Ratigan. This failure was the direct result of Diocesan officials' decisions and oversights. No current Diocesan policy or code of conduct required officials to handle the Fr. Tierney and Fr. Ratigan reports in the way that they did. Indeed, as discussed above, certain decisions were inconsistent with the letter and spirit of the Policy.

However, our review indicates that various ambiguities, oversights, and flaws in the Policy increased the likelihood that reports of sexual abuse would be mishandled in this way, even if these ambiguities and flaws are readily apparent only with the aid of hindsight. Additionally, aside from the lessons that can be learned from reviewing the handling of reports involving Fr. Tierney, Fr. Ratigan, and other priests, our review identified certain safeguards and best practices that could be implemented to minimize the risk that abuse is not reported or adequately investigated. All of these improvements can be made by changes to the Diocese's Policy.[159] The Diocese's handling of reports of abuse can be improved in five key areas:

(1) the process for reporting and acting upon suspected abuse;

(2) the scope of conduct subject to the Policy;

(3) the extent of reporting to civil authorities and the public;

(4) the means by which support is extended to victims; and

(5) the adequacy of training and compliance with the Policy and codes of conduct.

B. Recommendations and Rationale

The following section organizes the Firm's recommendations by topical area. For ease of reference, each recommendation is numbered and separated from the rationale, which follows the recommendation in a comment section. Readers should also review the attached Exhibit A, a flowchart illustration of our reporting recommendations.

[159] Our review of the Norms, canon law, and recent correspondence from the CDF indicates that the Bishop likely has authority to implement each of our recommendations. However, an interpretation of the requirements of Church law is beyond the scope of this Report, and we suggest that to the extent the Diocese wishes to implement our recommendations, it proceed with the advice and counsel of a qualified canon lawyer.

1. Recommendation One:
Bolstering the Process for Reporting and Acting Upon Suspected Abuse

Recommendations

1-1.0 Office of the Ombudsman

(a) The Ombudsman should be responsible for:

(1) receiving and documenting in writing all reports or suggestions of current or past sexual abuse of a minor, sexual misconduct with a minor, or boundary violations by priests, Diocesan employees, teachers or volunteers;
(2) determining within 24 hours if a complaint meets the criteria for administrative leave, and notifying the responsible supervisor when it appears the criteria have been met;
(3) investigating all reports or suggestions received;
(4) notifying the Vicar for Clergy and IRB Chair of all new allegations;
(5) reporting results of the investigation to the IRB within 7 days for reports meeting the criteria for administrative leave, or at the next quarterly meeting for all other reports;
(6) requesting files, information, and other cooperation from the Vicar for Clergy, who shall freely and promptly provide such information assistance, including but not limited to assistance in securing the cooperation of witnesses or the accused in cases where the Ombudsman is unable to obtain their voluntary cooperation;
(7) in providing written reports to the IRB, making a preliminary recommendation that should encompass the following two points: (a) whether the report is credible; and (b) whether the report qualifies and should be classified as sexual abuse, sexual misconduct, or a serious or repeated boundary violation.

(b) The Ombudsman should be allowed as needed to use the services of one or more investigators with a law enforcement background or a background in treating or evaluating child sexual abuse, or with other professionals as needed, to enable her to undertake her investigation and make recommendations to the Independent Review Board.

(c) The Ombudsman should work with the IRB in advising the Bishop on policy, training, victim outreach, and other issues related to child abuse and protection.

1-2.0 Independent Review Board

(a) The Independent Review Board ("IRB") should consist of the following seven members:

(1) A Chairperson appointed by the Bishop;
(2) One priest who is an experienced and respected pastor in the Diocese;
(3) One mental health care professional with experience in the treatment of the sexual abuse of minors;
(4) One law enforcement professional who is retired or serves on a department from outside the Diocese;
(5) No fewer than one and no more than two non-Catholic members;
(6) At least two of the members should be female, and at least two should be male;
(7) At least five of the members should be laypersons; and
(8) All members should be selected for related expertise that will contribute to the overall effectiveness of the Independent Review Board.

(b) The following individuals should not serve on the IRB or should serve as ex officio members only:

(1) The Diocesan Vicar General or Vicar for Clergy, although the Vicar for Clergy shall be a non-voting, *ex officio* member;
(2) The Diocesan Victim's Advocate, who shall be a non-voting, *ex officio* member;
(3) Any other Diocesan officials, employees, or appointees;
(4) Diocesan legal counsel may make reports regarding the status of litigation but should not participate in deliberations or provide advice regarding the merits of claims.

(c) Five members shall constitute a quorum.

(d) The IRB shall meet at least quarterly. In addition to the quarterly meetings, it shall also be prepared to meet on seven days' notice when convened by the Chair.

1-3.0 Procedure for Handling Complaints of Abuse by Minors

(a) Initial action and reporting.

If any Diocesan employee or volunteer, including teachers, parish employees, volunteers, Chancery employees, high-ranking Diocesan officials and Diocesan legal counsel, receives a complaint regarding sexual abuse of a minor, sexual misconduct with a minor, or boundary violations, they should immediately take the following steps:

(1) Where the complaint involves current abuse or misconduct, and the victim is still under eighteen:
    i. immediately notify local law enforcement and the Children's Division, whether or not the employee is a mandated reporter, without exception.
    ii. After notifying police and the Children's Division, the person should immediately notify the ombudsman.
(2) Where the complaint involves past abuse or misconduct and the minor involved is now an adult, notify the ombudsman.
(3) Where the complaint does not allege abuse or misconduct but otherwise alleges questionable behavior around children, notify the ombudsman.

(b) Ombudsman's independent reporting duties.

(1) The Ombudsman should independently determine whether the complaint involves current abuse of or misconduct with a minor. If so, the ombudsman should first verify that the police and the Children's Division have been notified. If they have not been notified, the ombudsman should immediately notify police and the Children's Division.
(2) If the complaint involves historical abuse of a minor and the minor is now an adult, the ombudsman should contact the complainant and seek permission to notify police. If the complainant consents, the ombudsman should immediately notify police. If the complainant does not consent, the ombudsman should document their desire that the police not be notified, and not notify police.

(c) Ombudsman's initial investigative action.

(1) Within 24 hours of a report, the Ombudsman must make three preliminary determinations:
    i. Could the facts of the allegation be true?
    ii. If the facts could be true, do they fall into one of the following three categories?
        1. Sexual abuse of a minor (including pornography)
        2. Sexual misconduct with or using a minor
        3. A serious boundary violation or a repeated pattern of less serious boundary violations.
    iii. Did the conduct occur less than five years ago?
(2) If the requirements of subsection (1) are met:
    i. The Ombudsman shall immediately notify the responsible supervisor of the Ombudsman's initial determination that the allegation meets the requirements for immediately placing the accused priest on administrative leave pending the outcome of an investigation.

ii. It will be the duty of the responsible supervisor to advise the priest or employee that he or she is being placed on administrative leave effective immediately, and that his or her cooperation in the investigation is requested.
iii. The Ombudsman shall notify the Vicar for Clergy and Chair of the IRB.
iv. Upon notification of a serious allegation, the IRB Chair will convene a meeting of the Independent Review Board within seven days to hear the report of the Ombudsman.
v. The Ombudsman shall immediately conduct an appropriate investigation into the allegation.

(3) If the allegation could not be true, or if the allegation does not involve one of the above serious allegations, or if the allegation occurred more than five years ago:

i. The Ombudsman shall notify the IRB Chair and Vicar for Clergy.
ii. The Ombudsman will ensure that any investigation necessary to determine the nature of the allegation is conducted.
iii. The Ombudsman will prepare a written report on the actions taken and present that report to the IRB at its next quarterly meeting.
iv. The Ombudsman shall document all reports and related correspondence, phone calls, investigative steps and other matters related to complaints.

(d) The Ombudsman's primary investigation and report to the IRB.

(1) The Ombudsman shall investigate all reports, including anonymous reports or reports made on behalf of a third party. The complainant's or accused's unwillingness to meet with the Ombudsman or others may limit the effectiveness of an investigation, but shall not be a basis not to investigate a report.
(2) The Ombudsman will conduct a thorough investigation, to include interviewing the accused priest(s), victim(s), and third parties who are involved in or have knowledge of the allegation.
(3) Investigation will be completed and a written report be prepared and presented to the Chairperson of the IRB within seven days. If additional time is needed, the Ombudsman can seek permission from the Bishop. An extension may be granted to avoid interference with an ongoing criminal investigation.
(4) A recommendation will be made by the Ombudsman as to the credibility of the allegation using a preponderance of evidence standard. The Ombudsman will also offer an opinion as to which of the three categories of violation, if any, are implicated by the allegations. However, the final recommendation of credibility and classification of the violation is the responsibility of the IRB.

(e) Action by the Independent Review Board.

(1) The IRB shall meet at least four times a year at regularly scheduled meetings, and additionally, when convened by the Chair to address complaints.
(2) The IRB will review the results of the Ombudsman's investigation and recommendations.
(3) The IRB will deliberate and, by vote, decide whether to recommend that the allegation or parts of the allegation should be deemed credible, using a standard of the preponderance of the evidence.
(4) If the IRB decides that the allegation or some parts of the allegation should be deemed credible, it should decide whether the facts deemed credible can be classified into one of three categories of violation: (1) the sexual abuse of a minor; (2) sexual misconduct involving a minor; or (3) a boundary violation that is serious or if less serious, demonstrates a repeated pattern.
(5) The IRB may request that the Ombudsman conduct additional or follow up investigation when necessary. The IRB may make initial recommendations of credibility or classification that are subject to additional investigation.
(6) All recommendations from the IRB to the Bishop shall be in writing and state specifically what parts of the allegation were deemed credible and of those parts deemed credible, whether the IRB classified the conduct into one of the three categories of violation.
(7) If the IRB determines the allegation is credible and constitutes sexual abuse of a minor, the IRB shall make an immediate recommendation to the Bishop to have the accused priest removed from active ministry.
(8) If the IRB determines that sexual misconduct or boundary violations were committed, a recommendation to the Bishop shall be made as to the course of administrative and/or disciplinary action, to include but not limited to the following:
    i. Taking appropriate precautionary measures
    ii. Placing the accused priest(s) on limited faculties
    iii. Removing the priest(s) from active ministry

(f) The Bishop's Determination

(1) The Bishop should make a determination after reviewing the recommendation of the IRB.
(2) If the Bishop determines the allegation is not credible, or does not constitute sexual abuse of a minor, he can take any one or more of the following actions:
    i. Elect or reconsider taking appropriate precautionary measures.
    ii. Request that additional investigation be conducted.
    iii. No further action.

(3) If the Bishop determines the allegation is credible and constitutes abuse of a minor, the Bishop should take the following actions:

i. Remove the accused priest(s) from active ministry; and
ii. Make official notification to the Congregation of the Doctrine of Faith.

(g) Other IRB communications with the Bishop

In consultation with the Ombudsman, the IRB should continue to study the functioning of the investigative and review process. It can and should report in writing to the Bishop on a regular basis with recommendations on policy, training and other matters related to the protection of children.

Rationale and Comment

[1] General Comment

The Diocese's recent creation of the Ombudsman position has anticipated one of our core recommendations: that an experienced lay professional receive all reports and initiate a formalized reporting and investigation process that is subject to IRB supervision. In the past, the Vicar General (frequently relying upon Diocesan counsel) gradually assumed the role of a *de facto* gatekeeper by making express or implicit assumptions about whether certain information or conduct should be reported to the IRB. In the cases of Fr. Tierney and especially Fr. Ratigan, these gatekeeping assumptions eventually began to usurp the role of the IRB. Concentrating difficult decisions in one person who was heavily burdened with unrelated administrative and pastoral duties and not subject to clear reporting requirements and oversight made it more likely that the system would fail. For these reasons, we recommend that the process for reporting and acting upon suspected abuse be modified.

[2] Office of the Ombudsman

The Ombudsman position has already been created and has been staffed with a professional who has experience as an attorney with a prosecution and abuse response background. We recommend that the Ombudsman be allowed to use the services of an investigator, a person with experience in dealing with minors who have been sexually abused, or other professionals, as needed. With these resources, the Ombudsman would replace the Response Team, which could be discontinued.

[3] Independent Review Board

The IRB already exists under the Policy and has been functioning for well over a decade. Our recommendations regarding the IRB center on its membership and frequency of meeting. The IRB has already decided to meet on at least a quarterly basis. To prevent the appearance of conflicts of interest, we have recommended that law enforcement members of the IRB not be from a jurisdiction having authority over the Diocese.

[4] Procedure for Handling Complaints

As discussed above, our most important recommendation is that the Vicar General and Diocesan counsel not serve, either by design or by the force of circumstance, as the gatekeeper for the investigation and review process. Instead, these and other officials and employees are required to make all reports to the Ombudsman. The intent of these recommendations is that no person other than the Ombudsman shall make gatekeeping judgments. Even the Ombudsman's judgments are subject to disclosure and review. The Ombudsman is required to document all reports and communications—even those which do not rise to a level requiring administrative leave or any further action. The Ombudsman is also required to report all of these documented contacts to the Chair of the IRB and Vicar

for Clergy within twenty-four hours, and to the entire IRB on at least a quarterly basis. No single person's judgment will or should determine whether a report is ultimately or timely disclosed to the IRB.

Additionally, much is asked of the Ombudsman and IRB. Both are to make recommendations as to the credibility and classification of reports, but the Ombudsman has the additional and difficult burden of determining whether an initial report "could be true." This determination must be made very quickly, within 24 hours. The Ombudsman may conduct some initial investigation before making this determination, but the investigation at this stage should be focused on basic facts. The aim at this point is not to assess the credibility or believability of the witness, but rather to understand whether the facts alleged by the reporter could be true.

Because of the responsibility placed on the Ombudsman at this initial stage and during the 7-day investigation, it is recommended that the Ombudsman use the services of one or more investigators with a background in law enforcement or child abuse treatment. The Firm makes no recommendation as to whether these support positions should be permanent or subject to the Ombudsman's call.

Additionally, no member of the clergy or high Diocesan official is a member of the Ombudsman's office or investigative team. This is to preserve the independence of the Ombudsman. However, the Vicar for Clergy should assist the Ombudsman in making records and information available as quickly as possible. If witnesses within the control of the Diocese are not fully cooperative, the Ombudsman should solicit the Vicar's support, which should be promptly given. The Vicar should not use this supporting role to direct or interfere with the investigation, which is entirely in the hands of the Ombudsman.

Finally, because the ultimate determination as to credibility and the suitability of the priest for active ministry remains at all times with the Bishop, the most complete possible record should be assembled for the Bishop's review. This should at minimum include the written reports of the Ombudsman and IRB.

2. Recommendation Two: <u>Clarifying the Scope of the Policy</u>

Recommendations

2-1.0 Individuals whose conduct is covered

The process for handling complaints of sexual abuse of a minor should apply to complaints against all Diocesan employees and volunteers including priests, other clergy members, teachers, parish employees, Chancery employees and volunteers. At the conclusion of the investigation and IRB recommendation the matter may be referred to Human Resources, the Schools Office or parish officials as necessary.

2-2.0 Covered conduct

(a) For purposes of the Policy, three categories of conduct should be subject to investigation. However, reports should be made to the Ombudsman if there is even a suspicion that the reported conduct falls within a category or that discovery of additional facts could reveal conduct which falls within a category.

(b) For purposes of the Policy, the three categories should be as follows:

(1) Sexual abuse of a minor

Sexual abuse of a minor includes sexual activity with someone under the age of 18, including but not limited to any violation of state or federal law regarding sexual abuse of a minor. A person who habitually lacks the use of reason is to be considered equivalent to a minor. A person does not need to come into physical contact with a minor to engage in sexual abuse. This category includes the violation of any state or federal law involving the possession, manufacture and/or distribution of pornography.

(2) Sexual misconduct with a minor

This category includes activity of a less serious nature with someone under the age of 18, which may or may not include contact or touching, if the activity is conducted for the sexual gratification of the adult.

(3) A serious boundary violation or a repeated pattern of minor violations

This category includes activities that involve violations of basic standards of prudent adult conduct as exemplified in the Diocese's Circle of Grace training and/or the Code of Ethics and/or the Standards of Conduct for adults working in youth ministry. It includes but is not limited to conduct that could be construed as "grooming" a potential victim for future sexual abuse. Examples include but are not limited to imprudently being alone with a child, rubbing a child's back, letting a child sit on one's lap, texting or privately contacting a child through social media, a hug that lasts for more than five seconds, or using sexual language when speaking to a child. A single serious violation, or a repeated pattern of minor violations which demonstrate an inability or unwillingness to conform one's actions to basic standards of prudent adult conduct, fall within this category.

2-3.0 The standard for determining whether an allegation is credible.

(a) The standard for determining that an allegation is credible should be preponderance of the evidence. Preponderance of the evidence is defined as more likely than not.

(b) The IRB should be free to determine that some facts or circumstances making up an allegation are credible, while some are not.

2-4.0 What constitutes a complaint

Any communication, whether written or verbal, including phone calls, text messages, emails, letters, or legal correspondence or process, made to any Diocesan employee, constitutes a complaint.

Rationale and Comment

[1] General Comment.

Our investigation revealed that misperceptions regarding the "scope" of the Policy (and, therefore, the duty to make reports to the IRB) may have played a role in the failure to notify the IRB of serious misconduct. As discussed in subpart 1 of our recommendations,

the creation of the Ombudsman position, coupled with a more open and well-documented reporting and investigation process, is an essential for addressing this problem. But this alone is not enough. As discussed below, the definitions of covered conduct under the Policy should be refined to alleviate any possible misconceptions and to ensure that adequate attention is paid to conduct that witnesses frequently described as "boundary violations."

[2] Covered Individuals

The Firm recommends that the revised process should apply to all Diocesan employees and volunteers, not just clergy. This will ensure that the special expertise already residing on the IRB and within the Ombudsman's office will be put to productive use, particularly in periods when no reports regarding clergy have surfaced.

[3] Covered Conduct

The Firm recommends that the focus of this process remain on its core competency: investigating the sexual abuse of minors. This abuse is in many ways distinct from other types of abuse, and the qualifications of the Ombudsman and IRB have been formulated to focus on the abuse of minors. However, this does not mean that the Ombudsman or IRB should apply rigid definitions of what constitutes "sexual abuse" at the onset of the process. Rather, the Ombudsman and IRB should also investigate and make recommendations on misconduct and other disturbing behavior that, while perhaps not constituting sexual abuse, is harmful or potentially harmful to children and should be addressed.

[4] Preponderance of the Evidence

Some IRB members expressed confusion about their role and the manner in which they were to make decisions. Preponderance of the evidence (more likely than not) is a clear and commonly-used standard that reasonably balances the interests at stake in the process. The Firm also recommends that the Diocese clarify that the IRB has flexibility to accept some, all, or none of the facts or allegations relayed by a reporter.

3. Recommendation Three: <u>Expanding the Extent of Reporting to Authorities and the Public</u>

Recommendations

3-1.0 Reporting to Civil Authorities

(a) Initial action and reporting.

If any Diocesan employee or volunteer, including teachers, parish employees, volunteers, Chancery employees, high-ranking Diocesan officials and Diocesan legal counsel, receives a complaint regarding sexual abuse of a minor, they should immediately take the following steps:

(1) Where the complaint involves current abuse of a minor:
   i. immediately notify local law enforcement <u>and</u> the Children's Division, whether or not the employee is a mandated reporter, without exception.
   ii. After notifying police and the Children's Division, the person should immediately notify the ombudsman.

(2) Where the complaint involves child abuse from many years earlier and the minor involved is now an adult, notify the ombudsman.

(3) Where the complaint does not allege abuse but otherwise alleges questionable behavior around children, notify the ombudsman.

(b) Ombudsman's independent reporting duties.

(1) The Ombudsman should independently determine whether the complaint involves current abuse of a minor. If so, the ombudsman should first verify that the police and the Children's Division have been notified. If they have

not been notified, the ombudsman should immediately notify police and the Children's Division.

(2) If the complaint involves historical abuse of a minor and the minor is now an adult, the ombudsman should contact the complainant and seek permission to notify police. If the complainant consents, the ombudsman should immediately notify police. If the complainant does not consent, the ombudsman should document their desire that the police not be notified, and not notify police.

3-2.0 Reporting to the public

(a) The Diocesan website should include a link which provides access to a listing of clergy who have been permanently removed from ministry after a finding by the Bishop of a credible accusation of sexual abuse of a minor. This could take the form of a list or of a series of links to press releases previously issued by the Diocese.

(b) When the Bishop has determined that an allegation of sexual abuse of or misconduct with a minor is credible, the Diocese should notify the affected parish(es) any all parishes or schools in which the priest or employee has worked.

Rationale and Comment

[1] Reporting to authorities

As discussed in our conclusions, any one of many individuals could have reported their knowledge regarding Fr. Ratigan's conduct to the Children's Division or to law enforcement. The first person to make such a report was Msgr. Murphy in May of 2011. Reporting to civil authorities should be viewed as an initial and integral part of the process for dealing with reports of abuse, not a fateful step that must be taken only after a series of thresholds are crossed and determinations made. For that reason, the Firm's report makes fulfilling obligations to report to civil authorities the first two steps for handling reports of abuse. The Firm recommends a two-tiered approach in which individuals are required to directly contact law enforcement, but are also required to contact the Ombudsman, who is

required to verify that a report has been made and if not, to make one on his or her own accord.

[2] Reporting to the public

Several witnesses, including victims' advocates, suggested that the Diocese should make greater efforts to ensure that the public knows the identities of priests who have been removed from ministry because of sexual abuse of minors. The Firm agrees that notifying the public is an important step because it enables parents and the community to protect children, determine if other abuse has occurred, and offer assistance to victims.

4. Recommendation Four: <u>Providing Support for Victims</u>

Recommendations

4-1.0 The role of the Victim Advocate

(a) The Advocate will be solely responsible for meeting with victims and offering support. The Advocate may coordinate professional counseling for victim's pursuant to the Diocese's current policies, or turn to a priest to offer an apology to a victim on behalf of the Diocese.

(b) As before, the Advocate should be a professional in the field of health care, mental health care.

(c) The Advocate should report abuse to the Ombudsman and, if desired by the victim, be present at any interviews and IRB proceedings. The Advocate should continue to be an *ex officio* member of the IRB who may attend meetings with or without a victim.

(d) The Advocate should continue to have knowledge of and be able to develop working relationships with various victims' outreach and support groups.

(e) The Advocate should foster an approach and environment that encourages abuse victims to come forward, make complaints/reports of abuse to the Diocesan Ombudsman, and utilize the reporting and investigative process outlined above.

(f) The Advocate should encourage public support of victims of abuse by the leadership of the Diocese.

(g) The Advocate should compile statistical reports related to the position/office of Victim's Advocate and make a quarterly report to the IRB.
(h) The Victim Advocate should be allowed to engage in general advocacy for victim support issues. The Advocate should take steps to reach out to victims, including but not limited to establishing support groups for victims of childhood sexual abuse and reaching out to victims' rights' groups.

Rationale and Comments

[1] General comment

The role of the Victim Advocate should continue to be supported by the Diocese, but the Victim Advocate should serve solely in a victim support role. The Advocate should play no role in the investigation of or deliberations regarding reports of abuse, with a few limited exceptions, because a professional who provides support or counseling to a victim should not also be expected to play a role in determining the veracity or credibility of the victim. Because some victims may initially choose to approach groups outside of the Diocese for support, the Victim Advocate should stay in contact with those groups and encourage them to have victims make reports to the Ombudsman and come forward to the Diocese for spiritual and pastoral assistance. The overriding goal of the Victim Advocate should be to encourage victims to come forward and report their abuse to the Diocese so that children can be protected and the process of healing can begin.

5. Recommendation Five: <u>Ensuring the Adequacy of Training</u>

Recommendations

5-1.0 Expanding the scope of training

(a) Annual training should be provided to all members of the Chancery staff, including but not limited to all church officials and the members of the IRB. Training should include but not be limited to the following:

(1) Diocesan safety policies and the Charter for the Protection of Children and Young People
(2) Safe Environment programs training
(3) Reporting procedure related to the handling of abuse complaints

(b) A Communications/Safety team should be established to jointly develop the process for continued education throughout the Diocese related to the above-mentioned subjects. This team could consist of the following individuals:
(1) Ombudsman
(2) Victim's Advocate
(3) Safe Environment Programs Coordinator
(4) Communications Director

5-2.0 Safe Environment Programs Coordinator

(a) The Safe Environment Programs Coordinator should oversee compliance and to conduct spot checks related to compliance.

(b) It may be necessary to make the Safe Environment Coordinator position a full time job or, if funding is unavailable, to assign these duties to the Ombudsman.

(c) If funding exists for a separate Safe Environment Coordinator, the position's duties could include monitoring compliance with the Charter and Diocesan Safety Policies by the Ombudsman, IRB, Vicar for Clergy, Victim Advocate and other Diocesan officials.

5-3.0 Training for priests and clergy

Priests and clergy members should be required to take "Protecting God's Children" training on a more frequent basis, or more specialized training could be offered related to the Code of Ethics and appropriate boundaries for all priests and clergy members.

5-4.0 Making materials available

(a) Safety training materials could be made available through the Diocesan website and other avenues of mass communication, including but not limited to:

(1) Literature related to warning signs and child safety
(2) Information on victim outreach and support groups
(3) Child safety policies
(4) Abuse reporting procedures

(b) A quick-reference card could be developed for distribution to students, employees and volunteers with information to report allegations of child abuse including contact information for local law enforcement, the Children's Division and the Ombudsman.

Rationale and Comment

[1] General comment

The Firm could not conclude that any inadequacy in training contributed to problems in the Diocese's handling of reports of abuse during the 2002-2011 time period. Nonetheless, in reviewing the Diocese's training programs, certain areas for improvement manifested themselves. First, the scope of training should be expanded to chancery staff. Second, staff should be trained in the Policy and not simply in preventing and reporting sexual abuse. Third, the Safe Environment Programs Coordinator should be empowered to engage in compliance and not simply to assist in reporting.

Process for Handling Complaints Involving Sexual Abuse of Minors (Exhibit A)

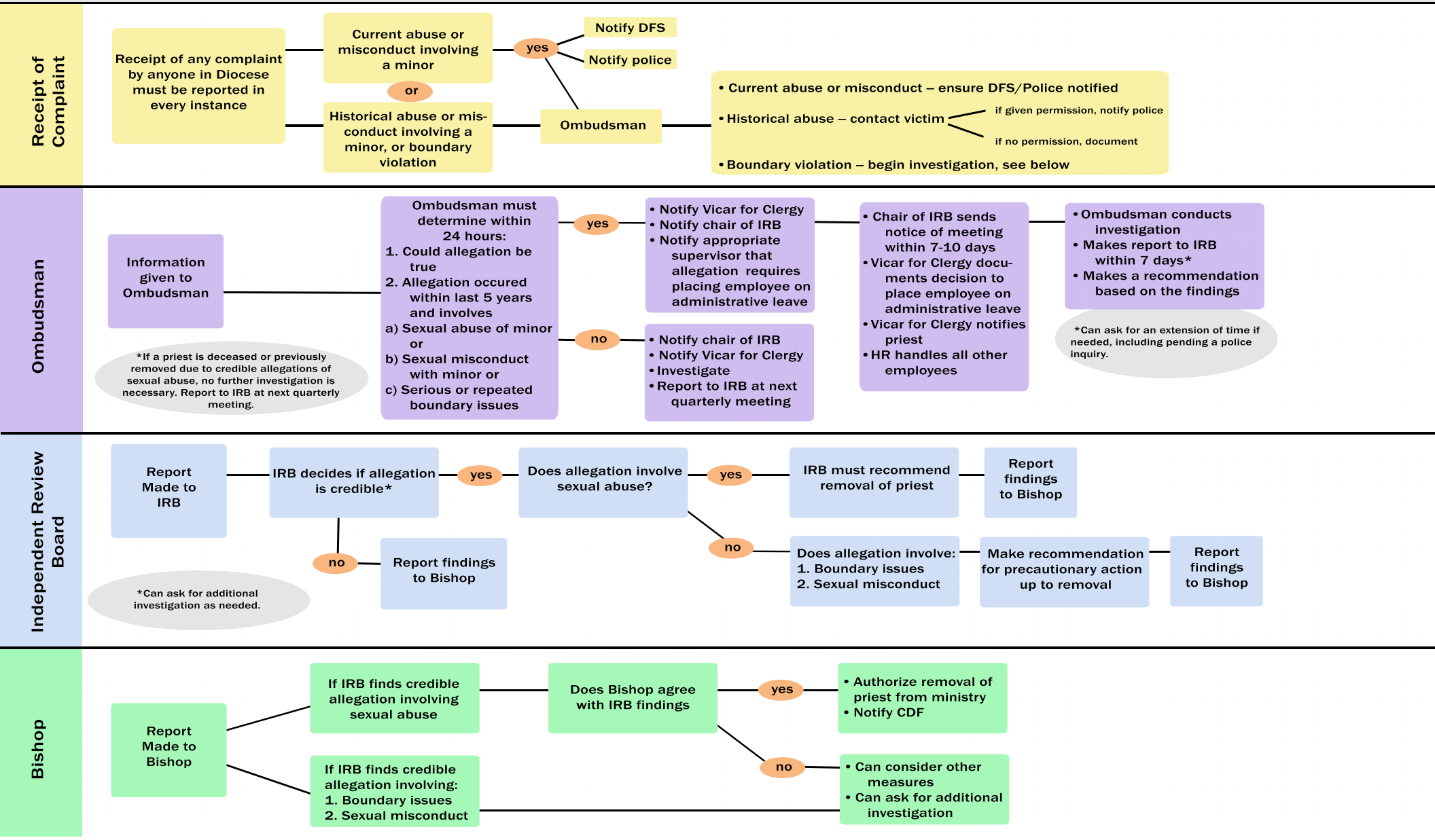

Exhibit B

The Conduct of the Investigation and Preparation of the Report

Graves Bartle Marcus & Garrett, LLC

This Report does not represent the views of any individual or entity other than counsel on the Firm's investigation team, which consisted of attorneys Todd P. Graves, Nathan F. Garrett, Edward D. Greim, and Kathleen F. Fisher, and an investigator, Thomas A. Nunemaker. The Firm has produced the report exclusively for and at the request of the Diocese in accordance with the terms of the Firm's engagement, and any decision to release the report publicly is the responsibility of the Diocese. The Firm has not prepared the Report in response to any third party investigation, inquiry or litigation.

This Report is based on the information available to the investigation team during the investigation. Certain information, including photographic images and other electronic data residing on devices used or owned by Fr. Shawn Ratigan, is in the possession of law enforcement and is not available to the Firm. However, the Firm believes that lack of access to this electronic data did not compromise its ability to making findings or conclusions.

In the course of the investigation, members of the team conducted interviews, and this report draws upon the team members' understanding of those interviews. It was not the practice of the investigation team to record or produce verbatim transcripts of any interviews. There were at least two team members present during each interview and, in utilizing information gathered from interviews, the team has taken into account the presence or absence of corroborating or conflicting evidence from other sources.

At times, the evidence available to the investigation team was contradictory, unclear or uncorroborated. The investigation team generally did not seek to make credibility determinations in such cases. In evaluating the information available to it, the investigation team used its best judgment but recognizes that others could reach different conclusions or ascribe different weight to particular information.

The report should be read as a whole; individual passages should be viewed in the context of the entire report. Wherever appropriate, the report indicates the source or nature of the information on which analysis has been based or conclusions have been reached. Where such references would be overly repetitive or might otherwise confuse the presentation, evidentiary references have been omitted.

Except in cases where the Report explicitly states that the Firm has formed a legal conclusion by applying facts to a specific legal standard, the Firm did not evaluate evidence against legal standards, including but not limited to standards regarding causation, liability, intent and the admissibility of evidence in court or other proceedings.