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**REPORT ON THE INVESTIGATION OF THE DIOCESE OF MANCHESTER**

**March 3, 2003**

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## **OVERVIEW OF INVESTIGATION**

### **I. INTRODUCTION**

This report is the final product of an intense investigation conducted by the New Hampshire Attorney General's Office ("AGO") into the manner in which the Roman Catholic Diocese of Manchester (the "Diocese") handled allegations that priests committed sexual assaults against minors – an investigation that established that the Diocese endangered the welfare of children. The State's investigation began in February 2002, when the Attorney General's Office ("AGO") contacted representatives from the Diocese of Manchester to inquire about the Diocese's policy and practice regarding allegations of sexual misconduct by clergy. That inquiry was prompted by news reports from Massachusetts regarding the Archdiocese's practice of reassigning priests after allegations of sexual abuse became known to the Archdiocese.

Following the initial inquiry to the Diocese, the investigation into the actions of the Diocese began by gathering records from the Diocese through grand jury subpoenas. The Diocese initially provided redacted records to the AGO, asserting various grounds for withholding or redacting information. The State filed a motion to compel production of complete, unredacted records. In June 2002, the Diocese complied with the grand jury subpoena, following an order by the Hillsborough County Superior Court (Barry, J.) granting the State's motion to compel and denying the Diocese's motion to reconsider.

The AGO received the unredacted records on June 20, 2002. Following the Superior Court's order enforcing the grand jury subpoena, the Diocese permitted prosecutors and investigators direct access to all records of the Diocese to ensure that the investigation obtained all relevant information.

The records obtained from the Diocese provided a basis for the AGO to begin speaking with witnesses. The Attorney General established a Task Force, consisting of three teams of two investigators from state, county, and local law enforcement agencies, to interview witnesses beginning on July 2, 2002. The investigation confirmed initial suspicions that in multiple cases the Diocese knew that a particular priest was sexually assaulting minors, the Diocese took inadequate or no action to protect these children within the parish, and that the priest subsequently committed additional acts of sexual abuse against children that the priest had contact with through the church.

Based on this evidence, the AGO was prepared to present indictments to the Hillsborough County Grand Jury on December 13, 2002, charging the Diocese of Manchester with multiple counts of endangering the welfare of a minor in violation of RSA 639:3. On December 10, 2002, the Diocese entered into an agreement with the State that ended the criminal proceedings. With an understanding of the evidence obtained by the State and the elements required to prove a criminal violation of the New Hampshire child endangerment statute, RSA 639:3, I, the Diocese acknowledged that the State had evidence likely to sustain a conviction against the Diocese for child endangerment.

The State decided not to present indictments to the grand jury for two reasons. First, the Diocese acknowledged that certain of its decisions concerning the assignment to ministry of priests who had abused minors in the past resulted in other minors being victimized. Second, the Diocese agreed to comply with several conditions that will safeguard children, ensure transparency of both its prior and future conduct, and create a system of accountability. The State feels that the agreement with the Diocese accomplished greater protection of children than would have resulted from a criminal trial and conviction.

- **Protection of Children:** Under the agreement, the Diocese is required to comply with mandatory reporting requirements for sexual abuse of minors (children under the age of eighteen) that are even more stringent than under current law. All Diocesan personnel will be required to acknowledge, in writing, their knowledge and understanding of these reporting requirements. The Diocese is obligated to train its personnel on issues of child sexual abuse. The Diocese will establish a centralized office to handle allegations of sexual abuse of minors, to establish policies and protocols for handling such cases, and to maintain all records and information relating to such matters.
- **Accountability:** The Diocese is obligated to submit to an annual audit by the AGO, focusing on the manner in which the Diocese has responded to allegations of sexual abuse of minors. It is also required to permit the AGO to review and comment on policies, protocols, and training materials relating to such matters. The agreement will be reviewed in five years upon a motion by the State. In addition, all terms of the agreement are enforceable by the Hillsborough County Superior Court.
- **Transparency:** The agreement also provides for a complete disclosure of the facts relating to the Diocese's past handling of sexual abuse allegations against priests. This report details the facts discovered by the State during its investigation of those cases that the Task Force investigated. In addition, the State is releasing copies of documents obtained from the Diocese, as well as investigative reports and other information gathered by the Task Force during the course of this investigation.

This report begins by canvassing the relevant criminal laws that applied to the facts uncovered by the Task Force during the investigation. Following a discussion of the law, the report details the facts concerning the Diocese's handling of allegations of sexual abuse against eight priests which the Task Force investigated between July 2, 2002 and December 10, 2002. The eight cases investigated by the Task Force represent only some of the Diocesan priests accused of sexual abuse. The Task Force has been unable to investigate the circumstances surrounding all cases for several reasons. As explained in more detail below, for some of the cases the statute of limitations expired on or about February 1, 2003, one year after the AGO first became aware of the potential criminal conduct by the Diocese. As a practical matter, the manpower resources were simply inadequate to investigate all cases in a

timely manner. The bulk of the investigation needed to be completed by November 1, 2002, in order to provide adequate time to formulate a decision about proceeding further in the case, and ultimately presenting the case to the grand jury before the statute of limitations expired.

## II. LEGAL ANALYSIS

### A. Potential Criminal Conduct Of The Diocese And/Or Its Agents

#### 1. *Child Endangerment – RSA 639:3*

The State investigated the Diocese of Manchester, as an organization, for the crime of Endangering the Welfare of a Child. “A person<sup>1</sup> is guilty of endangering the welfare of a child . . . if he knowingly endangers the welfare of a child under 18 years of age . . . by purposely violating a duty of care, protection or support he owes to such a child . . .” RSA 639:3, I. In order to prove that the Diocese or its agents violated this statute, the State would have been required to prove the following elements: (1) the Diocese knowingly endangered the welfare of a child under 18 years of age; and (2) the Diocese purposely violated a duty of care or protection that it owed to the child.

New Hampshire’s statute was adopted from the Model Penal Code § 230.4 (“MPC”). See Report of Commission to Recommend Codification of Criminal Laws at 81-82 (1969) (noting that RSA 639:3, I, was “taken from the Model Penal Code § 230.4”). The commentary to the MPC explains the purpose of this provision regarding endangering the welfare of a child:

[Section 230.4] reaches one who knowingly endangers the welfare of a child by violating a duty of care, protection, or support. This prohibition, punished by misdemeanor sanctions, includes a wide range of adult behavior that may have an adverse effect on the welfare of children, but is circumscribed by the requirements that a duty of care, protection, or support must exist in law, that the actor must knowingly endanger the welfare of the child by violation of that duty, and that the actor must be a parent, guardian, or other person supervising the welfare of the child.

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<sup>1</sup> Our criminal code defines the term “person” to include corporations and unincorporated associations. See RSA 625:11, II. The Roman Catholic Bishop of Manchester is by New Hampshire state law a “corporation sole.” N.H. Laws ch. 232 (1901). The purpose of this law appears to have been to ensure the orderly succession of property and liabilities from one Bishop to another without the need to probate church property each time a Bishop died. Id. The law subjects the Bishop and his successors to “all the liabilities and limitations imposed by the Public Statutes.” N.H. Laws 232:1. The charges the AGO intended to present would have been brought against the entity commonly known as the Diocese of Manchester.

The section further requires that the violation of duty actually endanger a child's welfare. . . . The requirement of actual endangerment eliminates from the scope of this offense de minimis failures of a parent or guardian that do not warrant legal redress. The statutory phrasing also excludes from coverage some less serious defaults for which civil sanctions should be sufficient. . . . The objective is to confine criminal punishment for endangering the welfare of children to consequential acts violative of some settled obligation springing from the supervisory relationship of actor to child.

Model Penal Code and Commentaries pt. II, § 230.4, comments 2 & 3, at 450-51 (1980).

Although case law interpreting RSA 639:3 is limited in New Hampshire, cases from other states that have adopted provisions similar to RSA 639:3 provide information regarding the interpretation of New Hampshire's statute. Pennsylvania, for example, has adopted the MPC version of Endangering the Welfare of a Child that is similar to New Hampshire's statute. Pennsylvania courts have defined the state's burden of proof under that statute, as follows:

In order to sustain a conviction of this offense the Commonwealth must establish each of the following elements: 1) the accused is aware of his/her duty to protect the child; 2) the accused is aware that the child is in circumstances that could threaten the child's physical or psychological welfare; 3) the accused has either failed to act or has taken action so lame or meager that such actions cannot reasonably be expected to protect the child's welfare.

Commonwealth v. Mackert, 781 A.2d 178, 187 (Pa. Super. Ct. 2001).

The State intended to prove that the Diocese breached its duty when it learned of allegations of sexual assault and either did nothing to respond to the danger posed by the priest or took ineffective action, thereby permitting the priest to perpetrate subsequent assaults on children.

*(a) The Diocese Has A Duty Of Care To Child Parishioners*

The essential threshold issue under both RSA 639:3, I, and MPC § 230.4 is whether the Diocese owed a duty of care to its child parishioners. The commentary to the MPC notes that RSA 639:3, I, is, in fact, broader in this regard than the MPC. The MPC notes that New Hampshire's statute is not limited to a parent, guardian, or other person having supervisory control over the child, but includes anyone who owes the child a duty of care. See Model Penal Code and Commentaries pt. II, § 230.4, comment 4, at 452 n.39.

In order to be found guilty of Endangering the Welfare of a Child, the defendant must owe a legal duty to the child. "The duty itself need not be stated in the penal code but may

arise from contractual obligation, from settled principles of tort or family law, or from other legal sources.” Model Penal Code and Commentaries pt. II, § 230.4, comment 3, at 450-51.

The State was prepared to establish that the Diocese owes a duty of care to its minor parishioners, especially under circumstances in which a priest is entrusted to supervise the children. “As a general rule, a person has no affirmative duty to aid or protect another. Such a duty may arise, however, if a special relationship exists. The relation of the parties determines whether any duty to use due care is imposed by law upon one party for the benefit of another. If there is no relationship, there is no duty.” Marquay v. Eno, 139 N.H. 708, 716 (1995) (citations and quotation omitted). “Whether a duty can be imposed upon an entity for the care and protection of a person is a question of law.” Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999).

A fiduciary relationship has been defined as a comprehensive term and exists wherever influence has been acquired and abused or confidence has been reposed and betrayed. A fiduciary relation does not depend upon some technical relation created by, or defined in, law. It may exist under a variety of circumstances, and does exist in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence.

Id. (quotations omitted). The Court in Marquay v. Eno recognized that a duty of care exists for “[o]ne who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection . . . .” 139 N.H. at 717 (quotation omitted) (emphasis added).

In Marquay v. Eno, the New Hampshire Supreme Court considered whether a fiduciary relationship existed between students and certain employees of the school where the students were being educated. Marquay involved a civil lawsuit filed by three high school girls who were assaulted by certain teachers and coaches. 139 N.H. at 711. The Court held that the school owed a duty of care to the children who attend the school to protect them against sexual abuse by its employees. Id. at 717. The Court further held that this duty of care extended to the principal or superintendent of the school who was responsible for overseeing all aspects of the school’s operation. Id. at 718. The Court went on to hold that a school had a duty not to hire or retain any employee who the school knew had a propensity for sexually abusing students. Id. at 720. The school could be held civilly liable if the plaintiffs could prove a causal relationship between the retention of the offending employee and the sexual abuse suffered by the victim. Id.

While New Hampshire courts have not specifically addressed the issue of whether a church owes a duty of care to its child parishioners, courts in other jurisdictions have held that a Roman Catholic diocese has a fiduciary relationship with its parishioners. See Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 429-430 (2d Cir. 1999) (upholding jury finding that a fiduciary relationship existed between the Diocese and

child/victim of sexual assault and rejecting Diocese's claim that the victim was merely one of 300,000 parishioners to whom it owed no particular duty). In light of the reasoning in Marquay, the State believed that it could have established that the Diocese owed a duty of care to the minor parishioners who were victims of sexual abuse in the cases investigated by the State.

*(b) The Diocese Knowingly Endangered Children*

The specific facts supporting a conclusion that the Diocese acted "knowingly" will be addressed in subsequent memoranda in the context of each case. However, at this juncture it is appropriate to address some generally applicable principles that will apply across the board to each of the charges. In some instances the Diocese took some steps to address complaints that a priest had molested children, including referring the priest to counseling. The State was prepared to prove that the steps taken by the Diocese were so ineffective that they did not negate the fact that the Diocese "knowingly" endangered with welfare of a minor. In doing so, the State would have relied on Commonwealth v. Cardwell, 515 A.2d 311 (Pa. Super. Ct. 1986), in which a Pennsylvania court addressed the issue of the "knowing" endangerment of children under Pennsylvania's version of the statute, which closely tracks New Hampshire's crime. The Pennsylvania court upheld the defendant's conviction for endangering the welfare of a child based on the following facts:

The defendant lived in an apartment with her husband, Clyde, and her 11 year old daughter Alicia, who was Clyde's stepdaughter. Id. at 312. Clyde began sexually abusing Alicia in 1979. Id. The abuse ended in 1984. Id. The defendant did not clearly understand that Clyde was sexually abusing her daughter until November 1983. Id. In January and February 1984, the defendant wrote two letters to Clyde, informing him that she knew about the abuse, found it abhorrent, and indicated that she would not tolerate it. Id. In February 1984, the defendant moved some of her daughter's belonging out of the house into her mother's home and took steps to transfer Alicia to a school closer to her mother's home. Id. at 313. The defendant's efforts to remove Alicia from Clyde's presence, however, were frustrated when the defendant's mother's home burned to the ground. Id. After that, the defendant took no additional steps to protect her daughter from the sexual abuse until Alicia ran away from home in September 1984. Id.

The defendant was charged with endangering the welfare of a child pursuant to 18 Pa. Crim. Stat. Ann. § 4304, which mirrors the language of MPC § 230.4. The criminal complaint alleged that the defendant "was aware that Clyde Cardwell was having sex with [Alicia] and taking polaroid pictures of [Alicia] in various sexually explicit positions without reporting this to authorities." Id. at 313. After the defendant was convicted of the charge, she appealed, challenging the sufficiency of the evidence. Id.

The Pennsylvania appeals court recognized that the statute "involves the endangering of the physical or moral welfare of a child by an act or omission in violation of legal duty even though such legal duty does not itself carry a criminal sanction." Id. at 314 (quoting 1972 Official Comment to 18 Pa. Crim. Stat. Ann. § 4304 (Purdon's 1986)). The court

further recognized that the crime “was drawn broadly to cover a wide range of conduct in order to safeguard the welfare and security of children. It is to be given meaning by reference to the common sense of the community and the broad protective purpose for which it was enacted.” Id. at 314-15 (quotation omitted).

On appeal the defendant argued that because she took some steps to protect her daughter she did not have the intent to endanger the welfare of her child. Id. at 315. The court framed the issue as follows: “whether acts which are so feeble as to be ineffectual can negate intent.” Id. The Pennsylvania court then summarized what level of action a person is required to take in order to fulfill their duty of care:

The affirmative performance required by § 4304 cannot be met simply by showing any step at all toward preventing harm, however incomplete or ineffectual. An act which will negate intent is not necessarily one which will provide a successful outcome. However, the person charged with the duty of care is required to take steps that are reasonably calculated to achieve success. Otherwise, the meaning of “duty of care” is eviscerated.

Id. at 315.

The Cardwell court upheld the conviction, relying on the following factors: “the circumstances in which Alicia was being abused; that those circumstances endangered the welfare of the child; that [the defendant] owed a duty of care and protection to Alicia; that one remedy [the defendant] had was to remove Alicia from the house in which Clyde resided; and that [the defendant’s] ineffectiveness in removing Alicia from the house (or otherwise protecting her) meant that Alicia’s welfare continued to be endangered. This awareness is sufficient to establish intent beyond a reasonable doubt.” Id. at 316.

Based on this law and the facts discussed below, the State was prepared to prove that actions the Diocese took to address allegations of sexual abuse by clergy against minors was so ineffective that it did not negate the “knowing” mental state.

*(c) The Diocese Purposely Violated Its Duty of Care*

In comparison to MCP § 230.4 and other state statutes, a conviction under RSA 639:3, I requires proof of a heightened mens rea. The elements of RSA 639:3, I, are not entirely consistent with MPC § 230.4 or other state statutes, like Pennsylvania’s statute. RSA 639:3, I, imposes a heightened mens rea requirement that is not required for a conviction under other similar statutes. RSA 639:3, I, requires the State to prove that the defendant “purposely” violated its duty of care. “A person acts purposely with respect to a material element of an offense when his conscious object is to cause the result or engage in the conduct that comprises the element.” RSA 626:2, II(a).

State v. Portigue, 125 N.H. 352 (1984), is the only relevant New Hampshire decision interpreting the meaning of the endangering statute. In that case, the defendant knew that his

wife severely beat their child on a regular basis over several months. He took no action to report his wife because he did not want to get his wife in trouble. The beatings eventually lead to the death of the child. The defendant challenged the indictment, which charged him with a violation of RSA 639:3, I, because it alleged a course of conduct over time instead of identifying specific acts that constituted the endangering. The defendant also challenged the sufficiency of the evidence to support the conviction.

The Court held that RSA 639:3, I, outlaws the “purposeful disregard” of a duty of care that a person owes to a child and does not require the State to allege or prove specific acts that the defendant committed. Portigue, 125 N.H. at 360. The Court did not further define the level of care in that case. In rejecting the defendant’s sufficiency of the evidence claim, the Court noted that there was compelling evidence that the defendant was not only aware of the beatings but observed some of the beatings. Id. at 367. The Court observed: “We are left with the inescapable conclusion that the defendant must inevitably have discovered the injuries.” Id. Finally, the Court recognized that the defendant was aware of the egregious nature of the situation based on his own statements that he should have taken action or reported his wife but he did not want her to go to jail. Id. Based on this evidence, the Court concluded that the defendant was properly convicted for failing to protect his child from his own wife. This case, thus, recognizes that a person can be guilty of violating RSA 639:3, I, for failing to take effective steps to protect a child from the dangerous acts of another.

More importantly, with respect to the “purposely” element of the offense, the case recognizes that the defendant’s decision to protect his wife from prosecution instead of protecting the child from the abuse presented sufficient evidence to convict the defendant of violating RSA 639:3, I. The same theory applies to any charges brought against the Diocese. The State was prepared to prove that the Diocese consciously choose to protect itself and its priests from scandal, lawsuits, and criminal charges instead of protecting the minor parishioners under its care from continued sexual abuse by priests.

#### *(d) Tolling of the Statute of Limitations*

Endangering the Welfare of a Child is a misdemeanor offense. See RSA 639:3, V. A one-year statute of limitations typically applies to the charging of misdemeanor offenses. See RSA 625:8. There is an exception to the statute of limitations, however, for “any offense, a material element of which is either fraud or a breach of a fiduciary duty...” RSA 625:8, III(a). For offenses in which a breach of a fiduciary duty is a material element, the statute of limitations is tolled until one year after the discovery of the offense by an aggrieved party or their representative. See RSA 625:8, III(a).

In the cases investigated by the Task Force, the acts or omissions of the Diocese that would constitute the offense of endangerment took place many years ago. For the statute of limitations exception to apply in any particular case, the victim must have only discovered within the past year that the Diocese breached a duty owed to him/her. As a practical matter, this would mean that the victim of sexual assault by a priest was unaware that prior to the assault, the Diocese had knowledge of earlier accusations against the priest and that the

Diocese either did nothing or assigned the priest to a new ministry. Thus, the statute of limitation does not begin to run when the assault actually occurred, but when the victim discovered that the Diocese breached a duty of care that it owed to him/her.

Because the offense of Endangering the Welfare of a Child involves a breach of a duty of care, and the Diocese owes a fiduciary duty to its parishioners, the State was prepared to establish that the tolling provision of RSA 625:8, III(a) applied to the offenses, in this case. The New Hampshire Supreme Court has interpreted the concept of “fiduciary duty” to include those situations where there is a “special relationship” between the victim of sexual abuse and another person or entity (such as a school or college). Schneider, 144 N.H. at 463. While the crime of Endangering the Welfare of a Child does not specifically use the term “fiduciary duty” as a element of the offense, the State would have established, based on Schneider and Marquay, that the duty to provide care, support or protection (which is an element of RSA 639:3, I) is synonymous with the concept of a fiduciary duty, thus triggering the tolling provision of RSA 625:8, III(a).

*(e) Historical Perspective of the Diocese’s Conduct*

While the conduct investigated by the Task Force stretched back almost 40 years, New Hampshire has long been a leader in the protection of children. In the late 1970s, one commentator observed that “[i]n terms of encouraging the identification of neglected and abused children, New Hampshire is one of the most progressive states in the country.” Michael R. Chamberlain & Gerald M. Eaton, Protecting the Abused and Neglected Child, 19 N.H. B.J. 25, 38 (1977) (hereinafter “Chamberlain & Eaton”); see also Michael R. Chamberlain et al., PROTECTING THE ABUSED AND NEGLECTED CHILD: A HANDBOOK FOR PROTECTIVE SERVICE WORKERS 28-29 (1977) (hereinafter “HANDBOOK FOR PROTECTIVE SERVICE WORKERS”). Child molestation has always been a serious offense in this State. In 1971, New Hampshire enacted a comprehensive child abuse reporting law, that included the reporting of suspected cases of sexual abuse of children. See N.H. Laws 531:1 (1971); HANDBOOK FOR PROTECTIVE SERVICE WORKERS, supra at 26.

New Hampshire case law also supports the conclusion that society treated inappropriate sexual contact with minors as a serious matter for many decades. In State v. Cross, 111 N.H. 22 (1971), the New Hampshire Supreme Court upheld the defendant’s conviction for contributing to the delinquency of a minor for having sexual intercourse with a 16 year old girl in 1968. In State v. Vachon, 113 N.H. 239 (1973), rev’d on other grounds, 414 U.S. 478 (1974), the New Hampshire Supreme Court upheld the conviction of the defendant for selling a button that read “Copulation Not Masturbation” to a 14-year-old girl.<sup>2</sup> The girl’s priest saw the button, explained its meaning to her, and took it away. Vachon, 113

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<sup>2</sup> The defendant’s conviction was ultimately reversed by the United States Supreme Court on the grounds that there was no evidence that the defendant himself sold the button to the girl or knew that the button would be sold to the girl. The only evidence introduced was that the defendant owned the shop where the button was sold. The Court concluded that this was insufficient to hold the defendant personally liable for the crime of contributing to the delinquency of a minor.

N.H. at 241. The court concluded that the button was obscene and the defendant was properly found guilty for contributing to the delinquency of a minor. Id. at 242. The court reasoned that “the mere possession of the button could be injurious to the minor’s moral well-being by tending to convince her that copulation by a 14-year-old girl was an acceptable act. Similarly, the wearing of the pin could lead to immoral solicitations thereby endangering her morals and those of others.” Id. Thus, Cross and Vachon illustrate that sexual matters, even innocuous conduct by modern standards, involving minors was taken seriously in decades past.

## **2. *Contributing To The Delinquency Of A Minor – RSA 169:32***

The crime of Endangering the Welfare of a Child, RSA 639:3, did not exist as such until the enactment of the Criminal Code in 1973. See RSA 625:2, II (provision of the Criminal Code do not take affect until November 1, 1973). Prior to the enactment of this provision, the crime of Contributing to the Delinquency of a Minor, RSA 169:32 (Supp. 1972), afforded protection to children to the same extent as RSA 639:3. See Commission on the Codification of the Criminal Code 81 (comments to RSA 584:3). Thus, with respect to the Diocesan conduct that occurred prior to 1973, it is necessary to examine whether the actions of the Diocese met the elements of the crime of Contributing to the Delinquency of a Minor and whether the statute of limitations had run on that offense.

The crime of Contributing to the Delinquency of a Minor provided: “Any parent or guardian or person having custody or control of a child, or anyone else, who shall knowingly or willfully encourage, aid, cause, or abet, or connive at, or has knowingly or willfully done any act to produce, promote or contribute to the delinquency of such child” shall be guilty of a crime. RSA 169:32 (Supp. 1972) (emphasis added). According to the New Hampshire Supreme Court, the provisions of the statute must “be construed in the light of their intended purpose to protect minors from influence which might lead them to deportment injurious to their health or morals.” Vachon, 113 N.H. at 240.

As discussed above, the Supreme Court in Vachon held that it was a violation of the statute for a store owner to sell a 14 year old girl a button that encouraged copulation instead of masturbation. 113 N.H. at 242. If such an act could endanger the morals of a child, the acts of the Diocese in exposing children to a priest who was known to engage in inappropriate sexual conduct toward minors certainly “could lead to immoral solicitations thereby endangering [the child’s] morals and those of others.” Id. More than injuring the morals of a child, by aiding, abetting, or facilitating a situation where a priest could sexually assault a child, the Diocese injured the physical and mental health of that child. The Diocese’s conduct does not actually have to result in a formal finding that a child became delinquent as a result of its actions. It is sufficient that the Diocese’s conduct was “such as to endanger the health or morals of [the child] or others.” State v. Cross, 111 N.H. 22, 24 (1971).

Contributing to the Delinquency of a Minor was (and still is) a misdemeanor offense with a one year statute of limitations. RSA 169:32 (Supp. 1972); RSA 603:1 (1972). There is no applicable tolling provision that would extend the statute of limitations for the crime of

Contributing to the Delinquency of a Minor. As a result, the Diocese's responsibility for sexual assaults committed prior to November 1, 1973, was covered by the offense of Contributing to the Delinquency of a Minor and this conduct was outside the statute of limitations at the time the investigation began.

### **3. *Mandatory Reporting Of Child Abuse – RSA 169-C:29***

As noted above, in 1971 New Hampshire enacted a comprehensive child abuse reporting law that included the reporting of suspected cases of sexual abuse of children. See N.H. Laws 531:1 (1971). The purpose of the law was to protect children “who may be further threatened by the conduct of those responsible for their care and protection” by ensuring that child and family services “immediately investigate such cases and if necessary report them to the appropriate police authority thereby causing the social and protective services of the state to be brought to bear in an effort to protect the health and welfare of these children [and] prevent further neglect or abuse of these children . . . .” Id. (RSA 571:25)

The 1971 reporting law specifically required “[a]ny person having reason to suspect that a child under the age of eighteen has been neglected or abused, shall report the same” to the bureau of child and family services. Id. (RSA 571:26) (emphasis added). The law was designed to avoid allowing a person to make a subjective determination regarding whether a child was abused or neglected and, instead, left that decision to the Division of Welfare after it conducted an investigation. See HANDBOOK FOR PROTECTIVE SERVICE WORKERS, supra at 22-23, 24-25, 26-27.

The law specifically defined child abuse to include evidence of “sexual molestation.” N.H. Laws 531:1 (RSA 571:25-b). “Sexual molestation” is not specifically defined by statute. However, it appears that as early as 1959, courts understood sexual molestation to include touching a child on her breast and private parts over her clothing. See State v. Lizotte, 101 N.H. 494 (1959); see also State v. Deslites, 96 N.H. 245 (1950) (upholding conviction of engaging in unnatural and lascivious acts with a 14 year old boy who, apparently, engaged in the conduct voluntarily).

Under the law enacted in 1971, “the legal obligation to report suspected cases of child abuse and child neglect [was] not restricted to certain professional groups (i.e., teachers, physicians, social workers, etc.). In New Hampshire, every person, professional and lay person alike, who has reason to suspect that a child has been abused or neglected, must report that child to the division of welfare.” Chamberlain & Eaton, supra at 38 (emphasis in original); see also HANDBOOK FOR PROTECTIVE SERVICE WORKERS, supra at 28. The legislative history further emphasizes the scope of the reporting law. During the debate before a committee of the New Hampshire Senate, the following exchange took place between one of the senators and the prime sponsor of the bill, Rep. Gerry Parker:

Senator Koromilas: There is an obligation on the part of every person to report this?

Rep. Parker: That has the knowledge of abuse, yes. Any one who sees the molesting of a child SHOULD report it. Several states have moved in this manner. In the past, those who did make a report, nothing could be done about it.

Senator Koromilas: Are you suggesting that someone who doesn't make a report should be subject to a fine not less than \$200 and not more than \$500?

Rep. Parker: If a father inflicts abuse on the child and the mother refuses to report it, it is a denial of the right of the child for protection. The mother should be fined. If a neighbor sees this, he must report it. We as a society must move in this direction.

Mr. Hooker [Assistant Director of Social and Rehabilitation Service]: The present statute has a fine in it for reporting. Many people report anonymously abuse of children. We want the opportunity to review the situation to determine if the child is neglected or abused. Everyone who sees this should report it. The potential to handle this is difficult but the necessity for reporting is there.

Hearing on HB 911, Senate Comm. on Public Health, Welfare and State Institutions (June 17, 1971).

A person who failed to report was guilty of a violation and could be fined between \$200 and \$500. In 1973, the legislature increased the penalty to make it a misdemeanor for any person who failed to report suspected cases of child abuse. N.H. Laws 532:8 (1973) (RSA 169:45).

Thus, it is clear that as early as 1971, sexual molestation of any child under the age of 18 was treated seriously and the failure to take appropriate steps to protect children who were being sexually abused would result in serious penalties.

The evidence gathered during the investigation reveals instances where the Diocese "had reason to suspect," if not direct proof, that a child was being abused by a priest, yet, it did not report the conduct to the Department of Health and Human Services. There are, however, two obstacles to charging the Diocese with a failure to report. First, the offense is a misdemeanor. The State did not discover any instances of non-reporting within the one-year statute of limitation, nor is there a no tolling provision that would apply to stay the statute of limitations.

Second, there would also have been a practical problem with pursuing a charge of non-reporting. The Department of Health and Human Services does not permanently maintain records of reports of suspected cases of child abuse. Consequently, it would have been impossible to establish definitively in most cases that the Diocese did not make such a report. However, there appear to be instances where the Diocese suspected a priest sexually

assaulted a minor but did not report this to the child protection services. Even though this conduct may be outside the statute of limitations, it nonetheless provides evidence that the Diocese purposely violated its duty of care to parishioners. Evidence that the Diocese failed to report allegations of sexual abuse against minors may also have been admissible at a child endangerment trial to demonstrate the Diocese's consciousness of guilt – that it was aware of its own wrongdoing. In this way, the Diocese's failure to report could be viewed in the same way as a defendant's flight or efforts to tamper with witnesses – two instances where New Hampshire courts have permitted such evidence to demonstrate the defendant's consciousness of guilt with regard to the crime charge by showing that the defendant was trying to evade responsibility or avoid the truth about his conduct from coming to light.

#### ***4. Compounding – RSA 642:5***

“A person is guilty of a misdemeanor if he . . . confers, offers, or agrees to confer any benefit upon another as consideration for such person refraining from initiating or aiding in a criminal prosecution.” RSA 642:5.

The Task Force obtained information that Diocesan officials may have secured confidentiality agreements from victims of sexual assaults in return for civil settlements and other benefits such as providing counseling to victims. This evidence demonstrates that the Diocese required confidentiality in return for remuneration. In at least one instance, the investigation revealed that one of the reasons for the Diocese's insistence on a confidentiality agreement was to prevent the victim from speaking with law enforcement about the sexual offenses of the priest. Such conduct would support a charge that the Diocese engaged in compounding. As a misdemeanor, this offense carries a one-year statute of limitations. Because a breach of a duty of care is not an element of the offense, the tolling provision of RSA 625:8 does not apply. However, for the reasons stated above with respect to violations of the child abuse reporting law, evidence that the Diocese engaged in compounding may have been admissible on charges of Endangerment to show that the Diocese acted purposely and to demonstrate its consciousness of guilt.

#### ***5. Perjury, False Swearing, and Unsworn Falsification***

As discussed in the fact section of this report, the investigation uncovered instances where Diocesan officials made apparently false statements in the context of civil lawsuits and in the course of a presentencing investigation conducted by the Department of Corrections for the purpose of the sentencing of a Diocesan priest. This conduct may have constituted perjury, false swearing, or unsworn falsification.

A person is guilty of perjury “if in any official proceeding . . . [h]e makes a false material statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true . . . .” RSA 641:1, I(a). A person is guilty of false swearing if “[h]e makes a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and he does not believe the statement to be true if . . . [t]he falsification occurs in an official proceeding . . . or

... [t]he statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths . . . .” RSA 641:2, I. A person is guilty of unsworn falsification if “[w]ith the purpose to deceive a public servant in the performance of his official function, he . . . [m]akes any written false statement which he does not believe to be true . . . .” RSA 641:3, II.

It is unclear whether the statute of limitations has expired with respect to any of the false statements. Perjury is a Class B felony that has a six-year statute of limitations. RSA 625:8, I(b). False swearing and unsworn falsification are both misdemeanor offenses. Accordingly, a one year statute of limitations applies to these offenses. RSA 625:8, I(c). The one-year discovery provision, discussed above in the context of the statute of limitations for the offense of endangering the welfare of a minor, may be applicable to these offenses. RSA 625:8, III(a) permits the prosecution of an offense within one year of its discovery, where a material element of the offense is “fraud.” None of the three false-statement offenses discussed above have “fraud” as a literal element of the offense. However, it does not appear that RSA 625:8, III(a) requires such a narrow interpretation. Pennsylvania has a similar tolling provision. In Commonwealth v. Hawkins, 439 A.2d 748, 751 (Pa. Super. Ct. 1982), the court held that, for purposes of the tolling provision, “[f]raud is characterized as a false representation of a material matter made with knowledge of its falsity and with the intent to deceive.” The offenses of perjury, false swearing, and unsworn falsification appear to satisfy this definition of fraud. Accordingly, the statute of limitations on any false statements made by the Diocese or its agents may have been tolled until the discovery of the offenses. Even if the statute of limitations was not tolled, evidence that the Diocese made such false statements would likely have been admissible on charges of Child Endangerment to establish the purposeful conduct of the Diocese and to establish its consciousness of guilt.

## **B. Corporate Criminal Liability**

In New Hampshire, a “corporation may be held criminally responsible for criminal acts performed by its agents and employees on behalf of the corporation if the agents and employees were acting within the scope of their authority or their employment.” State v. Pinardville Athletic Club, 134 N.H. 462, 465 (1991) (refusing to require the State to demonstrate that the corporate board voted to permit gambling on its premises in order to find the corporation criminally liable). In order to be liable, the agents must have been acting within the scope of their actual or apparent authority. See State v. Zeta Chi Fraternity, 696 A.2d 530, 535 (N.H. 1997). Actual authority can be express or implied. See id. “Implied authority is the reasonable incident or construction of terms of express authority or results from acquiescence by the principal in a course of dealing by the agent.” Id. “Apparent authority can result when the principal fails to disapprove of the agent’s act or course of action so as to lead the public to believe that his agent possess authority to act . . . in the name of the principal.” Id. at 536 (quotations and citation omitted). “[A] corporation can be convicted for actions of its agents even if it expressly instructed the agents not to engage in the criminal conduct.” Id. at 535.

In this case, if Diocesan agents were acting in the scope of their actual or apparent authority at the time that they engaged in conduct that satisfies the elements of any of the offenses discussed above, the Diocese is equally responsible for the criminal offense. Under New Hampshire law there is no requirement that the Diocesan employee be a “high managerial agent” for the agent’s conduct to be attributable to the organization. Compare Zeta Chi, 142 N.H. at 21 (“The criminal conduct need not have been performed, authorized, ratified, adopted or tolerated by the corporation’s directors, officers or other high managerial agents in order to be chargeable to the corporation.”) (quotations and brackets omitted) with Model Penal Code § 2.07(1)(c) (corporation may only be convicted of an offense if the offense was “authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment”). Nonetheless, in the present case all of the decision-making with respect to the handling of sexually abusive priests was made by the Bishop of Manchester based on recommendations from the Auxiliary Bishop, the Vicar General, or the Chancellor. These are the highest offices within the administration of the Diocese of Manchester. Therefore, the State would have had little difficulty attributing the decisions and actions of these officials to the Diocese itself.

### **C. Proving Mens Rea For A Corporate Defendant**

This section will discuss the applicable law relating to proof of mens rea for corporate criminal defendants.

New Hampshire has adopted a very broad approach to corporate criminal responsibility. “A corporation may be held criminally liable for criminal acts performed on its behalf by agents or employees acting within the scope of their authority or employment.” Zeta Chi, 142 N.H. at 21. Zeta Chi illustrates the flexibility afforded to the State in proving the mental state of a corporate criminal defendant.

In Zeta Chi, a fraternity was convicted of selling alcohol to a minor during a “rush” event. Id. The organization challenged the sufficiency of evidence. The fraternity pointed out that its board of directors had voted to remove a vending machine that dispensed beer from the fraternity prior to the event and that the machine had actually been moved to a separate apartment that was at the back of the fraternity. Id. Despite these facts, the Court upheld the conviction, noting that “[a] corporation may be convicted for actions of its agents even if it expressly instructed the agents not to engage in the criminal conduct.” Id. (quotation omitted). The court noted that even though the machine had been moved, viewing all of the surrounding circumstances, the jury could have concluded that the fraternity as an organization gave tacit approval to the sale of alcohol during the rush event. Id. at 22.

The defendant specifically challenged the sufficiency of the evidence on the issue of the corporation’s mental state. The Court held that “[b]ecause the defendant is a corporation, its mental state depends on the knowledge of its agents. The corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their

failure to act accordingly.” Id. (citing and quoting United States v. T.I.M.E.-D.C., Inc., 381 F. Supp. 730, 738 (W.D. Va. 1974)).

The defendant in Zeta Chi was also convicted of engaging in prostitution, stemming from guests at the rush event paying prostitutes to engage in sexual activity. The fraternity challenged the sufficiency of the evidence on the element of whether the fraternity “knowingly” permitted the sex to occur at the party. 142 N.H. at 25. Specifically, the fraternity argued that it had no opportunity to manifest its lack of permission before the sex occurred because the stripper’s actions were unexpected. Id. The Court rejected this argument as well. It noted that the sex acts occurred more than once and that the fraternity president testified that he was in control of the party. Id. Based on this, the Court concluded that “even if the first act caught members of the fraternity by surprise, the jury could reasonably have inferred that the defendant knowingly permitted oral sex to occur from the defendant’s failure to prevent the subsequent conduct.” Id.

In upholding the conviction, the New Hampshire Supreme Court cited United States v. Bank of New England, N.A., 821 F.2d 844, 856 (1st Cir.), cert. denied, 484 U.S. 943 (1987), with respect to corporate mens rea. See Zeta Chi, 142 N.H. at 22, 25. Bank of New England is a seminal case regarding the mental state for corporate criminal liability.

The defendant, the Bank of New England, was convicted of willfully violating the Currency Transaction Reporting Act that requires a financial institution to report all instances where a customer engages in a currency transfer involving more than \$10,000 in cash. The defendant challenged the jury instructions, arguing that the court’s instruction eliminated the government’s need to prove that the corporation acted willfully. 821 F.2d at 854. The defendant first challenged the jury instruction regarding “collective knowledge.” Id. at 855. The court instructed the jury that it could consider the bank as an institution and conclude that its knowledge regarding the currency reporting law “is the sum of the knowledge of all of the employees. That is, the bank’s knowledge is the totality of what all of the employees know within the scope of their employment. . . .” Id. The bank further challenged the “willful blindness” instruction that allowed the jury to find that the defendant knew of the violation if the jury found that the bank failed to learn its obligation to file reports under the CTR law because of “some flagrant organizational indifference.” Id. The bank argued that the combination of these instructions eliminated the requirement that the jury find that the defendant violated a known legal duty. Id. at 856. Instead, the defendant argued, the instructions allowed the jury to convict the bank “for negligently maintaining a poor communications network that prevented consolidation of the information held by its various employees.” Id.

The First Circuit rejected the bank’s challenges to the jury instructions. The court reasoned that the collective knowledge instruction was appropriate in the context of corporate criminal liability because “[c]orporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation’s knowledge of a particular operation.” Id. The court held: “A corporation cannot plead innocence by asserting that the information obtained by

several employees was not acquired by any one individual who then would have comprehended its full import. Rather the corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their failure to act accordingly.” Id. (quoting T.I.M.E.-D.C., Inc., 381 F. Supp. at 738).

The First Circuit also rejected the bank’s challenge to the willful blindness instruction. The court gave short shrift to the defendant’s argument, reasoning that the trial court’s instructions taken as a whole adequately informed the jury that they could not convict the bank for mere “accidental, mistaken, or inadvertent acts or omissions.” Bank of New England, 821 F.2d at 856. Rather, the jury was required to find that the bank acted with “flagrant indifference . . . toward its reporting obligations.” Id.

The concept of “willful blindness” to prove that a defendant acted knowingly is well-settled. One of the seminal cases recognizing this concept is United States v. Jewell, 532 F.2d 697 (9th Cir. 1976). In that case, the defendant was charged with knowingly transporting marijuana into the United States. Id. at 698. The defendant claimed that he did not know that the drugs were in the car he was driving. Id. The trial court instructed the jury as follows: “The Government can complete their burden of proof by proving, beyond a reasonable doubt, that if the defendant was not actually aware that there was marijuana in the vehicle he was driving when he entered the United States his ignorance in that regard was solely and entirely a result of his having made a conscious purpose to disregard the nature of that which was in the vehicle, with a conscious purpose to avoid learning the truth.” Id. at 700. The Ninth Circuit upheld the instruction, recognizing that the concept of willful blindness as a substitute for actual knowledge has been accepted for more than 100 years. Id. The court cited an unbroken line of authority approving of the concept of “deliberate ignorance” under criminal statutes prohibiting “knowing” conduct. Id. at 702-03 (citing cases).

This line of cases has been carried up to the present. While the New Hampshire Supreme Court has never specifically addressed the validity of the “willful blindness” instruction,<sup>3</sup> as noted above, the Court in Zeta Chi cited Bank of New England several times with approval. 142 N.H. at 22, 25. Moreover, the First Circuit has continued to endorse the concept of willful blindness as a substitute for actual knowledge. See United States v. Singh, 222 F.3d 6, 11-12 (1st Cir. 2000). In United States v. Coviello, 225 F.2d 54, 70 (1st Cir. 2000), the court held that a willful blindness instruction is appropriate if the following elements are met: “[1] a defendant claims a lack of knowledge; [2] the facts suggest a conscious course of deliberate ignorance, and [3] the instruction, taken as a whole, cannot be misunderstood as mandating an inference of knowledge.” The court further held that “[i]n determining whether the facts suggest the type of deliberate avoidance warranting an instruction, we must consider whether the record evidence reveals ‘flags’ of suspicion that, uninvestigated, suggest willful blindness.” Id.

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<sup>3</sup> The willful blindness instruction is also known in other jurisdictions as the “Jewell instruction,” the “conscious avoidance instruction,” the “ostrich instruction,” or the “deliberate ignorance instruction.”

The concept of “willful blindness” as a means of proving that the defendant acted knowingly is consistent with New Hampshire law. RSA 626:2, II(b) defines the mental state of “knowingly” as follows: “A person acts knowingly with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such a nature or that such circumstances exist.” As a matter of public policy, “[t]he substantive justification for the rule is that deliberate ignorance and positive knowledge are equally culpable.” Jewell, 532 F.2d at 700. More importantly, however, in State v. Hall, No. 2000-735, slip op. (N.H. Sept. 30, 2002), the Supreme Court endorsed a definition of “knowingly” that would encompass the concept of willful blindness. In that case, the Court held that “a defendant acts knowingly when he is aware that it is practically certain that his conduct will cause a prohibited result.” Id. (emphasis added) (quotation omitted). Likewise, in Portigue, which involved the prosecution of the defendant for endangering the welfare of a child under RSA 639:3, I, the Court noted that there was compelling evidence that the defendant was not only aware of the beatings but observed some of the beatings. 125 N.H. at 367. The Court observed: “We are left with the inescapable conclusion that the defendant must inevitably have discovered the injuries.” Id. (emphasis added).

That a defendant be “practically certain” or “inevitably have discovered” that his conduct will cause the prohibited result is the same requirement that courts impose when they instruct a jury on willful blindness. See United States v. Lara-Velasquez, 919 F.2d 946, (5th Cir. 1990) (“The evidence at trial must raise two inferences: (1) the defendant was subjectively aware of a high probability of the existence of illegal conduct; and (2) the defendant purposely contrived to avoid learning of the illegal conduct. The first prong of this test protects a defendant from being convicted for what he should have known. . . . The defendant may be not convicted simply because he was foolish, stupid or negligent. In other words, the first prong permits a deliberate ignorance instruction only when the Government presents facts that support an inference that the particular defendant subjectively knew his act to be illegal and not when the Government presents facts that tend to support an inference that a reasonable person would have known the act to be illegal.”) (citation and footnote omitted).

The combination of the collective knowledge and willful blindness instructions approved in the Bank of New England case would have been important in the prosecution of the Diocese, to prove that it “knowingly” endangered children. With respect to the “collective knowledge” concept, the investigation revealed that in most cases multiple Diocesan personnel were involved over the course of years in the handling of allegations against a particular priest. While decisions with respect to the assignment of priests were always made at the top (usually, if not always, by the Bishop of Manchester), over the course of years different Bishops were involved in the assignment of an offending priest. For example, Bishop A may have become aware of a priest’s sexual misconduct with a minor and reassigned the priest to a new parish. That priest may have been reassigned to a new assignment sometime later by Bishop A’s successor, Bishop B. During that subsequent assignment the priest may have sexually assaulted an altar boy. The Diocese endangered that child when Bishop B placed that priest in a new parish without warning the parishioners of the dangers or taking any steps to supervise the priest’s actions. The fact that Bishop B did not subjectively know that a particular priest had engaged in acts of sexual misconduct with a

minor when he reassigned that priest does not absolve the Diocese of criminal responsibility. The Diocese is charged with the collective knowledge of all of its employees.

The policy behind this collective knowledge concept is sound. The Diocese should not be allowed to escape criminal responsibility because of Bishop A's failure to memorialize his knowledge of the sexual misconduct of a particular priest, or to pass that knowledge on to his successor, or Bishop B's failure to read the file to learn of the danger posed by a priest. As an organization, the Diocese has an obligation to take steps to ensure that full information regarding the dangers of a particular priest are known to those officials who had the responsibility of assigning priests. "[A] corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by any one individual employee who then would have comprehended its full import." T.I.M.E.-D.C., 381 F. Supp. at 738. The organization is held responsible for its failure to act on the collective knowledge of its employees. Id. It is for this very reason that the State's investigation focused on the institutional failings of the Diocese and not the criminal responsibility of particular Diocesan officials.

The State was also prepared to establish that in some instances the Diocese was willfully blind to the danger its priests posed to children. In certain instances, the priest admitted his sexual misconduct to the Bishop. The Bishop admonished a priest but took no action to restrict or otherwise monitor the priest's future activity to determine if the priest was reoffending. In other words, the Bishop made no effort to learn whether or not the priest posed a continuing danger to children. Thus, the Diocese exhibited a "flagrant indifference" to its obligations to protect children by engaging in a "conscious course of deliberate ignorance." Bank of New England, 821 F.2d at 856; Coviello, 225 F.3d at 70.

#### **D. First Amendment Considerations**

The State was prepared to establish that the First Amendment posed no barrier to the prosecution of the Diocese. It is well settled that the First Amendment does not provide "exemptions from a generally applicable criminal law." Employment Div. v. Smith, 494 U.S. 872, 884 (1990); see also In re Petition of Smith, 139 N.H. 299, 308 (1994) (citing Employment Div. v. Smith with approval). The United States Supreme Court has recognized that "[t]he government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." Smith, 494 U.S. at 889-90 (quotation omitted).

In the wake of the Supreme Court's decision in Smith, Congress enacted the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb et seq., ("RFRA"). See City of Boerne v. Flores, 521 U.S. 507, 512 (1997). This act requires that any time governmental action substantially burdens a religious practice the government must demonstrate a compelling governmental interest for that action and establish that the action was the least restrictive means available to accomplish the goal. Id. at 515-16. The United States Supreme Court has held that this statute is unconstitutional as it applies to action by state or local

governments. Id. at 535-36. Consequently, the test enunciated by the Supreme Court in Smith continues to apply to state action: all citizens are required to comply with generally applicable criminal laws so long as those laws are not motivated by a desire to burden the free exercise of religion.

The criminal offenses under investigation – child sexual assault, failure to report suspected child abuse, endangering the welfare of children – are “generally applicable prohibitions of socially harmful conduct.” See Smith, 494 U.S. 889-90. Accordingly, the Diocese’s actions are not protected by the First Amendment. Cf. Malicki v. Doe, No. SC01-179, 2002 Fla. LEXIS 434, \*26-27 (Fla. Mar. 14, 2002) (recognizing, in the context of a civil tort action, that the involvement of courts in cases of sexual abuse by clergy or the failure of the diocese to control a priest who engages in such abuse does not implicate the First Amendment).

### **III. OVERVIEW OF PUBLIC REPORT AND RELEASE OF DOCUMENTS**

Accompanying this public report are copies of the documents obtained from the Diocese pursuant to a grand jury subpoena, the release of which was authorized by the Diocese pursuant to the Agreement, and the investigative reports generated by the Task Force during its investigation. The records are being released pursuant to New Hampshire’s Right-To-Know law, RSA 91-A, in order to provide the public the opportunity to review the facts concerning the Diocese’s handling of allegations of child sexual abuse by priests over the last 40 years, as well as the manner in which the State conducted its investigation. The State believes that the release of this public report and the accompanying documents will help to protect minors in the future by educating the public about the dangers and devastating effects of child sexual assault, and reinforcing the need for immediate intervention in any case of suspected abuse.

As indicated earlier, the Task Force conducted a thorough investigation of the Diocese’s handling of eight priests who were the subject of allegations of child sexual abuse: Paul Aube, Albert Boulanger, Gerald Chalifour, Robert Densmore, Roger Fortier, Raymond Laferriere, Leo Landry, and Gordon MacRae. A narrative summary of the facts uncovered by that investigation follows. As discussed in more detail below, the cases involving a number of the priests could have formed the basis for criminal charges against the Diocese for endangering the welfare of a child. The State determined that it could not pursue criminal charges in the remaining cases, either because there was insufficient evidence to establish a criminal violation or the statute of limitations had expired.

While resource shortages prevented the State from conducting similar investigations of the allegations raised against nearly 40 other priests affiliated with the Diocese, it is confident, based on its review of the investigative materials and grand jury documents, that the eight cases detailed below fairly portray the Diocese’s response over time. Nonetheless, to achieve its objective of ensuring transparency of Diocesan conduct, the State is releasing all materials gathered during its investigations, including records relating to clergy that were

the subject of allegations of sexual abuse but were not the subject of Task Force scrutiny. The following priests' files are released along with this report:

**A. Priests Associated With The Diocese of Manchester**

Paul Aube  
Wilfred Bombardier  
Aimee Boiselle  
Albert Boulanger  
Albion Bulger  
Gerald Chalifour  
Richard Connors<sup>4</sup>  
Alfred Constant  
Joseph Cote  
Roland Cote<sup>5</sup>  
Robert Densmore  
Karl Dowd  
Eduard Duval  
Mark Fleming  
Fr. Fournier  
Roger Fortier  
A.M. Hilary  
Alfred Jannetta  
Raymond Laferriere  
Conrad LaForest  
Francis Lamothe  
Leo Landry  
Richard Lower  
Gordon MacRae  
Andy Meehan  
Francis Mullen  
John Nolin  
Donald Osgood  
Eugene Pelletier

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<sup>4</sup> This file does not contain allegations that Connors sexually assaulted minors. The file, however, does contain allegations that Connors possessed pornography, which a witness described appearing to depict teenage boys.

<sup>5</sup> Much of the information in this file was obtained from the Sullivan County Attorney's Office based on an investigation conducted by that office of allegations that Roland Cote had engaged in sexual assault of a minor. The Sullivan County Attorney's Office concluded that the victim was at least 16 years old at the time the sexual conduct with Cote occurred. Because the county attorney's office concluded that Cote could not be prosecuted, that office did not determine whether the victim was under 18 years of age. According to the Diocese, the victim subsequently informed them that he was at least 18 years old when the conduct occurred. There was at least one right-to-know request for this file that was presented before the conclusion of the investigation. Although there appears to be evidence that the person who made the allegations was no longer a minor when he engaged in sexual conduct with Cote, due to the pre-existing right-to-know request, this file had been included in this public release of documents.

Philip Petit  
John Poirier  
Leo Shea  
John T. Sullivan  
Roland Tancrede  
Romeo Valliere  
Roland Violette

**B. Members of Religious Orders**

Roger Argencourt  
Guy Beaulieu  
L. Morel  
John Voglio  
Patrick Walsh

**C. Massachusetts Priests**

Richard Barry  
Robert Burgess  
Robert Burns  
Frederick Cartier  
Dennis Conte  
Richard Coughlin  
Fr. Dennis  
Thomas Donnelly  
Robert Gale  
John Hanlon  
Bernard Lane  
Jon Martin  
Ronald Paquin  
George Rosenkrantz  
Frederick Ryan  
Paul Shanley  
Ernest Tourigney  
Robert Towner  
Robert (aka John) Turnbull

## PAUL AUBE

### **I. BACKGROUND**

Paul Aube is a sixty-one-year-old priest who was placed on administrative leave by the Diocese in 1994. (B179; 181; 4796). He was ordained in 1970. The Diocese first assigned Aube to St. Mary's in Claremont, followed by assignments to the Guardian Angel in Berlin, St. Aloysius in Nashua, Holy Rosary in Rochester, Concord Hospital, and the Elliot Hospital in Manchester. (B963).

The Diocese has stated that it first learned that Aube engaged in sexual misconduct with a minor in August of 1981, when a Diocesan official received a report from a parent alleging that Aube had improper sexual contact with her minor son in Rochester, New Hampshire. (B963).

However, in December of 1975 the Nashua Police Department found Aube in his car on a secluded road in South Nashua engaged in sexual contact with John Doe LII.<sup>1</sup> It appears that Doe LII was 18 years old at the time. Doe LII had been a member of Aube's youth group at Saint Aloysius in Nashua. The Diocese was aware of this incident and referred Aube to Dr. Edward Connors for a psychological evaluation and a report. Dr. Connors provided the Diocese with a report based on his work with Aube. That report raises concerns with regard to Aube's continued contact with minors. In addition to Dr. Connors' report to the Diocese, Aube stated that he personally reported to Bishop Gendron that he no longer wanted to engage in parish ministry or conduct youth work. Despite Dr. Connors' report and Aube's request, the Diocese reassigned Aube, in September of 1976, to the Holy Rosary parish in Rochester to engage in youth ministry.

In the Summer of 1981, the Diocese received a report that Aube sexually assaulted John Doe LIII in Aube's rectory room at Holy Rosary. Doe LIII was 16 at the time of the assault. Thereafter, the Diocese referred Aube to Dr. Ernest Desjardins for counseling. It also transferred Aube to Concord Hospital to work as the hospital chaplain based on Dr. Desjardins' recommendation. Shortly after making this assignment, the Diocese learned that Aube was continuing to have contact with John Doe LIV, a minor from Rochester. The Task Force recently interviewed Doe LIV. Doe LIV stated that Aube engaged in sexual contact with him both before and after the Diocese transferred Aube from Rochester to Concord Hospital. Additionally, letters to the Diocese from families of patients at Concord Hospital establish that Aube was continuing to have contact with minors even after his assignment to hospital ministry.

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<sup>1</sup> All victims and their family members have been identified by the pseudonym "John Doe" or "Jane Doe" followed by a roman number. There is no significance to the roman numeric designation assigned to a particular victim or witness. It is simply a mechanism to distinguish one individual from another.

In 1983, the Diocese assigned Aube to the Elliot Hospital in Manchester. Earlier this year, the Task Force received a report from John Doe LV, alleging that Aube assaulted him in the chapel at the Elliot Hospital, when he was 16 years old.

Separately, the Diocese and the Task Force have received numerous reports that Aube engaged in sexual contact with minors during his parish assignments in Berlin, Nashua, Rochester, and Manchester.

Father Aube participated in a tape-recorded interview with members the Task Force on August 14, 2002 pursuant to a grant of immunity -- that the State would not use information provided by Aube during the interview sessions against him. This grant of immunity does not prevent the State from prosecuting Aube based on any meritorious cases of sexual assault committed by Aube that fall within the applicable statute of limitations.

Based on the investigation conducted by the Task Force, the State was prepared to present one or more indictments to the Hillsborough County Grand Jury charging the Diocese of Manchester with Endangering the Welfare of Children.

This Memorandum addresses the following topics. Aube's history as a priest with the Diocese of Manchester beginning with his formation and continuing through his various Diocesan assignments, sexual assaults perpetrated by Aube against minors, sexual assaults that were reported to the Diocese, and the Diocesan response to allegations against Aube -- including his referrals for psychological evaluations and reassignments to new posts.

## **II. FATHER AUBE'S FORMATION**

Diocesan concerns for Aube's mental health date back to his early days at the Queen of Peace Seminary in Jaffrey Center, New Hampshire. The seminary reported that "Mr. Aube seems to have psychological problems. He tries very hard, but seems always to be under strain to prove himself and be accepted." (B2836). On August 23, 1968, Thomas Hansberry, the Vicar General of the Manchester Diocese, drafted a letter to Doctor J. Edward Connors, a mental health treatment provider, stating: "The faculty feel that he [Aube] cannot stand up under duress and would probably crack under pressure . . . his ideas are somewhat confused, his self-control not the best . . . I personally fear that he is a poor risk but the Bishop wishes to have you check him before making a final decision concerning his advancement." (B4). After meeting with Aube, Dr. Connors concluded: "There are a number of distinctive personality characteristics, in that he attempts to create the impression of an extroverted, outgoing individual, but underneath is a person capable of strong emotional reactions, whose anxiety level is stimulated easily by objects and events in this environment. In other words, he is capable of strong emotional reactions and this may result or be manifested by occasional compulsive behavior." (B6).

Despite these general concerns with regard to Aube, this early psychological evaluation does not specifically state that Aube may be a risk for sexual misconduct with minors. According to Aube, his early referral to Dr. Connors was not due to any concern for

his sexual behavior. Aube speculated that the Diocese may have referred him to Dr. Connors because of his practice of isolating himself to his seminary room to conduct his studies and overly enjoying himself during times of recreation. (B4798). Alternatively, he speculated that the Diocese may have stated that he had a “control” issue because he was very opinionated during his days at the seminary. (B4806).

When the Diocese received this report relating to Aube, Father Hansberry forward it to the Queen of Peace Seminary along with a cover letter that cautioned: “I think we should remember that this young man had a very frustrating experience with the Servites in Canada.” (B8). It is not exactly clear what this letter is referring to. When asked, Aube stated that nothing of a sexual nature occurred when he was serving the Servites in Canada. However, he explained that he became frustrated in Canada because he was approached about becoming a permanent Deacon instead of a priest, and he objected to that career path. (B4808).

After completing his work at the seminary, Aube filled out a form stating his preferences with regard to his first assignment as a priest -- he was asked to identify the “specialized fields” in which he was interested in working. He stated his strongest preferences for being a college chaplain, military chaplain, and engaging in youth work. (B2898).

### **III. AUBE’S FIRST ASSIGNMENT TO ST. MARY’S PARISH IN CLAREMONT**

Aube’s first assignment was to Saint Mary’s parish in Claremont, New Hampshire between June of 1970 and Fall of 1973. (B4809). His responsibilities included youth ministry. (B4809). During Aube’s interview, he admitted to engaging in sexual misconduct with at least three boys between the ages of 16 and 18 during his time at St. Mary’s -- John Doe LVI, John Doe LVII, and John Doe LVIII. (B4810-4812). Aube does not know whether any of these boys reported his abuse to the Diocese. Documents secured from the Diocese do not indicate that it received complaints from any of these three individuals. Additionally, the Task Force recently received a complaint from John Doe LIX, alleging that Aube sexually assaulted him when he was a parishioner at St. Mary’s, beginning when he was 12 years old. (B7289).

#### **A. John Doe LVI -- Claremont, NH**

Aube explained that he got to know John Doe LVI a few days after he was assigned to Saint Mary’s parish in Claremont in 1970. (B4813; 963). Doe LVI came to talk to Aube in his office at the church. Doe LVI confided in Aube that he had been molested. (B4813). He further admitted to Aube that he had been involved in “homosexual activities.” (B4813). Eventually, Aube became involved in a sexual relationship with Doe LVI. Shortly after John Doe LVI’s 18th birthday, they took a trip to Massachusetts, stayed overnight in the Town of Garner, and slept together. (B4811). Aube fondled Doe LVI’s genitals. (B4817-18). For the next two to three years, Aube and Doe LVI had several sexual encounters. They all

involved fondling. Their relationship extended for a short time after Aube was transferred to Berlin in 1973. (B4818; 963).

In late 1972 or early 1973, as his relationship with Doe LVI continued, Aube grew concerned about his own conduct and confided in Father Hector Lamontange, his pastor at Saint Mary's. (B4813; 4823-24). Father Lamontange is now deceased. (B4813). Aube explained to Father Lamontange that he had sexual contact with John Doe LVI and admitted that he was "affectionately and emotionally" attracted to Doe LVI. (B4814). According to Aube, Father Lamontange did not condemn his behavior and responded only by saying "[w]ell, Paul, we're all human you know. We all have weaknesses." (B4814). As far as Aube is aware, Father Lamontange never reported his behavior to Diocesan officials. (B4815).

Aube explained that Doe LVI later became a priest, but left the priesthood to get married. (B4842). Doe LVI invited Aube to his ordination ceremony. At one point, Doe LVI confronted Aube about their sexual contact in Claremont. (B4842).

#### **B. John Doe LVII (John Doe LVI's younger brother) -- Vermont:**

Aube described that at some point during his assignment in Claremont he engaged in sexual contact with John Doe LVII, Doe LVI's younger brother. Aube stated that when Doe LVII was approximately 18 years old, Aube took him on a trip to visit Doe LVI in Vermont. (B4818). During the trip, Aube stated that he engaged in sexual contact with John Doe LVII -- "fondling occurred" as well as "mutual masturbation." (B4820).<sup>2</sup>

#### **C. John Doe LVIII -- Claremont, NH**

Aube explained that he got to know John Doe LVIII through John Doe LVI and John Doe LVII. Doe LVIII was 16 or 17 when they began to have sexual contact. (B4819). According to Aube, Doe LVIII would visit him at the rectory, ask Aube if he could get "turned on" by Aube, and they would lie down together. (B4820). On a few occasions, they were naked together. (B4820). They would lie on top of each other. Aube stated that he may have reached "orgasm" when they "embrac[ed] each other very affectionately naked." (B4820).

Task Force investigators interviewed John Doe LVIII on October 30, 2002. (B9329; 9330). He explained that he became an altar boy at St. Mary's parish when he was in seventh or eighth grade, between approximately 1968 and 1970. (B9331-32). As an altar boy, he got to know Aube. (B9332). He was also involved in the Catholic Youth Organization ("CYO") and Aube was the leader of the organization. (B9333). When he was

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<sup>2</sup> Task Force investigators spoke with John Doe LVII, but he stated that he did not want to participate in an interview with this Office. (B9323). John Doe LVII also contacted his brother, Doe LVI. Through his brother, Doe LVI also indicated that he did not want to speak with investigators. (B9323). However, John Doe LVII explained that neither he or his brother ever reported their sexual abuse. (B9323).

approximately twelve or thirteen years old, Aube had sexual contact with him. (B9333). Aube began by kissing him and the sexual contact progressed from there. (B9333). Aube touched his genitals and he touched Aube's genitals. (B9333). These encounters occurred on as many as twenty occasions over a period of three to four years. (B9334). This sexual contact occurred in Aube's living quarters in the church rectory, in Aube's car, and at Aube's parent's home in Berlin during trips with other adolescents. (B9335-36). Aube would bring other kids to his parent's home to spend the night. (B9335). Doe LVIII explained that his encounters with Aube began when Aube encouraged him to give "open confessions." (B9334). These discussions occurred during face-to-face meetings with Aube, rather than in a confessional. (B9335). During these conversations, Aube would ask him about any sexual encounters he had when he was a child. (B9334-35). Doe LVIII explained to investigators that he is homosexual and believes that Aube picked up on his homosexuality even before he did. (B9336). Doe LVIII believes that Aube "played on" this fact to take advantage of him. (B9336). Doe LVIII did not report this conduct until recently when he sent a letter to Bishop McCormack in light of articles he read in the paper relating to sexual abuse perpetrated by clergy. (B9340-43).

#### **D. John Doe LIX -- Claremont, NH**

On September 18, 2002, Task Force investigators interviewed John Doe LIX. (B7284). Doe LIX explained that he grew up in Claremont, NH and was a parishioner at St. Mary's parish. When he was 12 years old, he met Aube. (B7285). His father had died and his mother thought that he needed a male mentor. She invited Aube to their home and asked Aube to help her son. (B7285-86). Aube took Doe LIX fishing, the two began talking, and Aube promised that he would not leave him like his father had. (B7286). He began seeing Aube three to four times a week, plus Sundays. (B7286). After school, he would go to the rectory to see Aube. (B7286). They would play basketball and go for rides in Aube's car. (B7286).

About two to three weeks into their friendship, Aube asked Doe LIX if he wanted to wrestle. (B7287). Doe LIX agreed. Aube pinned him down and touched his "butt" and, ultimately, touched his "crotch." (B7287). On one occasion, Doe LIX joined Aube on a ride in Aube's Saab down to the Connecticut River. Aube asked him if he knew what masturbation was and explained that it was a way to "relieve a lot of stress." (B7288). Aube then began to masturbate Doe LIX. (B7288). Doe LIX was 12 years old at the time. (B7288). This type of contact occurred on several occasions and Aube explained that it was their "little secret." (B7289). These encounters occurred in the rectory, in Aube's car, and during a camping trip to a State Park in Ascutney, Vermont. (B7289). Aube also asked Doe LIX to masturbate him and Doe LIX complied. (B7289). During the camping trip in Vermont, Aube asked Doe LIX to perform oral sex on him. (B7290). Doe LIX was scared, but he complied. (B7290). On subsequent occasions, Doe LIX performed oral sex on Aube in Aube's car, in the church rectory, and in the locker room at the gym at St. Mary's. (B7290). These encounters occurred over the course of approximately one month during the summer of 1970. (B7291; 7295). Eventually, Doe LIX protested these encounters, but Aube would physically "hurt" him until he complied. (B7291). Specifically, Aube would bend

Doe LIX's finger and wrist back and put pressure on his fingernail. (B7291-92). On a couple of occasions, Aube performed oral sex on him. (B7292). On one occasion, when Aube bent his wrist back, Doe LIX threatened Aube that he would tell his mother. (B7292). Aube told Doe LIX that his mother would not believe him because Aube was a priest. (B7292). Ultimately, Doe LIX did tell his mother that he did not want to see Aube anymore, but he did not provide the details of Aube's assaults. (B7292-93). Doe LIX told his mother that Aube hurt him, but his mother slapped him and told him not to lie about the church. (B7293). Following Doe LIX's complaint, his mother met with Father Provost, but Doe LIX was not present for the conversation and does not know what was said. (B7293).<sup>3</sup>

During his freshman year in high school, Doe LIX attended boarding school in Enfield. (B7296). In the Spring of 1973, Doe LIX confided in Father Roger Plante at the school, explaining that there was a priest in Claremont that touched him and hurt him. (B7297; 7298). Doe LIX does not recall if he told Father Plante that he was referring to Aube. (B7297). Father Plante told Doe LIX that what he described was a tragedy, but that they shouldn't talk about the issue any further. (B7297).<sup>4</sup>

#### **IV. FATHER AUBE'S TRANSFER TO THE GUARDIAN ANGEL IN BERLIN**

The Diocese transferred Aube to the Guardian Angel Parish in Berlin in the Fall of 1973. (B4823-25; 963). As far as Aube was aware, his transfer was not related to his admissions to Father Lamontagne regarding his sexual contact with John Doe LVI in Claremont. (B4824). Aube was responsible for organizing youth ministry in Berlin. (B4825). He served under the late Father Robert Simard. (B4824).

Aube apparently had some health problems in 1974, when he was in Berlin. Father Aube's treating physician, Dr. Alberto Miyara, examined Aube in October of 1974 and then wrote a letter of concern to Father Hansberry at the Diocese, stating: "I have today examined Father Paul Aube and found him in worse condition than last year at this time." (B9). Dr. Miyara recommended a change in "working milieu" and/or a two month leave of absence for "rest and recuperation." (B9). There is no mention in the letter of the nature of the problem from which Aube was suffering from at the time. On behalf of the Diocese, Father Hansberry responded to Dr. Miyara, stating: "He has a tendency to take on too many extra-curricular activities which are really not necessary." (B10). Aube recalls that he visited Dr. Miyara for ulcers, but that he did not talk about any of his sexual problems. (B4816).

Aube admitted to having inappropriate sexual contact with at least five parishioners between the ages of 16 and 18 during the years he was assigned to the parish in Berlin --

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<sup>3</sup> The Task Force confirmed that Father Ernest Provost was the pastor in Claremont in the 1970's. He is now deceased. (B7076).

<sup>4</sup> On October 8, 2002, Task Force investigators interviewed Father Roger Plante. Father Plante confirmed that he was the headmaster of the boarding school between 1965 and 1974. (B7311). He recalled Doe LIX's name, but could not remember whether Doe LIX ever disclosed to him that he had been sexually assaulted by a priest in Claremont. (B7311). Father Plante also explained that he did not report to the Diocese of Manchester when he was associated with LaSalette School. (B7311).

John Doe LX, John Doe LXI, John Doe LXII, John Doe LXIII, and Doe LXIII's cousin. The documents from the Diocese do not reflect that it was aware of this abuse at the time that it occurred. To Aube's knowledge, Father Simard never learned of his sexual encounters with minors from Berlin. (B4829).

On July 31, 2002, Task Force Investigators interviewed John Doe LX (born in February of 1956). (B2439; 2440). Doe LX explained the following. He grew up in Berlin, went to Catholic schools, and was an active member of the Guardian Angel parish. (B2440). He served as an altar boy. (B2440). He met Aube through the parish. (B2440). Doe LX served as an altar boy when Aube arrived at the Guardian Angel in approximately 1972 or 1973. (B2441). Aube would profess to be able to read people's minds and then use private information that he learned through confession to prove that he could. (B2441). Aube's focus was youth ministry. (B2449). Doe LX described that he did not have much parental supervision, Aube knew this situation, and spent a lot of time gaining Doe LX's trust. (B2442). Aube would give him money, let him use Aube's car, and provide him with beer. (B2442).

Doe LX believes that his sexual contact with Aube began in the rectory. (B2443). Doe LX was 15 or 16 when his sexual contact with Aube began, and 19 when it ended. (B2443; 2461). Typically, his sexual encounters with Aube occurred in Aube's private quarters in the rectory. (B2444). Aube would begin by "doing things" to Doe LX, then Aube would request that Doe LX "do things" to Aube. (B2444). Over the course of their relationship, their sexual contact involved touching both on top of clothes and against skin. (B2463). Aube stressed the psychological benefits of not having any barriers, such as clothes. (B2463). They performed oral sex on each other. (B2463). On one occasion, in Aube's rectory room, Aube tried to sodomize Doe LX, but Doe LX got upset, began "yelling and screaming," and avoided the situation. (B2444). One sexual incident occurred in the basement of the church, Aube was there with Doe LX and one other boy. (B2450-51). Aube explained that he had direct contact with God and knew how to get closer to God. (B2451). Aube instructed the two boys to touch each other. (B2451). Doe LX believes that Aube was masturbating as he looked on. (B2451).

Doe LX's most painful memory was of taking a road trip with Aube and three other boys to Indiana for four to six weeks. (B2443). Doe LX described the trip as a "rape fest" -- Aube engaged in sexual contact with one boy after the other, in the same "session." (B2443). After Aube was transferred from Berlin, he continued to have some contact with Doe LX. Aube called on the phone and they would get together. (B2445). By approximately 1976, Doe LX's contact with Aube stopped. When Aube was at the Holy Rosary parish in Rochester, Doe LX traveled to Rochester and confronted him in the rectory. (B2445). Doe LX told Aube that what he was doing was "wrong" and "inappropriate." Aube began to break down and then, to Doe LX's surprise, Aube tried to have sex with him. (B2446).

During his interview, Doe LX confirmed that Aube told him about being caught having sex with a boy in his car in Nashua by the police. (B2446). Aube also told him about

his counseling. (B2446). Doe LX stated that he had personal knowledge that Aube sexually assaulted at least 10 other boys, but he was unwilling to provide their names to the Task Force without their consent. (B2464). His knowledge of these victims stemmed from his own observations and statements that Aube made to him. He explained that if you were a “special member” of Aube’s “inner circle,” Aube provided you with a special cross to wear. (B2465). Anyone wearing a cross was one of Aube’s victims. (B2465). To Doe LX, the cross given by Aube was “a right of passage” to demonstrate that they had the “favor of a priest.” (B2465-66).

During his interview, Aube admitted that he had sexual contact with Doe LX, who was a minor, during his time in Berlin. (B4826). Later, he claimed that Doe LX might have been as old as 19 or 20. (B4829).<sup>5</sup> Aube explained that he began by giving Doe LX “rub downs,” it progressed to “fondling” Doe LX’s genitals, they engaged in “mutual masturbation,” and performed “oral sex” or “blow jobs” on each other on two occasions. (B4826-27; 4828). He further stated that he went on a camping trip with Doe LX in Unity, New Hampshire and “was naked” with Doe LX. (B4828). On another occasion, during the winter of 1973-1974, Aube confirmed that he went on a trip half way across the country with Doe LX and another boy, John Doe LXIII. (B4833). During the trip, Aube engaged in sexual contact with Doe LX. (B4833). After Aube was transferred to Nashua, he continued to keep in touch with Doe LX as well as some of the other boys that he had inappropriate contact with in Berlin. (B4860-61). Aube stated that he had developed a “very, very close friendship with [Doe LX].” (B4861). Aube also confirmed that he “confided” in John Doe LX that the Nashua Police Department discovered him engaged in sexual contact with John Doe LII. (B4860).

In January of 1985, the Diocese received a report from John Doe LX, alleging that Aube sexually assaulted him in the church rectory when he was a teenager and a parishioner at the Guardian Angel parish in Berlin.<sup>6</sup> (B80). By the time that the Diocese received Doe LX’s report, Aube was assigned as the Chaplain at the Elliot Hospital in Manchester.

## **V. AUBE’S TRANSFER TO ST. ALOYISIUS IN NASHUA AND HIS CONTACT WITH JOHN DOE LII AND THE NASHUA POLICE DEPARTMENT**

According to Father Aube, he was transferred to Saint Aloysius in Nashua in August or September of 1974. (B4837). Diocesan records indicate that this transfer occurred on June 11, 1975. (B963; 2736). When news of his transfer reached Berlin, several parishioners drafted letters to the Bishop requesting that Aube remain. Several of these letters specifically referenced Aube’s success with youth ministry in the City.

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<sup>5</sup>Doe LX’s explanation that he was 15 when Aube’s assaults began does not square with Aube’s claim that Doe LX was as old as 19 or 20 at the time. This discrepancy raises the possibility that Aube was not entirely forthright in reporting the ages of his victims during his interview.

<sup>6</sup> Doe LX’s allegation and the Diocesan response to his claim is explained in greater detail in the section of this memorandum dealing with allegations of sexual assaults that were reported to the Diocese after Aube’s assignment to the Elliot Hospital.

During his interview, Aube admitted to engaging in sexual contact with John Doe LXIV and John Doe LXV, both minors, during his assignment to Saint Aloysius in Nashua. It appears that the Diocese had no knowledge that Aube engaged in this conduct.

Aube explained that he had sexual contact with John Doe LXIV when Doe LXIV was 17 or 18. (B4840). Aube began by giving Doe LXIV rub-downs, it lead to fondling of the genitals and “mutual masturbation,” and went as far as “mutual blow jobs.” (B4844; 6478). Aube’s contact with Doe LXIV occurred over a three-year period. (B6478). Aube also admitted that he began having sexual contact with John Doe LXV when Doe LXV was 16 or 17 years old. (B4840). It began with “rub downs” and lead to “mutual fondling of the genital area.” (B4841). Later, Doe LXV became a paratrooper in the Army. At one point, they reestablished communication and got together. On that occasion, Doe LXV masturbated in Aube’s presence. (B4841). Aube could not provide specific dates for when these assaults occurred.

In addition to these assaults, the Nashua Police Department discovered Aube in his car on December 27, 1975 engaging in sexual acts with John Doe LII. Doe LII appears to have been 18 years old at the time. Aube became acquainted with Doe LII through the parish youth group at Saint Aloysius. Both Aube and Father Desjardins reported this encounter to the Diocese.

During his interview, Aube explained the following with regard to his sexual contact with Doe LII as well as his meetings with the Diocese after the incident:

John Doe LII was a senior in high school at the time of their sexual contact and a member of Aube’s youth group. (B4843-44). In confidential conversations with Doe LII, Aube learned that Doe LII was preoccupied with his own sexual identity. (B6487). At the time, Aube wanted to convince Doe LII that he was not homosexual -- they talked extensively about the topic. (B6469).

One evening, Aube and Doe LII met up at a church gathering and Aube offered to give Doe LII a haircut. (B6471). They met later at Doe LII’s home -- his parents were not home. (B4844). Aube believed that this occurred during the spring or summer months. (B4853). At some point, they decided to go for a ride in Aube’s car. (B4843-44). Doe LII drove. (B4845). Aube was dressed as a priest, in his collar. (B4845). They pulled over in South Nashua near the parish boy scout camp, and Aube began to fondle Doe LII. (B4843-44). They unzipped their pants and Aube touched Doe LII’s genitals. (B4844). Soon, a car pulled up behind them with blue lights flashing. (B4844). Two detectives in plain clothes approached and introduced themselves. Aube does not recall their names. (B4845). The officers knew that Aube was a priest because he was dressed that way. (B4845). They

asked Doe LII to get out of the car. (B4845). When Doe LII exited the vehicle, he had to tie his pants. (B4846). The officers spoke to Doe LII at the back of the car -- Aube could not hear the conversation from where he was sitting. (B4846). Then, the officers asked Aube to get out of the car and he did. (B4846). They asked Aube what was going on. (B4846). Aube told the officers that he was trying to show Doe LII that he was not homosexual. (B4846). Aube believes that he admitted to the officers that he and Doe LII were fondling each other. (B4847). The officers stated that they were disgusted to see that a priest would be engaged in such conduct. (B4847). The officers took both Aube and Doe LII's names and addresses. (B4847). According to Aube, the police officers left, without incident. (B4847). Neither Aube nor Doe LII were taken into custody by the police. (B4847). The officers stated that they wanted to think about how they were going to handle the situation. (B4848). Aube apologized to Doe LII and asked him to keep the incident between them and he agreed to do so. (B4848). According to Aube, he drove Doe LII home. (B4848).<sup>7</sup>

The next morning, Aube called the Nashua Police Department to speak with one of the detectives that approached them the night before. (B4849). Aube did not reach the officer at the Nashua Police Department, but located the officer's home number and contacted him there. (B4849). Aube does not recall the name of the officer. (B4849). Aube asked the officer not to make an incident report and stated that he realized he had a problem and planned on seeking help. (B4849). The officer again told Aube that he would think about how best to respond to the situation. (B4849). Aube believes that there was a police report generated about the incident, although he never actually saw such a report. (B4849-51).

The morning after the incident, Aube approached his pastor, Father Raymond Desjardins, to report the events from the evening before with Doe LII and the Nashua Police. (B4851). Aube explained to Father Desjardins about his sexual contact with Doe LII, his contact with the Nashua Police, and his effort to contact one of the officers the following morning. (B4851). Father Desjardins was aware of the fact that Doe LII was one of the boys from Aube's church youth group. (B4851). Aube and Father Desjardins agreed that Aube should contact the Bishop to report the incident. (B4851).

Aube contacted Bishop Odore Gendron the following Monday morning. (B4852). Bishop Gendron agreed to meet with Aube that day. (B4852). Aube met with Bishop Gendron and reported "exactly"

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<sup>7</sup> John Doe LII recalls being driven home by police officers.

what happened with Doe LII and the Nashua Police, including the fact that Aube had sexual contact that involved fondling Doe LII's genitals and that Doe LII had fondled his genitals. (B4853; 4855; 4856). Aube informed the Bishop that Doe LII was a boy from his youth group at Saint Aloysius, about his conversation with the police officers that discovered them, and that Aube contacted one of the officers the following morning. (B4853-54; 4855). Aube did not admit to his prior sexual contacts with other boys at that time. (B4853). Aube explained to the Bishop that he believed that he needed help and asked for the name of the doctor that had evaluated him prior to his ordination. (B4854; 4863). The Bishop agreed to review Aube's file and provide the name of the doctor that had previously evaluated Aube. (B4854). Bishop Gendron provided Aube with Dr. Conners' name.

Aube had a couple of meetings with Dr. Conners over the course of the next couple of weeks. (B4856-57). Aube discussed the sexual contact that occurred with Doe LII during his meetings with Dr. Conners. (B4866). In general, Aube spoke with Dr. Conners about the fact that similar incidents had occurred in the past. (B4867). Aube gave Dr. Conners permission to share their discussions with the Diocese. (B4867). Dr. Conners told Aube that he would be getting in touch with Bishop Gendron to make a recommendation to the Bishop about Aube. (B4857).

Soon thereafter, Aube met again with Bishop Gendron in his office. (B4857). Bishop Gendron explained to Aube that he had talked to Dr. Conners. Bishop Gendron also stated that he had contacted the Nashua Police Chief and asked him for a favor by making sure that there was no record of the incident in the files at the Nashua Police Department. Bishop Gendron explained that the Chief agreed that there would be no report generated. (B4857-58). During the meeting, Aube asked the Bishop for permission to leave parish work and pursue a Doctoral degree in scripture. (B4858). Aube did not want to continue in parish work. (B4858). Aube was concerned that he could not cope with his "problem" and wanted to make sure that he did not have any contact with youth. (B4858). At that meeting or a subsequent meeting with Bishop Gendron, Aube told the Bishop that he did not want to return to youth work and requested a transfer. (B4859; 4869). Aube believes that he told Bishop Gendron that the reason that he did not want to continue with youth work was for fear that he would re-offend with other youths. (B4859). These meetings with Bishop Gendron were in the context of responding to the encounter with Doe LII and the Nashua Police. (B4859; 4869). The Bishop refused Aube's request for him to return to academics and told Aube that he wanted Aube to use

his talents in the best way possible. (B4860).<sup>8</sup> Bishop Gendron told Aube that he was going to discuss the matter with Father Christian who was the Bishop's secretary at that time.<sup>9</sup> (B4862). After speaking with Dr. Conners, Bishop Gendron told Aube that he should make an effort not to engage in that type of conduct again. (B4869).

Following these meetings, the Diocese did not place any restrictions on Aube's ministry. (B4862; 4865). Aube does not know if Doe LII's family was ever told about the incident. (B4865). In the weeks following Aube's meetings with the Bishop, Bishop Gendron informed Aube that he would be transferred out of the Nashua parish to Rochester. (B4870). Bishop Gendron had a separate meeting with Aube in his office to discuss Aube's new assignment to Rochester. This meeting occurred approximately three weeks after the Nashua incident. (B4873). By this time, the Bishop had been in contact with Dr. Conners. (B4876). Bishop Gendron told Aube that he wanted him to continue his youth work at his new parish assignment because the youth program in Rochester was in disarray. (B4872-73; 4876; 4877; 6482). Aube protested his reassignment to parish work because he did not want to engage in youth work. (B4875; 6481; 6482). He specifically asked to pursue academic work rather than return to parish work. (B6482). Bishop Gendron told Aube that the Diocese needed his talents. (B6482). The Bishop did not place any restrictions on Aube's ministry at his new assignment in Rochester. (B4877; 6483). He worked with children of all ages. (B6482). Prior to his assignment to the Holy Rosary parish in Rochester, the Bishop arranged a meeting between Father Aube and Monsignor Simard, the pastor at Holy Rosary in Rochester. (B4871). During this meeting, the Nashua incident was not discussed. (B4871).

Following Aube's discussions with Bishop Gendron about the Nashua incident, but before his reassignment to Rochester, the parish in Nashua caught fire. (B4874). Aube was assigned by Father Desjardins to assist with the clean up effort at the church. (B4874; 6480). Aube worked with parish teenagers from his youth group to clean up the

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<sup>8</sup> In addition to confiding in the Bishop, Aube also spoke with John Doe LX about the Nashua incident. (B4861). Doe LX was one of the boys that Aube had sexual contact with during his parish assignment in Berlin. (B4861). Aube continued to have contact with Doe LX as well as other boys that he had sexual contact with in Berlin during his subsequent assignment in Nashua. (B4861).

<sup>9</sup> Francis Christian has held various positions in the Diocese over time. On May 14, 1996, Christian was elevated to Auxiliary Bishop. He was a monsignor from May 10, 1986 until 1996. Prior to that he is referred to by the title "Father." Throughout the report he will be referred to by the title that he held at the time of the events in question.

mess left by the fire. (B4874; 6480). The clean up project lasted all summer. (B6480).<sup>10</sup>

The Task Force interviewed John Doe LII on September 9, 2002. (B6289). He further confirmed his sexual contact with Aube in Nashua in 1975. Growing up, he explained that he and his family were members of Saint Aloysius in Nashua. In 1974, he got to know Father Aube. (B6290). Doe LII is certain that he met Aube in 1974 because he was still in high school and he graduated in 1975. (B6291). He met Aube through the church -- Doe LII was a Boy Scout, played CYO basketball, and was involved with the church youth group. (B6291). Aube was assigned to youth work. (B6291). Doe LII was impressed with Aube -- he thought Aube was a "cool" guy. (B6291). At one point, Aube was making a trip to Lebanon or Claremont in his Saab and asked Doe LII if he wanted to come along for the ride. (B6291; 6305). Doe LII agreed and Aube let him drive. (B6292). Doe LII trusted Aube as his parish priest and considered him a mentor. (B6293).

Doe LII recalled that the incident involving the Nashua police occurred when he was a freshman at New Hampshire Technical College in Concord. (B6292; 6294). It appears that Doe LII was 18 at the time. (B6294). He was born in November of 1957. (B6298). Therefore, if the incident occurred in December of 1975, Doe LII had just turned 18. (B6294). However, Doe LII remembered that the weather was nice at the time and believed that the incident may have occurred as early as September or October, which would have actually placed the incident prior to his 18th birthday.<sup>11</sup> Doe LII returned nearly every weekend from college because he had a job pumping gas and had a girlfriend at home. (B6294-95). One weekend, Doe LII approached Aube to discuss problems with his girlfriend. (B6296). They ended up taking a ride in Aube's car at around 11 PM and pulling over on Old Ridge Road in Nashua. (B6296). Aube was wearing his clergy clothes. (B6298). Doe LII does not remember exactly how the sexual contact began, but does recall that his pants were unzipped and that Aube fondled his penis. He also touched Aube's penis. (B6297). The fondling occurred for less than a half of an hour before the police arrived. (B6297). Two detectives in plain clothes walked up to the car. (B6298). Doe LII was in the driver's seat and the police asked him to get out of the car and sit in their cruiser while they talked to Aube. (B6299). The police drove Doe LII home. (B6299). Although the police appeared upset with Aube, Doe LII does not remember that he was arrested. (B6300). The police did not speak to Doe LII's parents when they dropped him off. (B6300). No one ever talked to Doe LII about the incident. (B6301). He never heard from the church or the police. (B6301-02). Looking back on the incident, Doe LII explained that he felt coerced by Aube. At first, they were "buddies" and Aube took advantage of their relationship. (B6301).

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<sup>10</sup> Aube drafted a letter to Bishop Gendron in June of 1977 requesting a vacation in light of the fact that his previous vacation plans had been cancelled because of a fire that occurred at St. Aloysius during the Summer or Fall of 1976. (B2891).

<sup>11</sup> Dr. Connors' report of the incident specifically states that it occurred on December 27, 1975. However, both Aube and Doe LII indicate that the weather was warm. Aube stated that he thought it was during either the Spring or the Summer. Doe LII stated that the weather was good and he did not wear a coat, possibly in the fall. (B6295). Officer Leblanc seems to confirm the December date. He remembered that the incident occurred in either November or December. (B4881).

Task Force Investigators have contacted numerous current and former members of the Nashua Police Department in an effort to learn more about their contact with Aube, Doe LII, and the Diocese in 1975. Lionel “Lee” LeBlanc, a former Police Officer with the Nashua Police Department confirmed that in November or December of 1975, he and his partner, Dick Gagnon, were patrolling in an unmarked Nashua police cruiser in the area of Ridge Road. They were members of the narcotics unit at the time. At around midnight, they approached a vehicle, stopped, and walked up to the driver’s side of the suspect car. (B4881). LeBlanc observed a priest, later identified as Paul Aube, involved in sexual contact with a boy. (B4881). LeBlanc estimated that the boy was as young as 12 or 13 and as old as 16. (B4881). When police asked Aube what he was doing, Aube responded that he was “trying to relate to the boy” and that he was trying to help the boy with some problems. (B4881). LeBlanc believes that a supervisor from the Nashua Police Department was called to the scene and he was instructed to take the boy home. (B4881). He was also told that a juvenile officer would be in contact with him to follow up, but he is not certain whether there was any additional investigation. (B4881). When he returned to the police station, he did not see Aube and he did not know whether Aube was taken into custody. (B4881).

Nashua Police Department Investigator Richard Gagnon (Ret.) confirmed that he was with Officer LeBlanc when they discovered a priest with a “kid” somewhere off Ridge Road in Nashua. (B4665). Gagnon explained that when they approached the car, the priest was “going down” on the boy. The priest was wearing his clergy clothing and was a small man. (B4665). The priest stated that the boy was having some problems and he was helping him. (B4665). He believed the boy was around 15 or 16 years old. (B4666). They did not arrest the priest, he thought that the priest and the boy left together, and recalled that the priest was transferred out of Nashua following the incident. (B4665). He recalled hearing that the Bishop contacted the Nashua Police, but did not who the Bishop talked to about the incident. (B4666).

Detective Bill Burns (Ret.) of the Nashua Police Department stated that he was working the night that a priest was caught with a boy. He recalled the Desk Captain instructing detectives to disregard the incident because the boy was not a minor. (B4726).<sup>12</sup> Former Chief of Police Craig Sandler denied knowledge of the incident with Aube, contact with Bishop Gendron, or any request for him not to generate a police report. (B2701). Investigator Fowler contacted Detective Donald Boyer (Ret.) on August 23, 2002. (B4661). When asked about the incident involving Father Aube, Boyer hung up. (B4661). Investigator Fowler called back. Again, Boyer hung up the phone. (B4661).

Task Force Investigator Brook Lemoine, of the Nashua Police Department, searched the Nashua Police Department for any documents relating to Aube’s contact with police in

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<sup>12</sup> Initially, Burns believed that the Desk Captain was Armand Roussell. However, the Task Force learned that Roussell died in the line of duty in October of 1971. (B9531). As such, Roussell could not have been the Desk Captain on the date that Nashua Police discovered Aube in his car with Doe LII.

1975. There was no documentation available at the Nashua Police Department relating to this incident. (B2428).

On October 1, 2002, Task Force Investigators met with Laurent “Larry” Noel. (B7309). Noel confirmed that he was involved with St. Aloysious parish in the 1970’s and met Aube through the parish. (B7309). Noel also explained that he had been a bail bondsman in Nashua for thirty years and was friendly with many of the Nashua police officers through the years. (B7309). He recalled that, at some point, Lt. Paul Gagnon shared concerns with him about Aube. (B7309). In response, Noel approached Father Desjardins. Father Desjardins already knew about the incident involving Aube. Noel did not discuss the specifics of Aube’s sexual misconduct with Father Desjardins, but did request that the church remove Aube from Nashua. (B7309). Father Desjardins told Noel that Aube would be moved in September when the other transfers were announced. Noel responded by telling Father Desjardins that September was not soon enough. (B7310). Noel could not remember exactly when this conversation occurred. (B7310).

Documents secured from the Diocese reference the Nashua incident, Aube’s subsequent treatment, and reassignment to the Holy Rosary parish in Rochester. On December 29, 1975, Vice Chancellor George E. Ham drafted a letter to Aube to provide him with Dr. Connors’ name and contact information. (B11). Father Ham also stated: “I mentioned your call to the Bishop, and he agreed with what I told you about the policy of the person involved making his own appointment with a psychologist or psychiatrist.” (B11).<sup>13</sup> When asked, Aube did not specifically remember being criticized for making his own appointment with a mental health provider. (B4863). Father Raymond Desjardins -- Aube’s superior in Nashua -- sent a letter to Bishop Gendron regarding the Nashua incident on January 4, 1976. Desjardins wrote: “We had a long conversation, Paul [Aube] and myself. I was firm; but I tried to show compassion. The doctor’s appointment is scheduled for this Wednesday morning. The healing process is on the way, lets’ hope. An interview with you should be requested within the week.” (B12). Aube stated that he recalled a conversation with Father Desjardins in the wake of the Nashua incident during which Father Desjardins told him to make “damn sure this doesn’t happen again.” (B6486). Aube stated that this conversation occurred the morning after the Nashua Police discovered him and Doe LII in the car. (B6487).

Bishop Gendron responded in a January 15, 1976 letter to Father Desjardins: “This is just a brief note to thank you for discussing with Father Aube the matter about which we recently talked . . . If there is anything you feel I should be aware of in the days ahead, please do not hesitate to bring it to my attention.” (B13).

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<sup>13</sup> The Task Force recently interviewed Father Ham. (B9640). He stated that during his years in the Chancery Office, he never heard of any allegation of child sexual abuse perpetrated by a priest. (B9641). With respect to Father Aube, he stated that he was not familiar with any allegation of sexual misconduct involving Father Aube. (B9650). During the interview, Father Ham reviewed the letter that he drafted in December of 1975 to Father Aube, but stated that he “never heard of” Dr. Connors and had no knowledge of an incident in December of 1975 where Nashua Police confronted Aube in his car with Doe LII. (B9648).

On June 15, 1976, Dr. Edward Conners provided a written report to Bishop Gendron regarding his meetings with Father Aube and the Nashua incident. (B14-15). Dr. Conners stated that he had three meetings with Father Aube. (B14). Dr. Conners related the following to Bishop Gendron:

I have carefully reviewed my notes of Paul's previous psychological testing which I administered to him as a candidate for the priesthood back in August of 1968. I have likewise given considerable thought to this young man and the "incident" involving a college student on the evening of December 27, 1975 in which both of them were apprehended by the police and questioned regarding an alleged homosexual relationship on a secluded back road in the vicinity of the community in which he is assigned.

In my interviews which were in depth with Fr. Aube concerning the incident and his prior priestly background and history since ordination I have attempted to establish whether or not there is a serious degree of underlying pathology and the need for ongoing psychiatric treatment.

I am not convinced that he is a homosexual as much as I was concerned about his imprudent behavior and impaired judgment for which he is deeply regretful especially since it has rather successfully prevented him from following his chosen religious goal of being involved in a youth ministry.

To my knowledge, from Father's statement, this is the only such incident involving potential homosexual behavior.

I have discussed with him his somewhat unconscious masochistic tendencies that get him into situations where he is going to be punished by authority and he seems to have developed some insight into this as a result of our sessions but I have some question as to whether he will continue to behave as such due to his admitted outspokenness in being "very direct in my approach," as he views his priestly role...

I believe that Father is always going to be somewhat difficult to control irrespective of whatever assignment he is in since he finds it somewhat difficult to lead a disciplined life.

We discussed at great length his future assignment which I believe is more in your hands than mine but I believe he is in a difficult position in his present assignment as long as the police report is hanging over his head and there is some indication that local police have implied difficulty in his relationships with young people and have

gone so far as to advise a couple of teenagers to stay away from him since he could be a “serious threat” to them.

I do not have any clear cut view as to whether he should continue with youth ministry work although he informs that he had a successful experience with a confirmation program involving 88 children and that the majority of the parents as well as the pastor thought he performed exceptionally well. We have also talked about military service, however, with his unconscious need I think to run into difficulty with authority I am ambivalent about encouraging this as a future objective. Whether he is eligible or not for advanced academic training is perhaps another consideration as well as the possibility of taking on a teaching assignment. However, I do not think he has many options open to him in the archdiocese under your pastoral control.

There is some question in the mind of Father Desjardins whether this man has a double personality which again is difficult to delineate but I would think that those who have seen him over the past six years would be in a better position to evaluate this as a possibility. Fr. Aube in his dealing with me appeared to be extremely honest, forthright, candid and deeply regretful over the incident. He also states he is having family pressures with a sister who I believe has domestic problems and I feel his reassignment from Berlin, N.H. was disturbing to him since he perceived himself as being very successful. On the other hand, he had some difficulty there with his pastor.

Objectively speaking, his past and present history seems to predict episodic difficulties and there may be deep defects in the basic personality structure which are not amenable to psychiatric treatment with any great hope for change. This would require great motivation on the part of Fr. Aube and I do not see this as a realistic goal at this time.

As you can see from the tone of this letter, I have some reservations as well as ambivalency but unfortunately he is not disturbed enough to recommend psychiatric intervention at this time...

(B14-15) (Emphasis added).

In a return letter to Dr. Connors on June 22, 1976, Bishop Gendron acknowledged the receipt this report and thanked Dr. Connors for his evaluation of Aube. (B16). Bishop Gendron also stated: “You may be sure that I shall give the contents of your report serious consideration as I endeavor to assign Father Aube to exercise his priestly ministry in a manner which will be for his own benefit, as well as for the benefit of those he serves.” (B16).

The Task Force interviewed Dr. Connors on October 16, 2002. (B8934). During the meeting, Dr. Connors reviewed the report that he provided to the Diocese based on his meeting with Aube. He explained that any factual information in the report came from Aube and not from the Diocese. (B8945-46). He stated that the Diocese never contacted him to ask whether it would be appropriate to assign Aube to a ministry that involved contact with children after he provided the report to the Diocese. (B8955). Dr. Connors stated that an assignment involving youth ministry would have been inappropriate in light of the report he generated, but acknowledged that he did not get involved with assignments. (B8953; 8956). Dr. Connors also explained his ultimate conclusion that Aube had “deep defects in his basic personality structure” that were “not amenable to psychiatric treatment with any great hope for change.” Dr. Connors stated that this conclusion indicated that the Diocese had “problems with this guy” that were “coming to the surface” and that “[i]n the future, you can have problems with this guy.” (B8957-58). Dr. Connors stated that he “even went so far as to say I don’t think [Aube] could profit from psychiatric care.” (B8958). After reviewing the report of his meeting with Aube that he provided to the Diocese, Dr. Connors stated that he was not surprised to learn that Aube engaged in subsequent sexual misconduct with minors. (B8954).

Diocesan documents indicate that there were no restrictions placed on Aube’s ministry while he remained in Nashua. (B2893). On June 25, 1976, Bishop Gendron wrote to Aube:

As a follow-up to our recent conversation, I wish to inform you that I have presented your situation to the Diocesan Personnel Board. It is the feeling of the Board that you should continue your parish ministry at St. Aloysious Parish, at least for the Summer.

During this time, we shall continue to evaluate a new assignment for you. However, the members of the Personnel Board are not willing for you to seek ministries outside of the Diocese of Manchester, since your ministry is too valuable to the Diocese at this time.

(B2893).

## **VI. AUBE’S ASSIGNMENT TO THE HOLY ROSARY PARISH IN ROCHESTER**

According to Diocesan records, Aube was transferred to the Holy Rosary parish in Rochester on September 15, 1976. (B963; 2794). Early correspondence from parishioners in Rochester to the Diocese confirms that Aube was working with youth at his new assignment and compliment Aube for his efforts. (B2757) (Letter from Judge Richard Cooper of the Rochester District Court, stating “I would especially commend to you the interest and unselfish devotion of time and energies given by Father Paul Aube of the Holy Rosary parish

to some of the problems of young people in our community.”). Aube wrote to Bishop Gendron on June 14, 1977 requesting a vacation in light of his workload in Rochester -- work which included being “asked to organize a religious education program for all levels, especially high school level since there was nothing there.” (B2891).<sup>14</sup>

Aube served at the Holy Rosary parish in Rochester between September 15, 1976 and October 9, 1981 when he was assigned to be the Chaplain at the Concord Hospital and area nursing homes. (B963). During his interview, Aube explained that he was assigned to the youth program and to organize the CCD education program in Rochester. (B6489). Through Father Simard, Aube also began to work with the Rochester District Court, consulting on juvenile matters. (B6790). On at least one occasion, Judge Cooper placed two or three children in Aube’s custody. (B6491; 6492).

On June 1, 1981, Bishop Gendron conducted a personal interview with Aube regarding his status at Holy Rosary in Rochester. (B2888). Aube stated during the interview that if he left Rochester, he wanted to leave the Diocese. (B2888). In a note to Aube’s file, Bishop Gendron wrote: “His main problem at this point seems to say that he is tired working with people. He thinks he has gifts that we have not recognized . . . But I think his main thrust is that he wants to do his thing, which is electronics, work with the media, and evangelize through that kind of means. He feels that he would like to have an opportunity to do this and he doesn’t think we’re going to give him that opportunity in New Hampshire.” (B2888). As for Aube’s continued work with youth, Bishop Gendron stated: “He [Aube] did say at one time that he was tired working with the youth, but still is, I think, quite effective with them.” (B2888) (emphasis added).

### **A. Aube’s Sexual Assaults In Rochester**

Aube sexually assaulted at least seven minors during the time that he was assigned to Holy Rosary in Rochester. It appears that the first report made to the Diocese regarding Aube’s sexual misconduct in Rochester was in 1981 after Aube sexually assaulted John Doe LIII in his rectory room. Following this allegation, the Diocese reassigned Aube to hospital ministry. Thereafter, John Doe LXVII and John Doe LXVIII made reports to the Diocese alleging that Aube sexually assaulted each of them during his time in Rochester.<sup>15</sup>

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<sup>14</sup> There is a letter in the Diocesan records from Jane Doe LXVI on October 26, 1977 to Bishop Gendron, intimating that Aube had inappropriate contact with her daughter who was studying to be a nun. (B76). The letter suggests, but does not specifically state, that Jane Doe LXVI’s daughter may be pregnant with Aube’s child. (B76). The Bishop responded to this complaint with a letter to Jane Doe LXVI requesting more specific information. (B77). There is a handwritten note in the bottom corner of the copy of this letter in the Diocesan file from “G.E. Ham” on June 30, 1978 stating that “no evidence was produced that these allegations were true.” (B77). The Task Force recently interviewed Father Ham. Although the interview did not focus on this particular handwritten note, Father Ham stated that he did not have any familiarity with any allegations of sexual misconduct involving Father Aube. (B9650).

<sup>15</sup> John Doe LXVII and John Doe LXVIII’s reports as well as the Diocesan response to their allegations are described in greater detail in the section of this Memorandum relating to allegations of sexual abuse reported to the Diocese after Aube’s assignment to the Elliot Hospital.

## ***1. John Doe LXVIII***

John Doe LXVIII alleged that Aube hugged and kissed him inappropriately between approximately 1975 and 1977, beginning when he was 14 years old. Doe LXVIII reported Aube's conduct to the Diocese in 1988 and again in 1993. In these reports, Doe LXVIII explained that his mother began inviting Aube over for dinner at their home soon after they moved to Rochester. (B95). During his freshman year of high school, Doe LXVIII began visiting frequently with Aube -- over time their conversations involved physical contact. This began with "bear hugs" and "playful wrestling" and progressed to kisses on the cheek and then the lips. Soon, Aube's hugs involved him running his hand through Doe LXVIII's hair. (B95). These encounters involved intense conversation -- Aube told Doe LXVIII that he had a "Christ like" love for him and that God loved him so much that he would send Jesus down to die for him. Aube also told Doe LXVIII that he would die for him. (B95). In 1977, LXVIII's family moved out of state, but Doe LXVIII kept in touch with Aube. (B96). Doe LXVIII became active in a Catholic teen organization where his family settled after leaving New Hampshire. They had a retreat and raised money so that Aube could attend. (B96).<sup>16</sup>

During his interview, Aube explained that Doe LXVIII and John Doe LXIX (John Doe LXVIII's younger brother) were members of Aube's youth group at Holy Rosary in Rochester. (B6518). He got to know the Doe LXVIII's family when they moved to Rochester because Doe LXVIII's father secured a job in the area. (B6518). He would have dinner with the Doe LXVIII's family at their home. (B6518). Doe LXVIII's mother sought out Aube for counseling because she was having problems in her marriage. (B6518). Aube denied that anything sexual ever occurred with John Doe LXVIII. (B6518). However, he admitted that he probably gave Doe LXVIII kisses on the cheek and affectionate hugs. (B6518). This could have involved running his fingers through Doe LXVIII's hair. (B6519). Aube also confirmed that the Doe LXVIII's family raised money for him to travel to a Teens Encountering Christ retreat in 1978 or 1979. (B6521).

## ***2. John Doe LXIX (John Doe LXVIII's younger Brother)***

On August 13, 2002, the Task Force received a call from John Doe LXIX. (B2713). He was born in October of 1962. (B2713). Doe LXIX met Aube as a pre-teen when his family was living in Rochester and were parishioners of the Holy Rosary parish. (B2713). In the late seventies, he moved with his family out of state. (B2713). Doe LXIX was 15 or

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<sup>16</sup> Doe LXVIII also reported that in the Spring of 1981, he visited Aube in Rochester when Doe LXVIII was in New Hampshire on a break from college. (B98). Doe LXVIII was approximately 20 years old at the time. (B98). They got together one evening, Aube talked to Doe LXVIII about homosexuality and asked Doe LXVIII if he understood his love for him. (B99). Doe LXVIII explained that the "familiar physical contact" was taking place -- kisses on the lips and long hugs. (B99). Aube revealed that a family in the parish accused him of sexually abusing their son. (B99). Aube pulled the shades and stated that he could not risk having someone misinterpret his embraces. (B99). Aube requested that Doe LXVIII pull down his pants, Doe LXVIII was reluctant and stated that he would rather not, but finally agreed and pulled down his pants. (B99). Aube then instructed Doe LXVIII to pull down his underpants and Doe LXVIII complied. (B99). Aube kneeled down in front of Doe LXVIII, began to fondle Doe LXVIII's penis, and stated: "See, it's just a penis." When Doe LXVIII did not become aroused, Aube asked what was wrong. (B99). Aube stopped abruptly and then offered to give Doe LXVIII a ride to where he was staying. (B99).

16 at the time. (B2713). They raised money in order so that Aube could participate in a retreat with their church youth organization. Aube stayed at their home. (B2713). Aube slept in Doe LXIX's bedroom. One night during the visit when they were getting ready for bed, Aube told Doe LXIX that it would be an expression of their love and trust together, if they could get naked together. (B2713). Aube pulled his underwear down and so did Doe LXIX. (B2713). They talked about trust and love and Aube bent over and kissed Doe LXIX's penis and then hugged him. (B2713). Doe LXIX then bent down and kissed Aube's penis. (B2713). They remained naked for about fifteen more minutes, until they fell asleep in Doe LXIX's bed. (B2714). Doe LXIX woke up later that night with Aube's arm around him, they both got up and put their underwear back on, and Aube returned to the other bed in the room. (B2714). Aube stated words to the effect of "I feel bad about myself and my life." (B2714).<sup>17</sup>

During his interview, Aube admitted that while he was staying at the Doe LXIX's home, Doe LXIX sat on the corner of his bed, and Aube touched Doe LXIX's genitals through his underwear, but he did not admit to any further sexual contact. (B6522-23).

There is no evidence that the Diocese was aware that Aube sexually assaulted Doe LXIX at or near the time that the assault occurred.

### **3. John Doe LXXI**

John Doe LXXI contacted the Attorney General's Office on February 27, 2002 and provided the following information. (B976). From 1976 to 1978, he lived with his parents in Rochester and attended the Holy Rosary parish. Between the ages of 16 and 18, he was an active member of the church youth group. Aube fondled him and kissed him when he was 17 and 18. One incident occurred in Aube's rectory room where Aube "masturbated" Doe LXXI. Doe LXXI also reported that a friend of his, John Doe LXXII was also a victim of Aube's -- Doe LXXII told Doe LXXI that Aube had "masturbated" him as well. (B976).<sup>18</sup>

During his interview, Aube admitted that one night, after a trip to Manchester, he convinced Doe LXXI to return to his private quarters in the rectory at Holy Rosary. (B6501). Aube stated that "I convinced him to masturbate in front of me." (B6501).

There is no evidence that the Diocese is aware that Aube assaulted Doe LXXI.

### **4. John Doe LV**

Detective Paul Callaghan of the Rochester Police Department recently investigated allegations that Aube sexually assaulted John Doe LV in the 1970's at the Holy Rosary

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<sup>17</sup> Task Force investigators forwarded information relating to John Doe LXIX's report of Aube's sexual contact with him to the authorities in the locality where the assault occurred. (B9348).

<sup>18</sup> Task Force Investigators interviewed John Doe LXXII on August 7, 2002. Doe LXXII confirmed that he was a parishioner at Holy Rosary in Rochester, was friends with John Doe LXXI, and played on Aube's CYO basketball team. However, Doe LXXII denied that Aube ever engaged in inappropriate sexual contact with him. (B2691).

parish and that Aube sexually assaulted Doe LV in the chapel at the Elliot Hospital in 1982.<sup>19</sup> Doe LV was born in April of 1966 and graduated from high school in 1985. (B2176; 2193). There is no evidence that the Diocese is aware of these assaults.

Callaghan interviewed Doe LV on March 15, 2002, 2150-2154, and Nancy Harris of the Strafford County Attorney's Office conducted a videotaped interview with Doe LV on March 20, 2002. (B2176). During these interviews, Doe LV reported that Aube's assaults began when he was 12 or 13 and ended when he was 16. Doe LV was certain that the assaults began around his 13th birthday because he sought counseling from Aube after he had been arrested for burglary around that time. (B2151). His case was heard by Judge Cooper of the Rochester District Court. (B2182). Thereafter, Doe LV got involved with the church youth group. (B2151; 2178). He estimated that Aube sexually assaulted him in the rectory at Holy Rosary 25 different times. (B2194). He got to know Aube when Aube was assigned to the Holy Rosary parish in Rochester. While he was not a member of the church, Aube counseled him personally and he was involved with the church youth group at Holy Rosary. (B2193-94; 2195). Aube's assaults involved hugging, kissing, and fellatio. (B2150). Doe LV recalled one incident in Aube's rectory room when Aube rubbed Doe LV's penis with his hands outside of his pants. (B2152). Aube also rubbed his "crotch area" against Doe LV's "crotch area." (B2152; 2187). Other times, Aube would unzip Doe LV's pants, place his hand inside of Doe LV's underwear, and fondle Doe LV's penis. (B2189). This happened on several occasions. (B2189-90). At least once, Aube held Doe LV's hand, placed it on Aube's penis, gestured for him to move it, and he complied. (B2196-97). At least once, Aube had penis-to-penis contact with Doe LV -- Aube rubbed his penis against Doe LV's penis. (B2198). On 8-10 occasions in Aube's rectory room, Aube performed oral sex on Doe LV. (B2152; 2205). Twice, Doe LV performed oral sex on Aube in the rectory. (B2206).

Doe LV explained that Aube was in a position of authority over him when the assaults occurred, stating: "Definitely a position of authority. Ah, and respected. I mean, he was somebody that brought change to the community as far as really reputable program options. Um, he was in charge of that." (B2209).

During his interview, Aube denied that he had sexual contact with Doe LV. (B6514; 6565). However, he admitted that he kissed and hugged Doe LV. (B6514; 6565). He explained that he got to know Doe LV through the youth group at Holy Rosary. He stated that he began counseling Doe LV for substance abuse issues.

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<sup>19</sup> Following Aube's treatment for sexually assaulting John Doe LIII, the Diocese transferred him to Concord Hospital to serve as the Chaplain and later to the Elliot Hospital. John Doe LV also accused Aube of sexually assaulting him in the Chapel at the Elliot Hospital when Doe LV was 16 years old. This accusation will be explained in greater detail in the section of this memorandum that relates to Aube's assignment to the Elliot Hospital.

## **5. John Doe LXXIV**

Detective Paul Callaghan of the Rochester Police Department recently received a call from John Doe LXXIII, reporting that Aube sexually assaulted his son, John Doe LXXIV, in the late 1970's. (B2153). Doe LXXIII reported that in the late 1970's he had custody of his two sons and was a parishioner at Holy Rosary. He was befriended by Aube -- Aube asked him if he could take Doe LXXIV on weekend trips to introduce him to the Catholic religion. Doe LXXIII agreed to let his son join Aube for the trips. Aube started spending a lot of time with Doe LXXIV. Doe LXXIII noted that when his son would return from his visits with Aube, he would shower because he complained that he "felt dirty." (B2153). When Doe LXXIV was approximately 20, he revealed to his father that he was gay and told him: "do you remember when I went on all those trips with Father Aube, well he would blow me." (B2153). Doe LXXIII reported that his son, Doe LXXIV, died from AIDS approximately 13 years ago. (B2153).

There is no evidence that the Diocese is aware of these assaults.

## **6. John Doe LXVII**

John Doe LXVII alleged that Aube fondled his genitals and kissed him in the rectory at Holy Rosary in 1977 or 1978 when Doe LXVII was 15 or 16 years old. (B123). Doe LXVII reported this to the Diocese in January of 1993. Doe LXVII's report to the Diocese lead to a civil settlement of his claims against the Diocese, including a confidentiality agreement.<sup>20</sup>

The Task Force recently interviewed John Doe LXVII (born in March of 1962). (B10847-48). He explained that he grew up in Rochester and was introduced to Aube through a friend. (B10849). Doe LXVII was 15 when he first met Aube in approximately 1977. (B10850). Doe LXVII was sports oriented growing up and participated in "pick up" basketball and football games with other neighborhood kids. (B10849). Aube often took part in these games. One day, during the Summer of 1978, Doe LXVII and a friend joined Aube for ice cream at Friendly's. (B10850; 10852). Aube invited Doe LXVII to the rectory the next day. (B10850). Aube explained that he was picking up on "vibes" from Doe LXVII, he was concerned about Doe LXVII, and thought that they should get together. (B10850). The next day, Doe LXVII went to the rectory. (B10851). Aube met him and they sat in a private room with the doors closed. Aube engaged him in a conversation of a "sexual nature." (B10851). Aube indicated that he felt Doe LXVII was confused about his sexual identity. (B10851; 10853). Aube opened a bible and pointed to passages in an effort to convince Doe LXVII that it was permissible for him to join Aube in a sexual relationship. (B10851-52). Aube had his arm around Doe LXVII's waist as he was reading from the Bible. (B10852). Doe LXVII was overwhelmed and surprised. (B10852). Aube then

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<sup>20</sup> This allegation and the Diocesan response to this claim is described in detail below in the section of this Memorandum dealing with allegations of sexual abuse reported to the Diocese after Aube's assignment to the Elliot Hospital.

fondled Doe LXVII's genitals over his clothing and kissed him on the mouth. (B10852-53). Aube brought the encounter to a close by asking Doe LXVII if they could set up a meeting to get together again. (B10854). Thereafter, Doe LXVII saw Aube in the neighborhood and got together with Aube for ice cream at Friendly's. (B10854). On two occasions, Aube drove Doe LXVII and some friends to Friendly's. Aube dropped the other boys off and sat in his car talking to Doe LXVII. (B108554). On these occasions, Aube attempted to fondle Doe LXVII's genitals. (B10854). This conduct ended in the Fall of 1978. (B10855).

## **B. Aube's Sexual Assault Of John Doe LIII And The Report Of That Assault To The Diocese In 1981**

In the Summer of 1981, the Diocese learned that Aube had sexual contact in the Holy Rosary rectory with a 15 year old boy named John Doe LIII. During Aube's interview, he explained the following with regard to his relationship with Doe LIII.

Doe LIII was referred to him by other children in his youth group because they were concerned about Doe LIII's depression. Aube spoke with him a few times and Doe LIII shared with Aube that he had homosexual experiences. Subsequently, Aube engaged in fondling with Doe LIII which included "mutual masturbation." (B6493). The fondling occurred in Aube's car -- a blue Saab. (B6494; 6495). On a couple of occasions, they embraced "in the nude" together in Aube's rectory room. (B6493; 6494). Doe LIII wanted to be Aube's lover. Doe LIII asked to have "penetration," but Aube refused. (B6493). Doe LIII had Aube's private phone number and would call frequently. He would often visit Aube at the rectory. (B6493). Eventually, in January of 1981, Doe LIII threatened to tell his psychologist that Aube raped him because Aube refused to have a deeper relationship with him. (B6495). Aube believes that his sexual contact with Doe LIII occurred in 1979 and 1980. (B6495). Doe LIII's psychologist called Aube to set up a meeting in the beginning of September 1981. (B6495). Aube declined to take part in the meeting. (B6495).

In the Summer of 1981, Aube approached Bishop Gendron to ask for help because he was concerned about his relationship with Doe LIII and he was scared of Doe LIII's threats. (B6497; 6505).<sup>21</sup> Bishop Gendron met with Aube in his office. (B6497; 6532). Aube reported to Bishop Gendron that he was out of control, had a problem, and wanted to see a psychologist. (B6498; 6503; 6532). Aube explained his sexual contact with Doe LIII and the threats that Doe LIII made. (B6498). The Bishop assured Aube that their meeting would remain confidential. (B6533). Aube believes that he told the Bishop that he

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<sup>21</sup> Documents secured from the Diocese confirm that Aube initiated a meeting with the Bishop to discuss this issue. (B22-26; 52; 150).

became acquainted with Doe LIII through the children in his youth group. (B6506). He stated to the Bishop that he had problems with sexual boundaries and that he wanted help. (B6505). Aube told the Bishop to anticipate that there could be a complaint with regard to Doe LIII. (B6505; 6532). Bishop Gendron recommended that Aube see Dr. Desjardins -- a person that the Bishop had success with in the past. (B6498; 6508). At the meeting, Bishop Gendron picked up the phone and called Dr. Desjardins to make an appointment for Aube and the Bishop arranged an appointment for the following day. (B6498; 6499; 6508). Aube overheard Bishop Gendron tell Dr. Desjardins that he had a priest with a problem that had to be addressed immediately. (B6509). At the time, the Bishop did not take any further action with regard to Aube. (B6499). The Doe LIII family had not yet made a complaint to the Diocese. (B6499).

Following his meeting with the Bishop, Aube returned to Rochester and continued with his duties for approximately a month, at which time the Diocese received a complaint from Doe LIII's mother. (B6499). Initially, Bishop Gendron did not place any limitations on his ministry after Aube reported his own conduct to the Diocese. (B6507). Within a few weeks after his meeting with the Bishop, Father Christian confronted Aube at Holy Rosary with a report he received from Doe LIII's mother. (B6496; 6508; 6533). Aube confirmed his sexual contact with Doe LIII when he was asked by Father Christian. (B6496).

Documents secured from the Diocese confirm that, by at least August 20, 1981, Doe LIII's mother contacted the Diocese to report that Aube engaged in sexual contact with her son over a two year period, beginning when Doe LIII was 15 and 16 years old. (B17-19). Specifically, Doe LIII's mother alleged that Aube engaged in acts of fellatio in his rectory room with Doe LIII. (B19). In response to this allegation, the Diocese drafted a letter to Dr. Ernest C. Desjardins, Ph.D. referring Aube for psychological testing. (B17). Father Francis Christian, the Chancellor at the time, wrote to Dr. Desjardins on August 27, 1981 to confirm his conversations with Dr. Desjardins on August 24th and 26th as well a conversation that Dr. Desjardins had with Bishop Gendron on August 20, 1981 about the allegation. (B17). Father Christian's letter to Dr. Desjardins states that the Diocese wanted to investigate the matter, referred Aube to Dr. Desjardins for "a complete series of psychological tests," and set out a number of restrictions that the Diocese placed on Aube in light of the allegation.<sup>22</sup> (B17).

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<sup>22</sup> After Doe LIII's mother made this allegation, the Diocese ordered Aube not to have any further contact with John Doe LIII, requested that he take an extended vacation beginning on August 28, 1981, and asked him to undergo psychological testing. (B17). The Diocese requested that Aube sign a waiver so that Dr. Desjardins could share his testing and recommendations with Bishop Gendron and Aube agreed to this waiver. (B17).

In making this referral, Father Christian asked Dr. Desjardins for a report addressing the following topics: 1) Whether any serious psychological problems are part of Father Aube's lifestyle and if so, what they are; 2) If such problems exist, whether Father Aube can remain in the active ministry at this time; 3) If he can continue to function as a priest, whether he should remain at Holy Rosary in Rochester or be assigned to another priestly assignment; 4) What conditions would be placed on him in the future ministry he may undertake; 5) What sort of ongoing psychological therapy is required, if any, in regard to whatever problems may be uncovered. (B18).

Father Christian drafted a follow-up letter to Dr. Desjardins on August 31, 1981, with more specific information regarding the allegations involving Doe LIII. (B19-20). Father Christian stated that on Sunday, August 31, 1981, he met with Doe LIII's mother. (B19). She reported that her son was assaulted by Aube at the Holy Rosary Parish in the late winter of 1980, when he was 15 or 16. (B19). She told Father Christian that it was important to her that someone in the Diocesan Administration be informed of the details of the allegation against Father Aube. (B19).

According to Father Christian's letter, Doe LIII's mother reported the following to the Diocese. Doe LIII was asked by his girlfriend to play the piano for her and her confirmation classmates at the Holy Rosary parish as part of a musical program that the group was presenting to area nursing homes. At the time, Doe LIII was having some problems for which he was seeing a psychologist. (B19). When Doe LIII's mother would pick Doe LIII up at the parish, Father Aube told her that Doe LIII was a nice young man and that Aube was interested in helping him. Doe LIII began to see Aube on a regular basis -- at least once a week. (B19). Doe LIII would often return from these sessions late in the evening. (B19). Thereafter, Doe LIII stopped dating his girlfriend. Doe LIII's mother asked the girl what happened and she stated that Father Aube told Doe LIII that she was not good enough for him. (B19). Thereafter, Doe LIII's mother found some papers on Doe LIII's bedroom floor indicating that he missed Father Aube and that he could not live without him. (B19). Doe LIII's mother then learned from Doe LIII's psychologist (Dr. Seeman) as well as from her brother in law that Doe LIII confided in them that he had engaged in "homosexual activities" with Father Aube. (B19). This began with hugs and "a French kiss." Subsequently, Doe LIII was in a recliner in Father Aube's rectory room when Father Aube opened Doe LIII's pants and performed fellatio on him. (B19). Aube engaged in acts of fellatio with Doe LIII on at least two occasions. (B20). On another occasion, Doe LIII and Aube were naked in bed together in Aube's rectory quarters. Doe LIII told Father Aube that he had talked about their relationship with his psychologist. (B20). Aube then broke off the relationship. Doe LIII's mother stated that she was concerned that Father Aube receive the help he needs so that no other young men would be subjected to similar conduct. (B20). She requested that Father Aube be transferred from the parish in Rochester. (B20). After describing this allegation, Father Christian requested Dr. Desjardins' assistance in the matter and conveyed Bishop Gendron's gratefulness for his help. (B20).

On September 13, 2002, John Doe LIII (born in July of 1964) agreed to be interviewed with regard to his contact with Aube. (B6772). Doe LIII stated the following:

He met Aube at the Holy Rosary parish in Rochester. (B6774). His mother was a member of the parish, he had his first communion there, and attended Holy Rosary Catholic school for a time. He got to know Aube between 1979 and 1982. (B6775). He was 15 or 16 years old when he began associating with Aube. (B6775). His relationship with Aube began when he was a freshman in high school at the same time that his parents were getting a divorce. (B6775). He was confused and depressed so he sought out Aube for counseling. (B6775). At the same time, he was participating in a musical program with other youth -- they rehearsed at Holy Rosary. (B6798). Doe LIII played the piano. (B6798). He began to meet with Aube at the office in the Rectory. As their meetings progressed, Aube would pick him up at his house. (B6776). He approached Aube because he was a priest and was taught in Catholic school that his priest was the appropriate person to see for such problems. (B6776).

He began to see Aube on a weekly, and sometimes daily, basis. (B6777). He often called Aube. (B6777). Additionally, he was having questions about his own sexuality at the time and thought that he might be gay. (B6777). He confided his concerns about his sexuality in Aube and the topic became the focus of their discussions. (B6778). Aube tried to persuade him that he was not gay. (B6778). Aube told him that it was not unusual to become aroused when someone showed affection for him, whether it be a man or a woman. (B6778). Aube would then hug him, Aube would get aroused, and tell Doe LIII that he was not gay, but that he was aroused by their contact. (B6778). Aube would place Doe LIII's hand on Aube's "crotch" so he could see that Aube was aroused. (B6778). Aube would explain that he was not gay, but that he was still aroused. (B6779). Their physical contact progressed from there. (B6779).

They hugged, kissed, and on several occasions Aube removed Doe LIII's clothes and they went to Aube's bedroom. (B6779). On one occasion, Doe LIII was in Aube's recliner, Aube held Doe LIII's hands behind his head, undressed Doe LIII, and placed his mouth on Doe LIII's penis. (B6779). Aube held Doe LIII's hands down. Doe LIII told him "no" several times and tried to get his hands free, but could not. (B6779). This was the most "intense" encounter that he had with Aube. (B6784). This happened more than once. At one time, a similar incident occurred on Aube's bed. (B6779). These encounters would end abruptly and Aube would rush him out of his rectory room. (B6780). Aube was concerned that Doe LIII would tell someone. (B6787). On one occasion, he was naked in bed with Aube and Aube was fondling him. Aube got up fast, told Doe LIII to get dressed, and

started watching to see if the housekeeper was there. Doe LIII cannot recall the name of the housekeeper. (B6787).

This contact ended prior to Doe LIII's high school graduation in June of 1982. (B6781). At one point, Doe LIII called Aube and told Aube that Aube really "screwed" him up. (B6781; 6787). Doe LIII told Aube that he wanted to come over to talk to him about it, but Aube told him not to do so. (B6782). At some point, Doe LIII started to see Dr. Seeman, but he does not recall exactly when. (B6782). He was very confused, depressed, and suicidal at the time. (B6782). Doe LIII confided in Dr. Seeman and told Dr. Seeman about his sexual experiences with Aube. (B6786). Doe LIII is not sure whether his meetings with Dr. Seeman ever overlapped in time with when he was seeing Aube. (B6786). He stopped having contact with Aube because Aube would no longer answer his phone or make appointments to see him. (B6786). At the same time, Doe LIII began drinking and doing drugs. (B6790). Aube's conduct contributed to Doe LIII's substance abuse. (B6790). Eventually, Aube just "vanished" from Rochester. (B6790).

Doe LIII's sexual contact with Aube began in 1980, during his sophomore year and continued through 1981. (B6783). Aube had sexual contact with him on at least eight occasions during that time period. (B6783). These encounters occurred in the rectory and in Aube's car -- always in the City of Rochester. (B6783). Looking back on these incidents, Doe LIII is certain that Aube "used his position as, as a priest, as [his] priest, as the family priest, to get a sexual [] things from [him]." (B6792). To this day, Doe LIII is in therapy due, in part, to his encounters with Aube. (B6793).

There is no indication from Diocesan files that the Diocese complied with mandatory reporting requirements after it learned about Aube's sexual contact with John Doe LIII. However, DCYF indicated that any record would have been kept for only one year since a report would have been made against an "out of home" perpetrator. (B2218). According to Aube, Bishop Gendron never told him that the matter was reported to law enforcement. (B6506). As far as Aube is aware, Bishop Gendron never made a report to law enforcement regarding Doe LIII. (B6506). Indeed, law enforcement never contacted Aube after the Doe LIII allegation came to light. (B6506). Likewise, according to John Doe LIII, he was never contacted by either law enforcement or the Diocese regarding his sexual contact with Aube. (B6793). Doe LIII's mother also confirmed that she never had any follow up contact with the Diocese and that she never had any contact with law enforcement in the wake of her complaint to the Diocese. (B6437; 6439). In her dealings with Father Christian, he never mentioned making a report to law enforcement. (B6440).

On September 5, 1981, Dr. Desjardins provided Bishop Gendron with a report based on his evaluations of Aube following Doe LIII mother's allegation. (B21). The report specifically states that it was generated in response to "recent allegations of sexual misconduct between Father Aube and a 17 year old male in the parish." (B22). Dr. Desjardins' report states the following.

Aube admitted that his last "sexual experience" took place at the parish rectory with [John Doe LIII], who was 16 at that particular time. Aube explained that the youth came in unannounced requesting to see him. The "young man" came on to Aube during the meeting by caressing him. Aube responded to the advance. Aube stated, however, that "no complete homosexual experiences took place." The boy claimed that he needed Aube physically and sexually. The boy became "very upset" and "somewhat threatening" when Aube refused to have a sexual relationship with him. For the next two months, the boy visited the rectory "demanding Father Aube's time and attention." Aube explained that the youth threatened that if Aube did not have a sexual relationship with him, he would tell his psychologist, Dr. Steven Seeman. In February of 1981, the youth called Aube to tell him that he did make a report to his psychologist. The boy also stated that he had begun to take drugs and was contemplating suicide. Dr. Seeman contacted Aube and the boy's mother to have a meeting, but Aube voluntarily contacted the Bishop" and discussed the "entire incident with him" and Bishop Gendron referred for a psychological assessment.

Aube admitted that he had approximately six previous physical experiences with John Doe LIII "which included physical caressing in the nude, and some hugging and kissing, but no full sexual experiences resulting in orgasm." These encounters took place in the parish rectory between June and October of 1980.<sup>23</sup>

Aube also admitted to having sexual experiences with five other males between the ages of 20 and 23 over an 11 year period. He had more than one sexual encounter with some of these individuals. One relationship lasted two years and involved "approximately six sexual experiences." Aube typically engaged in sexual contact with these individuals in his rectory rooms in Nashua, Claremont and Berlin. Aube's sexual contact with these individuals included "caressing, necking, some oral sex, and a few orgasms..."

Aube stated that he "would not be able to handle another typical parish assignment at the present time." Aube reported feeling "burned

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<sup>23</sup> John Doe LIII was 15 years old in June of 1980.

out” for parish ministry, and “particularly for parish youth work.” However, Aube indicated that he may be able to handle other assignments such as hospital ministry.

Aube exhibited some sexual responses to testing, indicating some “preoccupation with sexual themes.” The resulting “Rorschach protocol indicates mild to moderate problems with anger and anxiety management, and some problems with impulse control, particularly when he becomes overwhelmed and/or tired. The problems with impulse control focus on sexual themes . . . There is evidence of a mild to moderate problem with psychosexual identification, and a problem with sexual orientation confusion and conflict.”

“The overall results of the present assessment indicate that this good priest is very much in need of appropriate psychotherapy, particularly if he is to continue in some kind of social ministry. In my opinion, long term psychotherapy is indicated which would be geared towards self esteem building, cognitive restriction, anxiety and anger management, and a clarification of his sexual orientation.” “I would also suggest, that in the present case, Father Aube be immediately transferred from his present parish in Rochester.” Aube is “quite open” to an assignment as a hospital chaplain.

Dr. Desjardins’ ended his report with the following recommendation to the Bishop:

I would suggest that [Aube] be transferred to some kind of hospital ministry, with the opportunity to take one or two courses on a part-time basis. I would strongly recommend that that the Bishop impose the following additional conditions: It will be expected that Father Aube will acquire and demonstrate appropriate impulse control of all his behaviors and drives consistent with his ministry, and within a reasonable period of time. I would suggest that the threat of suspension of his priestly functions be imposed as a condition under which he must avoid additional sexual contacts firstly with minors and secondly at a parish rectory or other religious dwelling. Finally, it would be most important for this priest to develop more effective contacts with other brother priests, who can support him and encourage him in his efforts to be a good priest. The Bishop may also wish to impose some conditions requiring contact with a regular spiritual director. Finally, it should be firmly pointed out to Father Aube, that sexual intimacies of any type with a minor in the State of New Hampshire, is considered a felony, and can result in a significant prison term.

(B22-26). According to Aube, Dr. Desjardins advised him to see an attorney. He went to Paul McEachern in Portsmouth and was candid with him about his sexual contact with Doe

LIII. (B6533-34). Attorney McEachern advised him to stay away from the Rochester area. (B6534). Thereafter, Dr. Desjardins instructed him that he was not to return to Rochester. (B6534).

## **VII. AUBE'S ASSIGNMENT AS THE CONCORD HOSPITAL CHAPLAIN**

After the Diocese received Dr. Desjardins evaluation of Aube with regard to Aube's sexual contact with John Doe LIII, the Diocese appointed Aube as Chaplain of the Concord Hospital and the nursing homes in the Concord area, effective as of October 9, 1981. (B2790; 963). Aube was also responsible for providing mass on a daily basis to the Sisters at the Carmelite Monastery in Concord. (B2790). When Dr. Desjardins learned of Aube's hospital assignment, he indicated that it was well suited for Aube, but cautioned the Diocese not to place too many demands on Aube in light of his tendency to be a workaholic. (B27-29). While Dr. Desjardins recommended that Aube have light duty, he did not recommend that he have no contact with youth. (B27-29). Aube resided at Saint Peters parish in Concord and was supervised by Father John P. Quinn, the Vicar for Community Affairs. (B2790; 6537).

According to Aube, Bishop Gendron contacted him to inform him that he would be the Chaplain at Concord Hospital and at the Carmelite Monastery, three area nursing homes, and the senior apartment building on Main Street. (B6537). Father Christian also contacted Aube to tell him that the Diocese had an agreement with the Doe LIII's family that prohibited Aube from returning to parish work. (B6549).

The Diocese did not place any stated restrictions on Aube's hospital ministry. (B2790). When the Bishop wrote to Richard Warner, the Concord Hospital Administrator, to introduce Aube as the new hospital chaplain, the Bishop stated: "It is my hope that his work with the sick people of your institution will prove fruitful." (B2792). There is no indication that the Diocese warned hospital administration that Aube had engaged in sexual conduct with minors in the past.

In his new role at the hospital, Aube had contact with youth. For instance, the Diocese received letters of praise from those that came in contact with Father Aube at Concord Hospital. (B2756). One man wrote to Bishop Gendron in January of 1983 to thank Aube for responding to his wife's bedside after she suffered a heart attack. (B2756). That person stated: "Father Paul went beyond the call of his duties to assist my young 15 year old son cope with this heart breaking event . . . Father Aube [sic] took my family under his wing even though we were not members of his or any church, although my wife was a Roman Catholic at one time in her life." (B2756). Bishop Gendron responded to this letter, stating "I am most happy that the Diocese has been able to provide the people of the Concord area with the care that Father Aube has so generously extended to the sick and their families." (B2755).

Aube confirmed that there were no restrictions placed on his ministry when he was transferred to Concord Hospital. The only restriction was that he was not to return to

Rochester. (B6532). He was not confined to adult hospital floors. (B6541). In fact, he ministered to children when he worked at Concord Hospital. (B6541). No one from the Diocese checked in with him to determine the extent of his contact with children. (B6541). By his own choice, Aube tried to stay away from adolescents unless it was absolutely necessary to administer sacraments. (B6541-42). Occasionally, Aube would fill in at St. Peter's parish when the regular priest was on vacation, offering mass to parishioners on the weekend. (B6546). He would have contact with parishioners before and after mass, greeting them on the way out. (B6546).

#### **A. Aube's Contact With John Doe LIV In Concord**

Soon after his transfer to Concord Hospital, the Diocese received a report from a representative of Catholic Charities in Portsmouth regarding contact between Aube and John Doe LIV, a 17 year old boy, following Aube's reassignment to Concord. (B78). Father Christian generated a memorandum on May 11, 1982 describing the report. According to Father Christian's memo, the head of information and referral for the Strafford County Welfare Department contacted a Catholic Charities representative and reported that Aube had been counseling John Doe LIV, who was 17, with regard to family problems and his own drinking and drug abuse. (B78). Doe LIV was from Barrington, NH. (B78). After Aube moved to Concord, Doe LIV's mother contacted Aube to ask for advice and Aube provided advice to her, over the phone. (B78). In Late April or early May of 1982, John Doe LIV hitch hiked to Concord and spent the night with Aube. (B78). On a subsequent occasion, Aube took Doe LIV and two friends to the beach in Maine. He picked them up outside of Rochester, explaining that he was not allowed in town. (B78). Father Christian explained in his memo that he told the Catholic Charities representative that made the report that he "could not confront Father Aube with this situation unless [he] had a source of information..." (B78). Christian also asked the Catholic Charities representative<sup>24</sup> to contact the Strafford County Welfare Department to secure more information.<sup>25</sup> (B78). Christian concluded the memo by stating:

I feel it would be important to confront him [Aube] for two reasons: (a) So that we could share this information with his psychologist from whom he may be hiding these sorts of incidents. (b) To make sure he knows that we are aware that he is obeying only the letter of the law but not its spirit in regard to his appearance in the Rochester area.

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<sup>24</sup> Task Force investigators spoke with the Catholic Charities representative referenced in Christian's memo on October 22, 2002. (B7700). She stated that she did not recall John Doe LIV and denied that she ever spoke with officials from the Diocese about him. (B7701).

<sup>25</sup> Task Force investigators spoke with the Strafford County Welfare Department employee referenced in Christian's letter on October 22, 2002. She confirmed that she contacted the Catholic Charities representative referred to in Christian's memo to provide her with information that she received that Doe LIV visited Aube and joined him on a trip to Maine with friends. (B7699). However, the Welfare Department employee could not remember how she learned about these incidents. She speculated that she received this information from either Doe LIV or his mother. (B7699). She did not have specific information that Aube had sexual contact with Doe LIV, but stated that she always suspected that Aube "sexually abused Doe LIV." (B7698).

(B78).<sup>26</sup>

There is no indication from the documents secured by the Diocese that it conducted any follow-up investigation after receiving this report, informed Dr. Desjardins of the report, or confronted Aube with the concern.

When asked about his contact with Doe LIV, Aube stated that he continued to keep in touch with Doe LIV, a Rochester parishioner, once he was assigned to Concord, but did not have any sexual contact with him. (B6537). Aube confirmed that Doe LIV ran away from home and came to Concord Hospital to see Aube, but he denied that any sexual contact occurred. (B6538). According to Aube, he has not had sexual contact with anyone after 1981. (B6541).

Task Force investigators interviewed John Doe LIV (born in September of 1964) on October 31, 2002. (B9351-52). He explained that he got to know Aube when he was 15 years old. (B9352-53). Doe LIV stated that he had significant drug abuse problems at the time and often ran away from home. (B9353). Because of these problems, he met Aube for counseling. (B9354). He also attended church functions at the Holy Rosary parish. (B9353). When he was approximately 16, he began to have sexual contact with Aube. (B9355). Aube would touch his penis both over and under his clothing. (B9355). Aube told him that it was a method of hypnosis. (B9355). Aube's sexual contact with Doe LIV occurred in the rectory, in Aube's car, at a camp in Barrington, NH, and during a ride in Aube's car to Aube's parent's house in Berlin. (B9356-59). Doe LIV explained that he continued to see Aube several times after Aube was transferred from Rochester. (B9363). Doe LIV recalled spending nights with Aube in either Manchester or Concord. (B9364; 9370). He recalled making trips with John Doe LXXV, another Rochester parishioner, to visit Aube. (B9364). Doe LIV recalled that "inappropriate touching" occurred between he and Aube during these visits. (B9367). Doe LIV stayed with Aube in his living quarters. (B9367). He believed that Aube lived near or on the hospital grounds. (B9367). He also recalled a time when he ran away to either Connecticut or New York and Aube came to pick him up. (B9370-71). However, he did not recall joining Aube on a trip to the beach. (B9365). Doe LIV stated that the Diocese never contacted him with regard to concerns that he was having continued contact with Aube after Aube left Rochester. (B9373).

#### **B. Aube's Contact With John Doe LXVIII In Concord**

Aube explained that John Doe LXVIII visited him when he was working at Concord Hospital. (B6526).<sup>27</sup> Aube joined Doe LXVIII and his friends for a ride up to the White Mountains. (B6526). At one point, he and Doe LXVIII were in Aube's rectory quarters at St. Peter's in Concord and Doe LXVIII told him that he was considering the priesthood.

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<sup>26</sup> Diocesan documents contain a handwritten note listing six of Aube's victims. (B63). John Doe LIV is on the list. The year 1982 appears to indicate the approximate date of the offense. The year 1965 appears to indicate Doe LIV's approximate date of birth. (B63). John Doe LXVII, John Doe LXVIII, John Doe LXX, John Doe LX, and John Doe LIII also appear on this list. (B63).

<sup>27</sup> As stated above, John Doe LXVIII was one of Aube's victims from his time at Holy Rosary in Rochester.

(B6526). However, Doe LXVIII told Aube that he was concerned that he was uncircumcised because the Old Testament states that we all must be circumcised. (B6526). Doe LXVIII then showed Aube his genitals. (B6526). Aube stated that he sat on the other side of the room during this incident. (B6526). Doe LXVIII would have been in his early 20's at the time of this encounter.

### **VIII. AUBE'S ASSIGNMENT TO MANCHESTER'S ELLIOT HOSPITAL**

On January 27, 1983, the Diocese transferred Aube to the Elliot Hospital in Manchester. (B963). Aube explained that the Diocese assigned him to the Elliot because the previous chaplain, Father Vayette, died. (B6542). Members of the Concord Hospital nursing staff wrote to the Diocese when Aube left, extolling his work at the hospital and presenting a petition to the Diocese requesting that he stay. Nurse Katherine Simonton wrote: "He has been a tremendous asset to patients, families and the Nursing Staff." (B2752). Aube worked at the Elliot until August 27, 1993, when the hospital eliminated his position as Director of Pastoral Care. (B2879; 2883).<sup>28</sup> Scott Goodspeed, the President and CEO of the Elliot wrote a letter to Bishop O'Neil praising Aube's efforts in the area of pastoral care during the ten and a half years that he served at the Elliot. (B2883). There is no indication that the Diocese warned administrators at the Elliot Hospital about Aube's previous sexual assaults against minors.

According to Aube, he lived at the Sisters of the Holy Cross retirement home in Manchester while he was working at the Elliot. (B6546). During his time in Manchester, Aube was also responsible for administering mass at Saint Patrick's in Manchester. Thereafter, he also gave mass in Candia for a stretch of three to four years. However, he was not involved in the day-to-day operations of the parish. (B6547). Between the late 1980's and 1993, Aube stated that he was asked by Father Billadeau and Father Christian to hear confessions in Hampstead, N.H. (B6547). On these occasions, Aube took confessions from children. (B6548). However, he did not establish any relationships with these children. (B6548).

During his interview, Aube explained that he continued therapy with Dr. Desjardins during his placement at the Elliot. (B6548). Aube stated that although he was tempted, he never re-offended. (B6548). Aube's treatment records indicate that he stopped seeing Dr. Desjardins in 1989 and began seeing him again in 1993, following an allegation of sexual misconduct reported to the Diocese against Aube stemming from an incident that occurred in Rochester in 1979 or 1980 with a 15 or 16 year old boy named John Doe LXVII. (B42).

Aube explained that while he did not have continued sexual contact with any of his previous victims, he did keep in touch with John Doe LXIV through his years in Manchester.

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<sup>28</sup> After he left the Elliot, Aube stated that he learned from Father John Quinn that there were rumors spreading among hospital administration that Aube "liked little boys." (B6543; 6544). Aube now believes that his departure from the Elliot had something to do with these rumors. (B6545).

(B6545). Aube had a “wonderful friendship” with Doe LXIV and his wife. (B6545). He also kept in touch with John Doe LX. (B6545).

**A. Aube’s Sexual Assault Of John Doe LV  
At The Chapel Located In The Elliot Hospital**

The Task Force recently received a report from John Doe LV (born in April of 1966) that he was sexually assaulted by Aube in the chapel of the Elliot Hospital, when Doe LV was 16 years old. As described above, Doe LV also alleged that Aube sexually assaulted him when he was involved with the Aube’s church youth group at the Holy Rosary parish in Rochester.

Doe LV explained that he kept in touch with Aube after Aube left Holy Rosary “all of the sudden.” (B2191; 2194). In approximately 1982, when Doe LV was 16 years old, he drove to Manchester to watch a Spaulding High football game, (B2190-91), and met Aube at the Elliot Hospital when the game was over. (B2152; 2191). Doe LV drove a 1976 Ford Pinto Wagon. (B2193). Aube gave him a tour of the Elliot trauma center and then led him to a room that Aube maintained in the hospital for church services -- there was also an office in the area. (B2152; 2191; 2192). There were wooden seats, enough room for approximately 30 people, and curtains in the room. (B2191; 2192). Aube started hugging and kissing him. (B2152; 2191). At some point, another person walked in, turned around, and left. (B2191; 2193). Aube stopped for a moment then continued. (B2191; 2193). Aube pushed Doe LV to the floor and continued to kiss him. (B2191). Aube placed his hands down Doe LV’s pants. (B2265). Doe LV felt like he was no longer in control. (B2191).

On a subsequent occasion, Doe LV explained that he went to Aube’s home in Candia, N.H. During one interview, Doe LV stated that he was an adult. (B2152). During a subsequent meeting, Doe LV recalled that he was approximately 17 and he drove to Aube’s home in his Ford Pinto Wagon. (B2169). They had a spaghetti dinner together, showered, and went to bed. They were both naked and Aube was touching him all over. (B2152; 2201). They were totally nude under the covers of the bed. (B2201). Aube performed oral sex on him. (B2208). Aube asked Doe LV to stay the night, but Doe LV felt uncomfortable and left. (B2152; 2201).

Years later, when Doe LV got engaged, he brought his fiancé to Aube’s home in Candia to introduce her to Aube. (B2207).

Aube confirmed that he saw Doe LV once during the time that he was working at the Elliot hospital. (B6517). On this occasion, Doe LV visited Aube at Aube’s home in Candia. According to Aube, Doe LV propositioned him to have anal sex and he refused. (B6514). This occurred in 1989 or 1990. (B6515). Aube did not state that he encountered Doe LV at the Elliot Hospital.

## **B. Aube's Contact With John Doe LXIX In 1982 In Manchester**

In August of 2002, the Task Force received a report from John Doe LXIX regarding his contact with Aube, when Aube was assigned to the Elliot Hospital. As described above, John Doe LXIX was a parishioner at the Holy Rosary parish in Rochester in the late 1970's. After his family moved from Rochester, Aube visited them during a trip to be a guest priest at a youth retreat. During the trip, Aube had sexual contact with Doe LXIX. In 1982, Doe LXIX was in college and traveled to New Hampshire during the spring break of his Freshman year. (B2714). Doe LXIX was 19 at the time. (B2714). He visited Aube in Manchester and stayed with him for 3-4 days. (B2714). He believed that Aube lived in a rectory. (B2714). One night, Aube came to his room and hugged him and kissed him. (B2714). They were both wearing their underwear at the time. (B2714).

## **IX. ALLEGATIONS OF SEXUAL ABUSE REPORTED TO THE DIOCESE AFTER AUBE WAS ASSIGNED TO THE ELLIOT HOSPITAL**

As indicated above, after Aube was working as the hospital chaplain at the Elliot in Manchester, Diocese received a complaints about Aube's conduct through the years. The Diocese received complaints from John Doe LX in 1985, describing Aube's sexual assaults in Berlin; John Doe LXVIII in 1988 and 1993 relating to Aube's sexual assaults in Rochester; and a complaint from John Doe LXVII in 1992 regarding sexual assaults in Rochester. The Diocese responded to each of these complaints. In various correspondence to these victims, the Diocese stated that it was not aware of any allegation relating to Aube before the Summer of 1981. The Diocese also claimed that Aube successfully received treatment for his problem, had been moved to a hospital assignment where he was supervised and did not have contact with minors, and that Aube had not re-offended since the 1981 report.

### **A. Complaint of John Doe LX to The Diocese In January 1985 -- Aube's Sexual Assault in the 1970's at the Guardian Angel Parish, Berlin**

In January of 1985, Bishop Gendron received a letter from John Doe LX alleging that Aube sexually assaulted him in the parish rectory when he was a teenager and a parishioner of the Guardian Angel parish in Berlin in the 1970's. (B80). Doe LX indicated that he was writing so that Aube would be stopped from molesting others. (B80). Doe LX explained that he had personal knowledge that Aube "sexually molested" other boys:

It is with personal knowledge that Paul L. Aube has sexually molested several boys throughout the state, and that none of the boys, now men, to my knowledge have ever brought it out, and that his actions were even covered up by policemen of Nashua, NH police department when they caught him having sex with a boy in his car, that I am writing you. (B80).

After the Diocese received this complaint from Doe LX, Father Christian confronted Aube on January 3, 1985, and drafted a memorandum based on their meeting. (B79). Christian provided Aube with Doe LX's letter alleging that Aube sexually molested him. (B79). Aube "admitted that the attached letter was accurate in regard to his relationship with John Doe LX," but explained to Father Christian that it was all part of the past and that he was continuing with counseling with Dr. Desjardins. (B79). In his memo, Father Christian stated:

I explained to Father Aube that our main concern at this point was how to persuade John Doe LX, who seems somewhat unstable, that Father Aube was under care and he did not have any further concern. Father Aube was appreciative of my efforts on his behalf in this regard, and I agreed to notify him after I had spoken with [John Doe LX].

(B79). Thereafter, Father Christian called Doe LX directly and informed him that Aube had "voluntarily revealed his problem to the Bishop three years ago, Aube had been removed from parish ministry, required to undergo a complete psychological evaluation as well as therapy." (B79). Father Christian also told Doe LX that "the diocese carefully monitors the whole situation, and with the reports of the psychologist, we are satisfied that the problem is under control." (B79) (emphasis added). Father Christian copied this memo to Bishop Mulvey. (B79).

## **B. Complaint Of John Doe LXVIII 1988 And 1993 -- Aube Sexual Assaults Between 1975-1977 At The Holy Rosary Parish**

On September 19, 1988, John Doe LXVIII contacted the Diocese to report that between the ages of 14 and 18, Aube made various sexual advances toward him when he was a parishioner at the Holy Rosary parish in Rochester. (B91).<sup>29</sup> The final incident occurred in approximately 1980 or 1981 when Aube tried to fondle Doe LXVIII's genitals. (B91). During the years, Aube hugged him, kissed him on the mouth, and massaged him while talking about love. (B91). Doe LXVIII stated that he wanted to bring Aube's conduct to the attention of the Diocese so Aube would not victimize others. (B91).

According to a memo in the Diocesan file, the Diocese told Doe LXVIII that it learned of Aube's problem at approximately the same time that Doe LXVIII reported his final sexual contact with Aube -- in 1981 or 1982. (B91). Aube "willingly admitted the problem" and cooperated in psychological testing. (B91). The psychiatrist that treated Aube recommended a hospital assignment "where he would not come into contact with youth in a familiar fashion." (B91). There had been no difficulties with Aube since the Rochester incident. (B91). Separately, the memo stated that following Doe LXVIII's report, a Diocesan official contacted Aube, Aube was "distraught" with regard to the allegation, and

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<sup>29</sup> There was a memorandum generated by the Diocesan official that had the conversation with Doe LXVIII. However, unlike similar memorandums, it is unsigned. (B92). Father Christian generated a similar memorandum when John Doe LX forwarded his complaint regarding Aube to the Diocese in 1985. (B79).

claimed that nothing happened with Doe LXVIII. (B91). The memo states: “I reminded him [Aube] how important it was for him to return to counseling if there was any weakening of his resolve in regard to the control of his problem.” (B92).

Doe LXVIII contacted the Diocese again on December 15, 1993 to report Aube’s conduct. Monsignor Christian took the call and generated a memorandum based on their conversation. (B131). Christian noted that he spoke with Doe LXVIII “approximately two years ago about this issue.”<sup>30</sup> Christian’s memo indicates that over a period of 2 or 3 years “when Father Aube was a trusted spiritual advisor,” Aube hugged and kissed Doe LXVIII inappropriately. (B131). Later, in the Spring of 1980, when Doe LXVIII was visiting from college, Aube convinced him to permit Aube to fondle his genitals. Soon thereafter, Aube was removed from Holy Rosary in Rochester. (B131). Christian again emphasized in his conversation with Doe LXVIII that Aube was removed from Holy Rosary in the wake of a similar incident, had undergone “long-term” psychiatric care, was permitted to serve only in the capacity of a hospital chaplain, and was closely monitored by the Diocese. (B131).

After reporting Aube for the second time in 1993, Doe LXVIII provided lengthy written materials to the Diocese detailing his allegations against Aube, his spiritual life following his contact with Aube, and his struggles in adulthood. (B93-130). In his letter to the Diocese, Doe LXVIII explained that he attended a seminar in the Spring of 1990 relating to sexual abuse by Clergy. He realized much about Aube’s contact and grew concerned that Aube may also have abused his brother, John Doe LXIX. (B104). After the 1990 seminar, Doe LXVIII stated that he contacted the Diocese and spoke with Monsignor Christian, but Christian would not provide him with any information about Aube. (B104). Doe LXVIII also called Monsignor Simard at the Holy Rosary Parish. Monsignor Simard denied any knowledge of Aube’s sexual misconduct. (B104).

At the conclusion of his letter, Doe LXVIII made specific requests of the Diocese relating to Aube. Doe LXVIII asked for information from the Diocese relating to Aube’s conduct “prior to and during” Aube’s assignment at Holy Rosary, that the Diocese acknowledge Aube’s conduct and provide a written response from Aube, and that the Diocese provide him with specific information about its efforts to protect the vulnerable from Aube. (B107-08). Doe LXVIII pointed out that when the Diocese learned about allegations in 1981 regarding Aube, it did nothing to invite other victims to come forward and stated: “Had the diocese acted immediately in suspending Aube pending an investigation, the abuse with me would have never occurred.” (B108). Doe LXVIII asked the Diocese to seek out other of Aube’s victims and inform the parishioners where he was assigned of Aube’s conduct. (B108). Doe LXVIII also stated his concern that Aube was currently working at the Elliot Hospital as a Chaplain and requested that they remove him from active ministry. Doe LXVIII criticized Diocesan supervision of Aube pointing out that “[y]our supervision

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<sup>30</sup> Had Monsignor Christian discussed this matter with Doe LXVIII two years prior, their conversation would have occurred in December of 1991. There are no documents in the Diocesan files referencing a conversation in that time period. It is more likely that Monsignor Christian was remembering his contact with Doe LXVIII on September 19, 1988 and was the one that generated the unsigned memorandum based on that conversation. (B91).

did not notice my brother's visit in the Spring of 1982." (B108). At the very least, Doe LXVIII requested the Diocese inform the hospital of Aube's past. (B109). Doe LXVIII also asked for restitution of his expenses in researching and presenting his story to the Diocese -- \$4,000 for 80 hours of his time. (B109). Doe LXVIII noted, however, that compensation was the "least of [his] concerns." (B110). Doe LXVIII also asked for financial assistance to pursue therapy. (B110).

Doe LXVIII's letter to the Diocese and his specific request for a Diocesan response prompted a series of correspondence between the Diocese and Doe LXVIII. The Diocese informed Aube on January 31, 1994 that Doe LXVIII had provided them with a "rather voluminous case history." (B141). Monsignor Christian stated: "While I do not think that he is any sort of legal threat at this time, I believe it would be important for us to get together as soon as possible to discuss this situation." (B141).

Also on January 31, 1994, Monsignor Christian responded to Doe LXVIII, in a letter. (B142). Christian acknowledged that he had shared Doe LXVIII's concerns with Bishop O'Neil who was recuperating from surgery at the time. (B142). Christian also acknowledged that when Doe LXVIII called in 1988, he shared his complaint with Bishop Gendron. (B142). He explained that "[w]hen Bishop O'Neil was named Bishop in June, 1990, he obviously was brought up-to-date on all the concerns regarding Father Aube." (B142).

In his January 31, 1994 letter, Monsignor Christian further stated to Doe LXVIII that he believed Doe LXVIII's account of his relationship with Aube. He acknowledged a "pattern of grooming" that Doe LXVIII described "consistent with people who have this sort of addictive sexual problem." He recognized that this pattern was consistent with "3 other instances of similar activity which had been reported to us by other victims of Father Aube." He apologized that "a priest of the Church in whom you placed such great trust was responsible for terribly wrong behavior in your regard." (B142). He also offered an account of the Diocese's knowledge of Aube's sexual misconduct over the years, stating:

1. The Diocese had absolutely no knowledge or suspicion of Father Aube's problem prior to his ordination as a priest. I can assure that such knowledge would have precluded his ordination.
2. In August of 1981, when the Diocese received the first complaint of sexual abuse, the following steps were taken.
  - a. Father Aube was relieved of his duties at Holy Rosary Church in Rochester, and was required to undertake extensive psychological testing and follow-up counseling. The victim in the case and his family were approached by the Diocese and assured of the

willingness of the Diocese to be of whatever assistance possible.

- b. The young man in question was already in counseling for other matters, and continued in that counseling situation.
  - c. The pastor of Holy Rosary Church in Rochester was made aware of the whole situation, and was encouraged to report to us any other suspected cases of abuse. Nothing was forthcoming at the time.
3. Father Aube remained in counseling (and does so up to the present), and subsequently, at the recommendation of the psychologist, was assigned to hospital ministry. That ministry was closely monitored by the Diocese, his psychologist, and his spiritual director. It did not put him into a situation where he could develop relationships with young people. In fact, since his position called for him to coordinate the hospital visitations of local priests, he rarely visited the general population of the hospital, and concentrated on his pastoral ministry in the oncology and critical care units.
4. Since 1981, up to the present, three other victims, including yourself, have identified themselves to the Diocese.<sup>31</sup> All these allegations of abuse had occurred prior to 1981. In each instance those victims were assisted, according to their needs and desires, to obtain the appropriate counseling. In each instance Father Aube was confronted with the allegation and the fact of the allegation was made known to his counselor, so that it could serve as a reminder and reinforcement in his ongoing need to control his behavior.
5. Since the Diocesan intervention in 1981, and Father Aube's testing and counseling, there has been no further complaint raised against him.<sup>32</sup> In other words, all the complaints and victims of which we know predated 1981. It appears that his counseling has proved effective in enabling him to control the sexual addiction from which he suffers. I also believe, however, that the warning given to him in 1981 by the Diocese that any further complaints of abuse subsequent to that date would result

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<sup>31</sup> Monsignor Christian was likely referring to John Doe LIII, John Doe LXVII and John Doe LX.

<sup>32</sup> Monsignor Christian's claim does not account for the report that the Diocese received in May of 1982 that John Doe LIV spent the night with Aube in Concord. Based on records secured from the Diocese, it does not appear that the Diocese investigated this complaint or confronted Aube. However, Doe LIV's name appears on a handwritten note in Diocesan files with the name of other of Aube's victims.

in his loss of the priesthood has served as a negative constraint in this regard.

6. Recently Father Aube's position as head of pastoral care at the Elliot Hospital was phased out, along with some thirty or forty other administrative positions in a hospital reorganization. Father Aube is currently without assignment, and is very much aware of the fact that the Diocese will assign him only some kind of appropriate chaplaincy situation. We do not currently have such a position available. Any such new assignment would obviously be under the same sort of constraint that was true of his previous hospital ministry.

In closing, Monsignor Christian stated that "from what I have previously said . . . to the best of our knowledge our actions have already prevented there being any further victims since 1981. We will continue to safeguard potential victims in this way." (B144) (emphasis added).

Doe LXVIII responded to Monsignor Christian's letter in a letter of his own on February 23, 1994. (B148). Doe LXVIII pointed out that the claim of the Diocese that it was unaware of any allegation relating to Aube until the Summer of 1981 was specious in light of the fact that "Aube himself spoke of accusations as early as April of 1981." (B149). Monsignor Christian responded to this concern in a letter to Doe LXVIII on February 24, 1994 stating "that while Father Aube may have had suspicions in April that a case would be raised against him, in fact those complaints were brought to the Diocese by the victim only in August. (You may be interested to know -- and something which I had not thought to share with you until now -- Fr. Aube actually turned himself in to the Bishop a day or two prior to our receiving the formal complaint. I believe his actions were in large part due to the remorse and guilt he was feeling)." (B150) (emphasis added).

Once Bishop O'Neil recovered from his surgery, he promised Doe LXVIII that he would also respond to his letters regarding Aube. (B166). Prior to responding, Bishop O'Neil provided drafts of his letters to Doe LXVIII to Attorney John Broderick for his comments. (B167). Attorney Broderick was representing Aube at the time. (B6531). Attorney Broderick suggested adding language "which demonstrably acknowledges Fr. Aube's personal recognition of his problem and his forthrightness in discussing it with Church hierarchy. I would also request that the intensive nature of his treatment with Dr. Desjardins be referenced as well as his success over the last 13 years . . . In my judgment, the letters should not only acknowledge Fr. Aube's past problems but should focus constructively and redemptively on his efforts and success over a considerable period of time." (B51). Attorney Broderick pointed out that Aube was in counseling once a week with Dr. Desjardins between 1981 and 1986 and then once a month between 1986 and 1988 as well as that "in 1981 Fr. Aube initiated discussions with the Diocese concerning his need for help and counseling." (B52). Attorney Broderick concluded by stating: "I think it is important that [] Doe LXVIII understand that the Church, although not approving of Fr.

Aube's conduct, is considerate not only of the pain caused to John Doe LXVIII but of its own priest." (B52).

On May 17, 1994, Bishop O'Neil drafted a letter to John Doe LXVIII. (B169). Bishop O'Neil restated assurances made to Doe LXVIII that "the Diocese had no knowledge of real or imagined problems prior to the matters which arose at the Holy Rosary and of which we became aware in the Fall of 1981. Had the Diocese had any reason to believe there were problems prior to Father Aube's ordination or at any other time, his assignments would not have been made."<sup>33</sup> (B169) (emphasis added). He also confirmed that Father Aube did not have a full-time assignment following his departure from the Elliot Hospital. (B169). He explained that the past 13 years were painful for Aube, he has "successfully come to understand and control his previous activity," and there has been no known instance of any repetition of this behavior since 1981. (B170). Bishop O'Neil promised Doe LXVIII that he would require that Aube undergo an "additional independent evaluation" at a facility of the Bishop's choosing prior to any future assignment. (B170). He also offered Doe LXVIII up to \$4,000 in counseling costs. (B170).

### **C. John Doe LXVII's Complaint To The Diocese On November 25, 1992 -- Aube Sexual Assault At Holy Rosary In Rochester**

On November 30, 1992, Monsignor Christian received a report over the phone from Dr. Frank Thompson from Maine, alleging that Aube sexually fondled one of his patients, John Doe LXVII, at the rectory of Holy Rosary in Rochester in the summer of 1977 or 1978, when he was approximately 15. (B123).<sup>34</sup> Monsignor Christian drafted a memorandum of the phone call. He explained that he told Dr. Thompson that they became aware of Aube's "problem" a number of years ago and took the following steps: 1) we immediately removed him from Holy Rosary, Rochester; 2) we required a complete psychological evaluation and ongoing therapy for Fr. Aube; 3) we reassigned him to hospital ministry only at the suggestion of his therapist, who was convinced that this type of ministry with ongoing therapy would not place other minors at risk. (B123).

John Doe LXVII called the Diocese and spoke with Monsignor Christian on January 20, 1993. (B128; 10857). Doe LXVII reported that when he was 15 or 16, Aube fondled his genitals and kissed him in the rectory at Holy Rosary Parish. (B128). According to his memo, Monsignor Christian told Doe LXVII that Aube was treated for his problem and "was now in a ministry where he was not in contact with youth." (B128) (emphasis added). Christian further stated: "I told Doe LXVII we were confident that Father Aube had his previous impulsive behavior well in hand, and that there were no recent victims of any sort of abuse." (B128). When Task Force investigators recently spoke with Doe LXVII, he

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<sup>33</sup> Bishop O'Neil's statement that the Diocese was not aware of real or imagined problems relating to Aube prior to Fall of 1981 does not account for concerns about Aube's relationships with young people that came to the attention of the Diocese in December of 1975, following the Nashua incident.

<sup>34</sup> Diocesan files indicate that Dr. Thompson reported the matter to the Maine Department of Human Resources as well as to a New Hampshire agency, although the memo states that the New Hampshire agency refused the report. (B122).

stated that he recalled Christian telling him that Aube was working in hospital ministry and that he no longer had contact with children. (B10858). Over time, Christian's statement troubled Doe LXVII. Doe LXVII called the hospital and learned that they treated children. (B10858).

Diocesan Attorney Brad Cook drafted a memorandum to Aube's file on August 3, 2001, relating to Doe LXVII's complaint which he termed "inappropriate" hugging by Aube. (B46). Attorney Alan Cronheim had contacted the Diocese regarding Doe LXVII to discuss Doe LXVII's potential claims against the Diocese. (B46). Cook stated in his memorandum that "Aube has had treatment and was removed from any ministry which would involve contact with children." He further stated: "The events allegedly occurred either in Rochester or Dover and were some years ago, perhaps raising a statute of limitations issue..." (B46).

According to Monsignor Christian's memo, he met with Aube on January 21st to discuss Doe LXVII's complaint. (B129). Aube did not recall John Doe LXVII. (B129).<sup>35</sup> Christian speculated that Aube may be lying. (B129). Christian stated in his memo:

I explained to Father Aube that in my experience where there is in fact a history of such a problem it is better to be honest from the very beginning [sic] about the knowledge of the Diocese and the treatment we had assisted the priest to obtain. Hopefully, this prevents the people in question from pursuing civil or criminal action.

(B129) (emphasis added). Christian also wrote in his memo that Aube told him that he had not been in counseling for some time based on a mutual agreement with Dr. Desjardins that it was no longer necessary. (B129). Aube agreed, however, to a further appointment with Dr. Desjardins to make sure that he was facing the new allegation appropriately. (B129).

Although Christian wrote in his memo that Aube had no memory of Doe LXVII, Christian told Doe LXVII that Aube remembered him and that Aube had admitted to sexually assaulting him. During a recent interview, Doe LXVII explained that he spoke to Christian twice on the phone regarding his complaint against Aube. Doe LXVII explained that Christian initiated the second call to him after Christian met with Aube. (B10859). Christian told Doe LXVII that he explained Doe LXVII's allegations to Aube, Aube was forthright, Aube told Christian that he remembered Doe LXVII, and Aube admitted to molesting Doe LXVII. (B10859).

Apparently, in response to Doe LXVII's allegation, in March of 1993, Monsignor Christian requested that Dr. Desjardins provide a summary of his assessment and opinion "concerning whether or not Fr. Aube continues to be in a good place emotionally, and whether or not I conclude that his hospital ministry continues to be an appropriate pastoral placement for him at this time." Dr. Desjardins provided a report to Monsignor Christian based on several sessions with Aube. Dr. Desjardins stated that he had not visited with Aube

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<sup>35</sup> During Aube's interview with the Task Force, he reaffirmed that he did not know John Doe LXVIII. (B6502).

in approximately four years (since March of 1989). (B42). Dr. Dejardins concluded that “I am pleased to report, that based on my updated evaluation, and on the basis of the historical data reported to me, that he continues to be quite happy, and well placed in his present hospital ministry.” (B42). “[T]here is no clinical and/or historical evidence available to this neuropsychologist, to indicate any significant problems, and/or inappropriate behavior, which would negatively impact his present pastoral placement.” (B42).<sup>36</sup> Dr. Dejardins noted that “[t]he major stressor and concern in his life at this time is related to the allegations, which recently surfaced, and particularly, the way, that he perceives, that these allegations have been handled. I believe that he has discussed his concerns with you on one or more occasions.” (B42). He further stated that Aube was experiencing “a moderate degree of mistrust, concerning the way, that he perceives, that these allegations, apparently, have been handled.” (B43).<sup>37</sup>

On August 4, 1994, Attorney Cook sent a letter to Cronheim stating “we are saddened by what we heard and believe Doe LXVII is sincere.” (B59). From a legal perspective, Cook stated that the statute of limitations as well as liability problems in connection with the Diocese as a target would make any suit against the Diocese difficult for Doe LXVII. However, Cook conceded that from a pastoral perspective, the “Church wants to assure him of its concern and regret for any effect on his life which the matters discussed may have had.” (B59). Accordingly, Cook offered Doe LXVII a \$20,000 settlement. (B59). Cook also stated:

Obviously, there would be no admission by the Diocese of any liability nor is there any accompanying admission to be implied concerning any personnel of the Diocese. We would ask for a Confidentiality Agreement protecting both parties from disclosure of the terms of the settlement or existence of the claim. While this might be deemed to benefit the Diocese primarily, it also would obligate the Diocese to inform Doe LXVII if any inquiry or request were made concerning his

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<sup>36</sup> There is no evidence that the Diocese provided Dr. Desjardins with the report it received in May of 1982 that Aube continued to have contact with a minor parishioner from Rochester even after his reassignment to hospital ministry.

<sup>37</sup> Additionally, Aube provided the Task Force with a Psychological Evaluation generated by Mark Blais, Psy. D., a Clinical Psychologist with Massachusetts General Hospital following testing on February 25, 1994. (B7472). This evaluation did not appear in the Diocesan file. However, it states that “[a]t the request of the Bishop, Fr. Paul is under going an independent psychological/psychiatric evaluation.” (B7472). The evaluation concludes that “Fr. Paul is prone to . . . be unaware of his emotional reactions. Yet he is drawn to emotionally arousing situations. This means that he will frequently find himself being (unconsciously) ‘pulled’ into situations where his judgment and reasoning are handicapped by his emotional arousal. Unchecked this process puts him at risk for impulsive poorly planned actions.” (B7475). Despite this conclusion, the evaluation also states that “[t]he testing found no signs that Fr. Paul is sexual [sic] preoccupied, impulse ridden or generally prone to lose his psychological control.” (B7476). In the end, this evaluation recommended that “some safeguards should be instituted for his benefit and the safety of others. I believe he can continue in his ministry work with the following conditions: He should continue in his psychotherapy. . . I would also consider having Paul’s religious work be supervised to some limited extent. I feel that having someone to check in with would be enough to compensate for his, at times reduced problem solving skills.” (B7476).

claim, its settlement or the like, allowing him the opportunity to seek to have any disclosure prohibited or limited.

(B59-60).

On December 5, 1994, the Diocese provided Doe LXVII with a \$25,000 check to settle Doe LXVII's claims. (B67; 68; 74). The settlement included a General Release, signed by Doe LXVII, discharging The Roman Catholic Bishop of Manchester, as a corporate entity, of any causes of action. (B69-70). As part of this release, Doe LXVII agreed to forgo "any and all claims for breach of fiduciary duty, breach of obligation to supervise or select clergy, breach of duty of loyalty..." (B69). This document further states: "This release may and shall be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or maintained in breach hereof anywhere in the world." (B70). Further, as part of the release, the Diocese refused to admit liability regarding Doe LXVII's claims. (B70).

The Diocese also entered into a Confidentiality Agreement with Doe LXVII stating that both parties agreed to the following:

- a) not to disclose any information concerning the other obtained in the process of settling this matter to any person or entity whatsoever.
- b) not to disclose the terms of this Settlement Agreement to any person or entity. Each party understands that the other or others may be compelled to disclose documents or give testimony in response to legal process and agrees to give the other notice of any such request in order that the other may contest such request.

(B72-73). Christian signed this release on behalf of the Diocese. (B73; 75).

During Aube's interview with the Task Force, he stated that he did not know John Doe LXVII. (B6502).

## **X. THE REMOVAL OF AUBE'S PRIESTLY FACULTIES ON AUGUST 16, 1994**

On August 30, 1993, when his position was eliminated at the Elliot, Aube wrote to Bishop O'Neil requesting a sabbatical to settle his late mother's affairs, take a vacation, and undertake research related to providing pastoral care in a clinical setting. (B2880-81). According to Aube, he was told to meet with the Bishop the day after he provided this letter. (B6552). The next day, Aube attended a meeting at Bishop O'Neil's house. Father Quinn was also present. (B6553). It appeared to Aube that Father Quinn had a better understanding of Aube's background than Bishop O'Neil. (B6553). Bishop O'Neil told him that the

Diocese wanted him to go to a center in New Mexico for an in-house psychological evaluation. (B6553). Aube believed that this request was in response to a Bishop's Conference where it was decided that any priest with allegations against them should receive an evaluation. (B6553). During the meeting, Bishop O'Neil and Father Quinn had a disagreement over which facility to send Aube. (B6554). Father Quinn wanted Aube to go to a facility in St. Louis. Bishop O'Neil stated that he had "good results" sending people to New Mexico. (B6554). Aube refused to go. (B6554). Aube's refusal sparked a series of letters between the Diocese and Aube regarding his treatment and his future in the Diocese. (B6555).

Diocesan documents evidence a heated back and forth between the Diocese and Aube regarding his continued psychological treatment in the wake of new allegations received by the Diocese in 1993 and 1994 relating to sexual contact that Aube had with boys during his assignment in Rochester. On August 4, 1994, Aube sent a letter to Bishop O'Neil responding to a letter he had received on July 12, 1994. (B57). Aube reasserted his desire to do research relating to clinical pastoral care. (B57). With regard to recent allegations of sexual misconduct against him, Aube stated that "[a]t this point, though I am innocent of the allegations against me, I am willing to undergo a comprehensive, extensive and independent out-patient psychological evaluation from a psychologist of my choice who specializes in your areas of concern. Obviously, the details of this evaluation and the confidentiality surrounding it are issues I will need to discuss with you." (B58). Aube requested that, if the results of the evaluation were acceptable to the Diocese, he be permitted to retain his priestly faculties and continue to minister in the area of health care. (B58). He also asked that if the results were unacceptable to the Diocese, that he be placed on "indefinite sabbatical leave for academic research" relating to areas of health care and still retain his priestly faculties with some restrictions. (B58). Aube pressed, that under either scenario, "I would need financial support from the Church..." (B58).

Bishop O'Neil responded to Aube in an August 9, 1994 letter stressing that a psychological evaluation was "absolutely necessary before I will assign you to a new ministry in the Diocese." (B61). The Bishop offered to allow Aube to go to Villa St. John Vianney Hospital in Downingtown, Pennsylvania for such an evaluation. (B61). The Bishop warned that if Aube failed to respond, he would "be forced, as indicated in [his] previous correspondence to [Aube], to place [Aube] on administrative leave, without priestly faculties, until such time as you comply with my request." (B62).

In an August 17, 1994 letter, Aube responded to Bishop O'Neil. The letter referenced a meeting that Aube had with Bishop O'Neil at the Bishop's home on August 9, 1994. (B64). Aube concluded by stating that "your options and mine are quite limited." He explained:

I cannot return to parish ministry because that would place the Diocese at risk based on an agreement the Diocese, through Msgr. Christian, chose to agree to with a family back in August of 1981. Unfortunately, I was not given an opportunity to have any input into that agreement, nor do I know the details of its terms. However, because of

that agreement, an assignment to full time parish ministry would certainly put the Diocese and me at an unreasonable risk. That I am not willing to do. I cannot return to chaplaincy work without satisfying your need of disclosure regarding allegations against me.

(B64). Aube asked the Bishop to clarify what ministries would be available to him should he receive a positive evaluation from Villa St. John Vianney Hospital. (B64). Alternatively, Aube again requested that he approve his sabbatical proposal. (B65).

Bishop O'Neil drafted a letter on August 17, 1994 withdrawing Aube's priestly faculties and placing him on "administrative leave" effective as of August 16, 1994, at noon. (B66). Bishop O'Neil explained that "[t]his means that you may not celebrate any of the sacraments of the Church, nor exercise any preaching or teaching function as a Catholic priest in public and/or with any members of the Catholic Faith Community." Bishop O'Neil also chastised Aube for failing to respond to his previous efforts to resolve the matter in a timely fashion and warned Aube that "[s]erious charges have been made against you and until this time you have not shown good faith in helping me find a just resolution this situation." (B66). The Bishop provided, however, that he would be "pleased" to restore Aube's priestly faculties if Aube agreed to an evaluation at one of the facilities that they had discussed. (B66).<sup>38</sup>

On January 22, 2002, Vice Chancellor Arsenault, reviewed Aube's file and generated a memorandum for Bishop McCormack. (B181). He noted that "[t]here are six (6) known victims in the file from his time at Guardian Angel in Berlin, NH and Holy Rosary in Rochester, NH. Each of these matters have been settled."<sup>39</sup> Arsenault confirmed that Aube

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<sup>38</sup> Apparently, Dr. Desjardins intervened in this dispute between Aube and Bishop O'Neil. Aube provided the Task Force with a "Summary of Psychological Services" generated on July 22, 1994 by Dr. Desjardins. This report was not in the Diocesan file. The report states Dr. Desjardins' belief that in-patient treatment was not necessary or appropriate in Aube's case because he had succeeded through his years of treatment with Dr. Desjardins without new incidents. The report also states that Dr. Desjardins had a meeting with Bishop O'Neil on May 6, 1994 during which the Bishop challenged Dr. Desjardins' conclusions with regard to Aube's need for continued in-patient treatment. The summary also indicates that Dr. Desjardins was bullish in his recommendation to the Bishop that further in-patient counseling was not necessary. (B7481). Aube also provided the Task Force with a letter to him from Bishop O'Neil dated September 7, 1994, after the Bishop had removed Aube's priestly faculties. (B7486). The Bishop's letter responded to Aube's concern that an outside evaluation was not necessary and apparently responded to Dr. Desjardins' recommendation that such an evaluation was not called for. Bishop O'Neil stated: "While your therapist must be your advocate, I must be concerned for all the people involved in this matter and I intend to do so as compassionately and as fairly as I can. Simply put, as Bishop of Manchester, I request the right to a second opinion and ask you to comply. Otherwise, I cannot allow you to live alone, minister publicly, or grant you a sabbatical leave." (B7486).

<sup>39</sup> The Diocese provided the Task Force with settlement documents relating to one victim -- John Doe LXVII. We recently requested any other legal documents from the Diocese relating to any other of Aube's victims through the years. It is not entirely clear which six victims Father Arsenault is referring to in his January 2002 memo. There is a cryptic handwritten note in the Diocesan documents listing six names: John Doe LXVII, John Doe LXVIII, John Doe LXX, John Doe LX, John Doe LIV, and John Doe LIII. (B63). Possibly, Father Arsenault's memo refers to these six individuals. However, in the documentation that we received from the Diocese, there is no information relating to John Doe LXX. With regard to John Doe LIV, there is only a one-page memorandum generated by Monsignor Christian in May of 1982 after he received a report that Doe LIV spent the night with Aube at St. Peter's rectory in Concord. That report indicated that there was not enough information to confront Aube. (B78).

was placed on administrative leave in August of 1994, and recommended that Bishop McCormack have a meeting with Aube to clarify his canonical status and verify that he is not functioning as a priest. (B181). There is a subsequent memo to Aube's file setting a meeting up between Aube and the Bishop on January 31, 2002. (B2866).

## **XI. CONCLUSION**

The Diocese had knowledge that Aube was a sexual threat to minors following the Nashua incident in December of 1975 and the 1981 allegation that Aube engaged in sexual misconduct with a minor in Rochester. Despite its knowledge that Aube was a threat to minors, the Diocese transferred him to subsequent assignments without effective limitations on his ministry. In these subsequent assignments, both at Holy Rosary parish in Rochester and the Elliot Hospital in Manchester, Aube sexually assaulted other minor victims.

Based on these facts, the State was prepared to present one or more indictments to the Hillsborough County Grand Jury, charging the Diocese with Endangering the Welfare of Children.

## **ALBERT BOULANGER**

### **I. INTRODUCTION**

Albert L. Boulanger was ordained as a priest for the Diocese in 1962. (B983). He retired in August 2000, but his faculties to function as a priest were not revoked until February 15, 2002. (B893). He died on June 30, 2002, at the age of 71.

In the mid-1960s, the Diocese first learned that Boulanger was engaged in sexual misconduct with minors. (B197). At that time he was referred to a therapist and returned to ministry. (B197-98). In April 1971, the Diocese again learned that Boulanger had engaged in sexual misconduct with an eleven-year-old child. (B223). The Diocese immediately removed Boulanger from ministry and referred him to psychological treatment. (B222; B184). Following psychological treatment, Boulanger returned to ministry in November 1971. (B983). In April 1987, Boulanger admitted in psychological reports that he had subsequently engaged in sexual misconduct with minors as late as the early-1980s. (B197). However, just days after the Diocese disclosed unredacted documents to the State that revealed the subsequent abuse of minors, Boulanger died. Boulanger's death and the fact that no subsequent victims came forward prevented a complete investigation of the facts surrounding the Diocesan response to Boulanger's sexual misconduct with minors. Nonetheless, Diocesan files and independent investigation by the Task Force revealed the following facts.

### **II. ALLEGATIONS OF SEXUAL ABUSE OF MINORS AGAINST BOULANGER**

#### **A. Sexual Misconduct in Claremont**

On February 20, 2002, John Doe LXXVI reported to the Attorney General's Office that he was sexual abused by Albert Boulanger in 1963 while Boulanger was assigned to St. Mary's parish in Claremont. (B987). Boulanger was assigned to St. Mary's parish in June 1962, where he served until February 1964. (B983). Doe LXXVI and his family, who were very religious, attended St. Mary's parish. (B993). In the summer of 1963, Doe LXXVI was 12 years and an altar boy. Id. As an altar boy, Doe LXXVI would have frequent contact with Boulanger. Id. Boulanger would often come into the changing room where Doe LXXVI got dressed for his duties as an altar boy. Id. During this time, Boulanger began hugging, kissing, and rubbing his groin against Doe LXXVI. Id. At one point during the summer of 1963, Boulanger took Doe LXXVI on a trip to Mascoma Lake in Enfield. Id. While swimming, Doe LXXVI developed a leg cramp. As Boulanger massaged Doe LXXVI's leg, he also rubbed Doe LXXVI's genitals. Id.

Later that summer, Boulanger took Doe LXXVI on a camping trip to Pittsburgh, New Hampshire. When they were getting ready for bed, Boulanger asked Doe LXXVI to join him in the sleeping bag. When Doe LXXVI got into Boulanger's sleeping bag, he discovered that Boulanger was naked. Id. Boulanger then began to rub Doe LXXVI's genitals while he masturbated himself. Id. After Boulanger ejaculated, Doe LXXVI got out of the sleeping

bag and got into his own bag. Id. The next morning Boulanger asked Doe LXXVI not to tell anyone about the incident. Id. Doe LXXVI did not report the abuse to anyone until many years later when he told his wife and a friend. Id. There is no evidence that the Diocese was aware of Boulanger's abuse while he was stationed in Claremont. The Diocese reassigned Boulanger in February 1964. (B996).

## **B. Sexual Misconduct in Berlin**

Apparently, the Diocese first became aware of Boulanger's sexual misconduct in the mid-1960s when Boulanger was assigned to St. Joseph's parish in Berlin. (B197; B996). There are no contemporaneous records of this misconduct in the Diocesan files. However, as discussed in further detail below, in 1987, Boulanger was sent for residential alcohol treatment. In the course of his evaluation, the therapist noted that during Boulanger's assignment in Berlin, he was active in starting hockey teams and coaching. (B197). The therapist writes: "It was in this situation where he first became involved in inappropriate behavior with young boys in the mid-adolescent age range. One of the parents of the children complained to the Pastor and Father Boulanger was asked to see a psychiatrist." (B197). The psychological evaluation does not disclose further details about this event or the Diocesan response.

## **C. Sexual Misconduct in Nashua**

Boulanger had several assignments at different parishes around the State following his assignments in Claremont and Berlin. (B996). On June 3, 1970, he was assigned to St. Joseph's parish in Nashua. Id. At that time, he was also assigned as assistant director of Diocesan camps for the summer. Id. Boulanger assaulted at least three boys during his assignment in Nashua.

On February 28, 2002, John Doe LXXVII reported that Boulanger had sexually assaulted him and his brother when Doe LXXVII was 14 years old and his brother was 12 years old. (B981). Doe LXXVII reported that Boulanger first touched his genitals on a camping trip to Wentworth Location with the boy scouts. (B982). On a second occasion, Boulanger took Doe LXXVII and his brother ice fishing on Lake Winnipsaukee. (B981). While they were in the ice house, Boulanger reached into both Doe LXXVII and his brother's pants and fondled them until they were erect. (B981). The assaults ended when Doe LXXVII and his brother ran out of the ice house. Id. The Diocese did not learn about these assaults until 1995 when Doe LXXVII's mother first learned that Boulanger had assaulted Doe LXXVII's younger brother. (B980). At that time, she reported the incident anonymously to Msgr. Francis Christian. Id. There is no indication in the Diocesan files about this report.

On April 21, 1971, the parents of John Doe LXXVIII reported to Msgr. Achille Lettre, the pastor of St. Joseph, that their son had been sexually assaulted by Boulanger.

(B226).<sup>1</sup> Msgr. Lettre reported the matter, in turn, to Msgr. Raymond Blair, the Assistant Chancellor, that same day. (B226). Doe LXXVIII's parents gave Msgr. Blair a statement on April 21, stating that Boulanger

has on several occasions sexually involved himself with our son, [Doe LXXVIII]. These actions have taken place over a period of time in the sacristy after Mass, in Father's car, his bedroom at the rectory and at Father's cottage. On Monday April 19, 1971 we were also informed that two of our older sons have been approached by Father Boulanger but nothing happened. Father Boulanger was trusted by us and had become rather friendly with the family. We have no reason at all to doubt this story of our son as we have noticed a definite change come over him. When we questioned him some time ago he denied that anything was going on. Later we learned that Father Boulanger had told [Doe LXXVIII] to do these acts and that nothing was wrong in doing them. . . .

(B228).

Bishop Primeau met with Doe LXXVIII's parents on April 21, and suspended Boulanger immediately that same day. (B222-23). Doe LXXVIII's parents spoke further to their son that night and became concerned that Doe LXXVIII might have contracted a venereal disease from his contact with Boulanger. (B229). They insisted that Boulanger be examined by a physician and that they be provided a certificate that he was free of disease. Id. Msgr. Blair was concerned that the family might take legal action if the Diocese could not comply with their request. Id.

On April 23, 1971, Bishop Primeau met with Boulanger in his office. (B232). Boulanger admitted the allegations. Id. He asked to be allowed to apologize to the family but the Bishop instructed him to stay away from Doe LXXVIII's family. Id. The Bishop also instructed Boulanger to leave the Nashua-Hudson area altogether. Id. Boulanger agreed to go to Colebrook for a "retreat." Id. "Father Boulanger admitted that he was a sick man. He has tried to overcome his homosexual desires on his own but he realizes that he needs help from a professional." Id. Boulanger also agreed to see a physician to assure the family that he did not have a venereal disease. Id. The Bishop took away Boulanger's faculties to be a priest and "informed him that he might never be able to give him an assignment in the Diocese of Manchester." (B232). That same day, Bishop Primeau informed Msgr. Lettre that Boulanger "no longer has the faculties of the Diocese of Manchester." (B230). He also instructed Lettre that Boulanger was not allowed to live in the Nashua deanery any longer. Id.

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<sup>1</sup> Task Force investigators did not interview Doe LXXVIII or his parents so the exact nature of the sexual misconduct is unknown. However, as described in more detail below, it is clear from the Diocese's own files that the incident involved some sort of sexual assault.

Boulanger saw Dr. Philip Sullivan on May 21 and May 28, 1971, for psychiatric evaluation. Dr. Sullivan's conclusion was that Boulanger's "condition is consistent with a long standing personality disturbance, a type of condition which is not easily amendable to change and which, in any case, would be expected to change only gradually over an extended period of time with psychotherapy. This does not necessarily mean that there would be recurrences of the overt behavior which occurred recently and four years ago because sometimes the motivation provided by the reality threats of civil and ecclesiastical sanctions can be sufficient to cause inhibition of the overt occurrence of such behavior even though the underlying tendency is unchanged." Dr. Sullivan noted that the other therapist recommended that Boulanger be allowed to return to temporary weekend assignments. Id. Dr. Sullivan did not express an opinion about this but recommended that Boulanger undertake "extended psychotherapy." Id.

There is absolutely no indication in the Diocesan files what the "overt behavior" was that had occurred four years earlier to which Dr. Sullivan was referring in his letter to Bishop Primeau. It appears from the context of the letter that Dr. Sullivan and the Diocese were aware of a prior incident of sexual misconduct by Boulanger. It is likely that this "overt behavior" is the incident during Boulanger's assignment in Berlin in the mid-1960s that is referenced in Boulanger's 1987 psychiatric evaluation.

On July 1, 1971 – just 9 weeks after the Diocese revoked Boulanger's faculties to perform as a priest – Bishop Primeau responded to Dr. Sullivan's letter. (B 238). He informed Dr. Sullivan that the "Personnel Board and the Vicar General have been trying to contact various parishes in the Diocese that could need weekend assistance and to which we could assign the Reverend Albert Boulanger." Id. The Diocese was unable to find any parishes in need of weekend assistance. Since the Diocese was unable to place Boulanger in weekend ministry, the Bishop approved Dr. Sullivan's recommendation that Boulanger enter extended group psychotherapy. Id.

On September 14, 1971, Bishop Primeau inquired of Dr. Sullivan regarding Boulanger's progress in therapy because "it is necessary for us to determine the availability of priest-personnel for assignments in the diocese." (B187). Primeau sought Dr. Sullivan's opinion about Boulanger's suitability for such an assignment. Id. Dr. Sullivan refused to provide Bishop Primeau a recommendation about Boulanger's suitability to return to full-time ministry because "[i]f a patient knows that his future work will depend on a report from his therapist, it would be impossible for the patient to be completely free and candid as is necessary in psychotherapy even if the patient consciously tried his best." (B188). Based on this, Dr. Sullivan recommended that the Bishop obtain an evaluation of Boulanger from another therapist. Id.

Boulanger was apparently referred to Dr. John Brennan by Dr. Sullivan in order to provide the Diocese a recommendation for Boulanger's ability to engage in ministry. (B189). On May 1, 1972, Dr. Brennan saw Boulanger for the second time after a six-month interval. Id. At the time of this visit with Dr. Brennan, Boulanger was still engaged in group psychotherapy with Dr. Sullivan but was also working on a part-time basis at a parish in

North Conway. Id. Dr. Brennan opined that Boulanger had made “some progress” in his therapy and had “some” understanding of his problem. Id. He observed that these factors “may” help him control his behavior. Id. Dr. Brennan felt “more comfortable” with Boulanger’s return to full-time ministry, but recommended several conditions to minimize the risk. Id. Dr. Brennan observed: “Whatever his assignment his contacts with children in the parish, especially adolescents should be minimized.” Dr. Brennan recommended that if there was a reoccurrence, Boulanger should report it promptly to his superior and Dr. Sullivan. Id.

Boulanger returned to full-time ministry in North Conway on June 1, 1972. (B983). There is no indication in the Diocesan files whether any of the conditions recommended by Dr. Brennan were imposed on Boulanger or whether the Diocese took any steps to monitor his behavior. There are also no subsequent progress reports on Boulanger’s treatment for sexual misconduct from either Dr. Sullivan or Dr. Brennan in the Diocesan files.

### **III. BOULANGER’S SUBSEQUENT PSYCHOLOGICAL EVALUATIONS**

In 1982, the Diocese referred Boulanger to the Guest House for alcohol treatment because he suffered from a bleeding ulcer and parishioners were upset that Boulanger was frequently intoxicated. (B209-10). In referring Boulanger to the treatment center, Fr. Francis Christian noted that Boulanger had seen a psychologist in Boston for a period of time regarding “sexual problems with adolescent boys.” (B209). While there is no direct indication in the psychological reports from the Guest House that his sexual problem with boys was addressed, there is a cryptic note in a progress report from the Guest House January 10, 1983, to Bishop Gendron, which states: “We did recommend that Father enter into further psychotherapy following Guest House to assist with problem areas he experienced previously. We do not know what his final determination was regarding that recommendation.” (B193).

In 1987, Boulanger was sent to St. Bernardine Clinic for alcohol abuse. (B196). This was prompted by complaints from parishioners about his behavior. (B4770; B4772-73). At the time, Boulanger was pastor at St. Matthew’s parish in Whitefield. (B4770). He had an eighteen-year-old boy living with him at the rectory. Id. Boulanger had met the boy while he was still a minor through his previous assignment in Ashland. Boulanger must have met the boy when he was 15 years old or younger because Boulanger’s assignment in Ashland ended in 1984 when he was assigned to Whitefield. (B996; B4773). In 1987, the boy was living with Boulanger because the boy reportedly had substance abuse problems. (B4773). There is no indication about whether Boulanger had engaged in any sexual misconduct with the boy.

However, during Boulanger’s treatment at St. Bernardine Clinic in April 1987, Boulanger disclosed further information about his sexual misconduct with minors. In particular, Boulanger admitted to the sexual abuse of a boy in his mid-adolescent years in Berlin, described above. (B197). Despite the formal complaint in Nashua, the therapist

noted that he was not aware of any other formal complaints than the one from Berlin. (B198). The therapist makes the following observations:

Father Boulanger was quite courageous in acknowledging that such behavior was a problem for him for several years. The total number of children and/or incidents is not known, but in response to rather focused questioning, Father Boulanger was able to give a few significant details. The youngest child he has had sexual interaction with has been perhaps 13 or 14. He has had sexual activity as recently as four or five years ago. This latter statement is important because it would place the behavior in time after his treatment at Guest House. Father Boulanger states that in the last four or so years he has not had such sexual activity and has achieved what he calls “white knuckle sobriety.” By this I mean he has controlled his behavior by a rather rigid avoidance of youth and a lifestyle of increasing isolation.

(B198).<sup>2</sup> The therapist further noted that Boulanger exhibited “[a] marked degree of sexual preoccupation . . . . Although he seemed rather matter of fact about this, there was some indication that his sexual impulses are in marginal control at best.” (B200). Boulanger was diagnosed with “Ephebophilia (sexual attraction to adolescents).” (B201).

On April 16, 1987, Bishop Gendron acknowledged receiving the evaluation from St. Bernardine Clinic and noted that “[o]bviously, Father Boulanger’s problems are severe.” (B202). On June 18, 1987, Boulanger entered residential treatment at St. Luke’s Institute in Maryland. (B203). On August 25, 1987, the therapists at St. Luke’s informed Bishop Gendron that Boulanger was dealing with both his alcoholism and “sexual issues.” (B204). In October 1987, St. Luke’s noted that “Father Boulanger is continuing to struggle with issues of intimacy/sexuality. This has been a more difficult area to approach and his progress in this area is slower than his work with alcoholism. At the same time progress has been occurring with regard to sexuality and relationships.” (B212). In December 1987, St. Luke’s noted that Boulanger was close to being discharged. The clinic recommended that he continue to attend “SA/SLAA” – sexual addicts therapy group. (B214). As a condition of his discharge, Boulanger agreed to “avoid contact with minors; e.g. I will not engage as educator in the Sunday school program nor direct the altar boys society, boys choir or be chaplain for the Boy Scouts.” (B216). St. Luke’s Aftercare Contract also spelled out Boulanger’s specific pastoral responsibilities upon discharge:

- a. I will be in residence at Holy Rosary Church as assigned to me by the diocese.
- b. Because of my disease I will follow criteria of helping in parishes as assigned by the diocese but not becoming attached to any persons which would endanger my sobriety.

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<sup>2</sup> Boulanger’s statement that his youngest victim was only 13 or 14 years old is untrue. As noted above, John Doe LXXVIII was 11 years old at the time Boulanger abused him.

- c. For the present my formal workload is limited to 25 hours per week. My normal official parish responsibilities are: 1) visiting a regional hospital twice a week, 2) celebrating Mass and anointing of the sick at two homes for the aging every two weeks, 3) Communion calls, visits and errands for “shut-ins” for approximately five hours per week, 4) daily Mass, Divine Office and meditation and parish rectory functions approximately ten hours per week, 5) community projects and meetings, committees, chaplaincy at County jails to not include youth group – average time three hours per week.

(B217).

According to an internal memo from Bishop Gendron, Msgr. Christian met with Msgr. Gilles Simard, pastor at Holy Rosary Parish in Rochester and explained the contract to him at length. (B219).

Sometime around September 1989, it appears that Boulanger was again removed from parish ministry. (B241). Msgr. Christian informed him that “[t]he Diocese is most anxious to make use of your priestly dedication and ministry. . . . However, the Bishop does not feel that it is responsible for him to give you another assignment until such time as we have assurances that you are successfully coping with your alcoholism and other problems which the alcoholism occasions.” (B241). Msgr. Christian directed Boulanger to attend AA and SLAA meetings on a regular basis before the Diocese would consider the possibility of reassignment. Id. Boulanger began attending AA and SLAA meeting again in November 1989. (B4762). Boulanger was reassigned in 1991 to a nursing home chaplaincy until his retirement in 2000. (B996).

#### **IV. CONCLUSION**

Although the Task Force was unable to conduct a complete investigation of the Diocese’s conduct relating to Boulanger, there is compelling evidence the Diocese was aware on three separate occasions that Boulanger had engaged in sexual contact with minors. This conduct would likely constitute endangering the welfare of a child. However, because Boulanger died before the State could complete its investigation and several victims were not identified by name, the State was not able to conduct a thorough investigation of these events. Accordingly, the State would not have presented charges against the Diocese based on these facts.

## **GERALD R. CHALIFOUR**

### **I. INTRODUCTION**

Father Gerald Chalifour is a 74-year-old priest who was ordained by the Diocese in 1952. The Diocese first learned of sexual misconduct by Chalifour with a minor in 1969. The Diocese took no steps to obtain a psychiatric evaluation for Chalifour and his ministry was not curtailed at that time. Subsequently, Chalifour abused two boys in the early and mid-1970s. This abuse was first revealed during the course of the State's investigation. However, the Diocese learned that Chalifour attempted to sexually assault another altar boy in the early 1980s. When that boy's parents confronted the Bishop about this misconduct, the Diocese sent Chalifour to the Diocesan therapist for a few months. Chalifour's ministry was not curtailed at that time and he continued to have contact with minors, although there is no evidence of another victim after 1982. In 1988, the Diocese learned that Chalifour had abused an altar boy at an earlier assignment in the 1960s. The Diocese accepted Chalifour's assurance that he had not reoffended and took no steps to curtail his ministry. Only in 1991, after the victim threatened to pursue legal action, did the Diocese send Chalifour for further psychiatric evaluation. That evaluation recommended that Chalifour's contact with minors be limited. Chalifour voluntarily retired from active ministry in 1992. However, he continued to fill-in as a priest at parishes around the state, including a 22-month assignment as the administrator of a parish in Goffstown. Despite the fact that the Diocese was aware of a number of instances of sexual misconduct by Chalifour with minors, his priestly faculties were not curtailed until February 15, 2002, when the Diocese released his name publicly.

### **II. ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY CHALIFOUR**

#### **A. Sexual Misconduct In Suncook**

Gerald Chalifour was interviewed by Task Force investigators on August 19 and 22, 2002, in connection with the investigation of the Diocese of Manchester. In connection with that interview, the State granted Chalifour limited use and derivative use immunity. That immunity precluded the State from using Chalifour's statements against him, but did not prevent the State from prosecuting Chalifour for his own misconduct based on independent evidence obtained by the State.

All available evidence indicates that Chalifour first engaged in sexual misconduct with a minor approximately 10 years after his ordination when he was a priest at St. John the Baptist in Suncook from 1962 until 1968.<sup>1</sup> Chalifour engaged in inappropriate sexual contact with at least 5 altar boys under the age of 18 while he was a priest in Suncook. (B368). As described below, Chalifour's description of the abuse differed markedly from that of the victims. In fact, Chalifour denied some of the allegations of sexual contact with some of the victims in Suncook.

Chalifour claimed that there was only one instance of inappropriate conduct with an altar boy named John Doe I. (B7167). Chalifour described how he asked Doe I to give him a backrub

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<sup>1</sup> According to Chalifour he did not engage in any sexual conduct at all prior to this. (B7163). He claims that he did not have any sexual contact with minors while he was assigned to an orphanage in Rochester with 125 children from 1959 to 1960. (B7164). The State has no evidence to the contrary.

because Chalifour had a bad back. (B7167). It was a hot day and there was a fan going in the room. According to Chalifour, Doe I took his clothes off and asked Chalifour if he could lie down next to him on the bed. Their bodies touched but Chalifour claims he never touched Doe I's genitals or buttocks. (B7167-68). According to Chalifour, the entire episode lasted no more than 10 minutes and ended when Chalifour told Doe I to get up and get dressed. (B7167).

Doe I, in contrast, claimed that Chalifour sexually abused him repeatedly from the ages of 12 to 16. (B367). Doe I first remembered giving Chalifour a backrub using rubbing alcohol starting when Doe I was between 11 and 12 years old in Chalifour's room in the rectory. (B2640). This occurred on a number of different occasions. Id. On at least one occasion, Chalifour pulled his pants down about a third of the way down his buttocks. Doe I does not recall any other sexual contact during this time. (B2641). According to Doe I, the first sexual contact occurred at a cabin on Northwood Lake when Doe I was 14 or 15 years old. (B2641). Chalifour had the use of a camp on Northwood Lake owned by a parishioner. Id. Doe I and Chalifour slept together in one bed and Chalifour had Doe I masturbate him until Chalifour ejaculated. Id. The last encounter that Doe I can remember occurred in 1968 when he was 16 years old. Id. Chalifour had moved to St. Kathryn's in Hudson and Doe I went to visit him. Id. Doe I slept in the same bed with Chalifour. Chalifour began french kissing Doe I. Id. When Doe I resisted, Chalifour told him not to resist but Doe I continued to fight back and Chalifour eventually stopped. (B2642). The sexual contact with Chalifour ceased altogether after that because in March of 1968 Doe I had a discussion with a friend who was several years older. (B2642). This friend told Doe I that Chalifour had also abused him and that Doe I had to stay away from Chalifour in order to protect himself. (B2643; B2647-48).

Despite Chalifour's claim that he did not engage in any sexual assault of Doe I, he paid him \$15,000 from his own personal assets to settle a claim brought by Doe I in 1993. (T-I at 11). Chalifour asserted that he wrote the check to Doe I without questioning his allegations because Msgr. Francis Christian instructed him to do so. (B7171).

Chalifour denied engaging in any sexual misconduct with a boy named John Doe II, although he did admit to sleeping in the same bed with Doe II on multiple occasions and embracing him while they slept beginning when Doe II was 16 years old. (B7181-87). Doe II has refused to be interviewed as part of this investigation. (B2245). Doe II informed the Diocese that he was sexually molested by Chalifour. (B321). It is unclear exactly what the nature of the sexual abuse was. Doe II alleged he was abused by two separate priests, one of whom fondled him and the other encounter involved "complete homosexual relations." (B5430). It is unclear which conduct Doe II attributed to Chalifour.

Chalifour also denied any sexual misconduct with a boy named John Doe III. (B7189-92). Doe III, however, described how Chalifour fondled him on 3 to 4 occasions from age 12 to 16. (B352; B386; B4735; B4735A; B4748). Doe III also described how Chalifour made Doe III give him a massage with oil while Chalifour was completely naked. (B352; B386; B4735A).

Chalifour's claim that he did not sexually abuse Doe I or the other victims is simply not credible. According to Lance Messinger, who the State has retained to offer expert opinions regarding the manner in which the Diocese handled sexual offenders, it is common for sexual

offenders to minimize or deny their conduct.<sup>2</sup> In fact, when the matter was first reported to the Diocese in 1988, even Msgr. Christian did not believe Chalifour's claim of innocence and credited the statement of John Doe I that the abuse actually occurred. (B368). Moreover, although Chalifour denied sexually assaulting John Doe II and John Doe III in Suncook, in each case the Diocese settled claims brought by the victims and Chalifour reimbursed the Diocese for the settlement costs -- \$7,000 for Doe II and \$45,000 for Doe III. (B7188, B7190).

Chalifour did admit to fondling the genitals and kissing an altar boy named John Doe IV 3 to 4 times in Suncook. (B7196). Chalifour claimed he befriended Doe IV and the other altar boys through their activities at church and that the friendship progressed to sexual contact. (B7196-97). The sexual contact with Doe IV continued even after Chalifour left Suncook. (B7196). According to Chalifour, Doe IV was 15 or 16 at the time of the sexual contact. (B7196). Chalifour stated that the first sexual contact with Doe IV occurred while the boy was giving Chalifour a backrub in his bedroom in the rectory. (B7197).

Chalifour also engaged in similar conduct during an overnight trip to New York with another altar boy from Suncook named John Doe V. (B7203-04). Doe V was 14 to 16 years old at the time. (B7203-04).

According to Chalifour, the Diocese did not learn of his misconduct in Suncook until 1988, when John Doe I first brought information about his abuse to the attention of the Diocese. (B7165). The Diocese first learned about Chalifour's conduct with respect to John Doe II and John Doe III in the early 1990s. There is no evidence that anyone was aware of Chalifour's abuse of John Doe IV and V until the present investigation by the State.

## **B. Sexual Misconduct in Hudson**

Chalifour was transferred from Suncook to St. Kathryn's in Hudson on October 4, 1968. (B7208; B3016). During the year that Chalifour was pastor at St. Kathryn's he engaged in sexual contact with one minor named John Doe VI. As in the other instances of sexual assaults described above, Chalifour's description of the abuse differed markedly from the victim's account of what happened between them.

According to Chalifour, in the Spring of 1969, John Doe VI's mother came to Chalifour for help with her son because she could not control him. (B7208; B7211). Doe VI, who was sixteen years old during the summer of 1969, visited Chalifour in the context of a counseling relationship. (B7209; B6258). After their first session, Doe VI and Chalifour "hit it off" and Doe VI agreed to continue to see Chalifour. (B7209). They would meet at the rectory. (B7210). After several sessions together, Chalifour asked Doe VI to give him a backrub because his back was bothering him. (B7208; B7211). According to Chalifour, Doe VI told him that he had to go to the bathroom. (B7211). When he returned from the bathroom, Doe VI was completely naked. (B7211). According to Chalifour, Doe VI got into bed with him and they mutually masturbated each other for about ten minutes. (B7208; B7210). Doe VI then got up, got dressed, and went

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<sup>2</sup> Lance Messinger is a licensed psychologist who has treated sexual offenders for nearly 30 years. He was the director of the Sexual Offender Treatment Program of the New Hampshire Department of Corrections until his retirement in 2001. He is currently in private practice.

home. (B7211). By Chalifour's account, this was the only incident between him and Doe VI. (B7211).

John Doe VI told investigators that he was a troubled youth. (B6259). His mother was a staunch Catholic, who was very active in the new parish in Hudson. (B6259; B7393). Chalifour was St. Kathryn's first priest. (B6259-60). One day, Doe VI's mother brought him over to the rectory to help tear down horsehair plaster. (B6260-61; B7393). After working all day with Chalifour, Doe VI took a shower at the rectory. (B6261). When he came out of the bathroom, Chalifour called him into his bedroom. Id. Chalifour had a towel on and asked Doe VI to rub his shoulders with witch hazel. Id. After Doe VI rubbed Chalifour's shoulders, Chalifour began rubbing Doe VI's shoulders. Id. Chalifour then began rubbing Doe VI's legs and telling him that he wasn't "queer." Id. Chalifour then asked Doe VI to perform fellatio on him and Doe VI refused. Id. Chalifour kept rubbing Doe VI and then began to perform oral sex on him. Id. Chalifour kept saying that "this doesn't make you queer." Id. Eventually the contact ended and Doe VI left the rectory without discussing the matter with Chalifour. Id.

Doe VI was expected to work on the rectory again the next day but he refused. (B6262; B7393). Eventually several days later, Doe VI's mother made him get in the car and she drove him over to the rectory. (B6262; B7393). Doe VI again worked all day and at the end of the day Chalifour performed oral sex on him. (B6262).

At some point after the second incident with Chalifour, Doe VI had been thrown out of his home by his mother. (B6263). He needed to talk with someone so he went to the rectory to see Chalifour. Id. Chalifour was sitting on the screen porch and invited Doe VI in. Id. When Doe VI entered the porch, he saw that Chalifour was sitting there completely naked. Id. Doe VI got very upset, swore at Chalifour and ran away. Id. He never went back to Chalifour again. Id. Chalifour adamantly denies that this encounter took place. (B7211-13).

After Chalifour sexually assaulted John Doe VI, Doe VI's behavior worsened: he was kicked out of school and was thrown out of the house. (B6263). Doe VI moved out of state for several months to live with his uncle. Id. Eventually Doe VI returned home. At that time, Doe VI's mother asked him whether something had happened between him and Chalifour. Id. Doe VI acknowledged that something had happened. Id. He revealed that he had given Chalifour a back massage. (B7393). He also told her that on another occasion Chalifour was completely naked lying in bed and pulled Doe VI down onto him. (B7393). Doe VI did not get into a lot of details with his mother at that time. (B7393).

Chalifour developed health problems and took a leave of absence from St. Kathryn's for health reasons on October 8, 1969. (B7214-16; B2996). According to him, the stress of starting a new parish and the state of his physical health required him to request the leave. (B7214-16).

Doe VI's mother tells a different account of Chalifour's ailment. She said that after she learned that Chalifour had engaged in inappropriate activity with her son, she spoke with one of the members of the parish council who recommended that she meet with the chancery. (B7393). She and her family also sat in the front row of the church the following Sunday and stared Chalifour down throughout the mass. (B7394). Doe VI's mother remembers Chalifour's hands

shaking. Id. A few days later she received a letter from Chalifour apologizing for his conduct. Id.

Chalifour wrote the following undated letter to Doe VI's mother on St. Kathryn's stationery: "Being human beings, we are weak....oftentimes we make mistakes, occasionally serious ones. I regret that I did not live up to your expectations of me. I am sorry for the hurt that I caused both you and [Doe VI]. I beg for your understanding, compassion and prayers that someday I may make amends and with time regain your confidence, trust and friendship. I hope and pray that we may continue working together for mutual help and for the good of the parish. This letter is not meant as an excuse for my behavior, but merely as an expression of the sorrow which I feel very acutely." (B366).

The following Sunday, the family again sat in the front row and stared Chalifour down. (B7394). Chalifour was again very nervous and announced that he was not well and would be taking a leave of absence. Id. Richard Dolbec, who was parish council president at the time, believed that it was understood that Chalifour took a leave of absence because he had a nervous breakdown. (B7400)

After learning what Chalifour had done to her son, Doe VI's mother brought him to the parish council to tell them what happened with Chalifour. (B6265; B7394). Fr. Aime Boiselle was present at the meeting. (B6265). Fr. Boiselle was appointed interim administrator of St. Kathryn's in Chalifour's absence. (T-I at 55-56; B2996).<sup>3</sup> Doe VI characterized this episode as the worst experience of his life – worse than the sexual assaults themselves. (B6265). Fr. Boiselle eventually ended the meeting by saying that he was not going to let this ruin a good man's life. (B6265; B7395). Doe VI did not tell anyone at that meeting what happened between him and Chalifour. (B6265). Several days later, Doe VI's mother brought him back to speak with Fr. Boiselle alone. (B6266). Boiselle was very comforting, but they never talked about what happened between Chalifour and Doe VI. Id.

Richard Dolbec was St. Kathryn's parish council president in 1969 when the allegations regarding Doe VI first surfaced. (B7397). After hearing from another member of the council that there was a problem with Chalifour, Dolbec called an emergency council meeting at which Doe VI attended with his mother. Id. Dolbec estimated that Doe VI was between 13 and 15 years old. Id. Doe VI's mother told the members that Chalifour had "gone to bed" with her son on several occasions. Id. Doe VI looked nervous. Fr. Boiselle, who had replaced Chalifour, said to Doe VI, "you're going to spare us the gory details, aren't you?" Id. Doe VI did not speak after this. Doe VI's mother was very upset and left the meeting. Id. The meeting continued and it was decided that Fr. Boiselle would contact the Bishop regarding this information. Id. at 3. Fr. Boiselle refused to be involved in the incident and Dolbec was appointed to meet with the Bishop on behalf of the council. Id. Fr. Boiselle arranged the meeting at the Bishop's residence. Id.

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<sup>3</sup> Chalifour claimed that he stayed over one night at the rectory while Boiselle was there. During this stay, John Doe II, one of the altar boys from Suncook who accused Chalifour of sexually assaulting him, stayed at the rectory with Chalifour. Chalifour and Doe II slept in the same bed together. It appears that by this time Doe II was over 18 years of age. (B7216-17). Chalifour denied engaging in sexual contact with Doe II at any time beyond embracing each other while they slept in bed together. (B7182-84). Doe II has refused to be interviewed in this investigation.

On October 14, 1969, Fr. Boiselle wrote to Bishop Primeau and informed him that Doe VI and his mother attended an emergency parish council meeting. (B362). During that meeting, they told the council that Chalifour had engaged in a “sexual act” with Doe VI. There is a handwritten note next to this line in the letter with the number “17” written in the margin. Id. This letter was written 2 days before Doe VI’s 17th birthday. The parish council requested that Chalifour not return to St. Kathryn’s after his sick leave was over. Id.

On October 15, 1969, Fr. Boiselle wrote a more detailed letter to Bishop Primeau. Boiselle explained to Primeau that following the council meeting, Doe VI’s mother explained in more detail the events leading up to the incident with her son and Chalifour. He informed Primeau that “the boy” was friendly with Chalifour since last winter when he became involved in the church through Chalifour. (B363). The letter does not detail the nature of the sexual assaults but concludes: “If what is reported is true (and it seems to be), I feel convinced that Father Chalifour is sick and needs help.” (B363). The letter also references a meeting between the Bishop and Richard Dolbec, the president of the parish council, who was familiar with the facts of the case. (B364).

At the time arranged by Fr. Boiselle, Dolbec went to the Bishop’s residence but did not meet directly with the Bishop. (B7397). Instead, he met with a monsignor, whose name Dolbec does not remember. Id. This person appeared to be aware of the facts already but listened to Dolbec’s story. Id. Dolbec told the monsignor that Chalifour had engaged in sexual relations with a boy in the parish and he had taken the boy to bed. (B7401). The monsignor asked how many people in the parish knew about the allegations. Dolbec told him that many knew. Id. The monsignor told Dolbec that Chalifour would not be returning to St. Kathryn’s and that they would be assigned a new pastor. Id.

Chalifour explained that when he was released from the hospital for his health-related ailments, he received a call from the chancery to meet with the Bishop. (B7214; B7217). Chalifour met with Bishop Primeau the following day at the Bishop’s residence. (B7217-18). Primeau told him that he had received a letter from the parish regarding a complaint and asked Chalifour what had happened. (B7217). Primeau also mentioned that the parish council president had met with him or spoken to him. (B7219).

Chalifour told Primeau the same story that he related to the Task Force investigators about the incident with Doe VI. (B7217). Chalifour is unclear how specific he was with Primeau about what had happened. (B7220). He does not believe that he told Primeau exact details like “who did what, when where, well how’d it start” or “anything like that.” (B7220).

During the meeting Chalifour became very emotional. (B7214). According to Chalifour, Primeau said to him “look if you find that you’ve, ah, you can’t cope with this, you can’t, um, you know if it bothers you, ah, so much that, that you can’t get on with your life, let me know and I have . . . a psychiatrist/psychologist, I can refer you to. If you find that you now that this is still, ah, bothering you a great deal . . .” (B7214). Primeau, however, did not require Chalifour to see a therapist or impose any other conditions or restrictions on Chalifour’s continued ministry. (B7218-19; B7224).

At the time Chalifour originally took his leave of absence from St. Kathryn's for health reasons, Bishop Primeau contemplated Chalifour's return to Hudson. (B2996). However, according to Chalifour, after the revelations by Doe VI's mother that her son was abused, he understood that he could not return to St. Kathryn's. (B7214; B7219).<sup>4</sup> Richard Dolbec, the parish council president, was also told that Chalifour would not be returning to St. Kathryn's because his misconduct was too widely known among parishioners. (B7398).

Chalifour took a month leave and went to Florida. (B7218). When he returned he was assigned to Franklin to cover for a sick priest and then to Gorham for several months where a priest had died of a heart attack. (B7218; B3014-15). There is no evidence that Primeau informed any of the pastors or parishioners about Chalifour's sexual misconduct at Chalifour's subsequent assignments. (B7225; B3014).

Following his abuse by Chalifour and the subsequent revelations, Doe VI's behavior spiraled further out of control. He became heavily involved with drugs and alcohol and was in and out of several rehab programs. (6268-69). After 22 years as an addict, he finally was able to overcome his problems and has been in recovery for 13 years.

### **C. Sexual Misconduct in Farmington**

As mentioned above, Chalifour had two short-term assignments in Franklin and Gorham immediately following his transfer from Hudson. During those assignments, there is no evidence that he engaged in sexual misconduct with minors. However, John Doe II, the altar boy from Suncook, visited him in Gorham. (B7228).

Following his time in Hudson and the subsequent temporary assignments, the Diocese permanently assigned Chalifour to St. Peter's in Farmington, beginning on February 20, 1970. (B7228). Chalifour acknowledged inappropriate behavior with a youth from Farmington, but, again, his account of what happened differed markedly from the victim's account.

According to Chalifour, he had the use of a summer cottage on Northwood Lake. (B7228; B7230). During the summer of 1972, John Doe VII was the only boy who was available to go over to the cottage with Chalifour. One night, they went to the lake to go swimming. Afterwards, Chalifour asked Doe VII to rub his shoulders and lower back. Both Chalifour and Doe VII were naked because they had just come in from the lake. (T-I at 69). At one point, Chalifour rolled over from his stomach onto his back. According to Chalifour: "[F]irst thing I knew after I turned over on, on my back, he was on top of me. I did not pull him down on me, I did not hold him down on me. Ah, but he was on top of me. He was there for a very brief time. Ten, fifteen seconds. He says, I don't like this." Doe VII then got up and went to bed. According to Chalifour, there was no genital touching. (T-I at 68).

John Doe VII related that he first met Chalifour at St. Peter's in Farmington in 1971 while Doe VII was an altar boy. (B1017, B2619). Doe VII was 12 years old at the time. Id.

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<sup>4</sup> Chalifour also stated that he had discussed a transfer with the Bishop even before the matter with Doe VI came up because of the work load imposed as a result of starting up a new parish like St. Kathryn's. (B7214; B7219).

During 1972, he and Chalifour became much closer. Doe VII described how, during the summer of 1972, he went with Chalifour to a cabin on a lake in Manchester that was owned by friends of Chalifour. (B1017; B2624). He went alone with Chalifour because his parents were very involved in the church and trusted Chalifour absolutely. (B1017).

Nothing eventful happened during the first day at the cabin. (B2625). However, in the evening, Chalifour asked Doe VII to go skinny dipping. (B1017; B2625). Doe VII felt that the request was odd but reasoned that “I guess it’s okay with a priest or whatever. It’s, you know, it’s certainly should be okay with God, I guess.” (B2625). While he and Chalifour were in the water, Chalifour came up behind him and began fondling his genitals. Id. They got out of the water and prepared for bed. Doe VII vividly described the cabin. (B2633). He said that he and Chalifour slept in the same room but in different cots. (B2626). Sometime during the night, Doe VII awoke when Chalifour got into bed with him and pulled down his underwear. Id. Chalifour was rubbing up against Doe VII with his penis “inside [Doe VII’s] anus area.” (B2626). Doe VII is not sure if he was penetrated but remembers lying on his side facing the wall while Chalifour engaged in this conduct. (B2626-27). He was very confused during the incident and remembered waking up the next morning on the couch. When he tried to get up, he passed out. (B2628). When he came to, he asked Chalifour to take him home. They were supposed to spend three days together, but Chalifour took him home after the second day. Id. On the car ride home, Chalifour apologized and begged Doe VII not to tell anyone what happened. (B2629).

Doe VII did not report the assault until he read Chalifour’s name in the paper on February 15, 2002, because it would have devastated his parents who were active in the church. (B1016, 1018; B2619). Doe VII told his wife about the assaults in 1984 and his mother in the early 1990s. (B1018). He came forward to the County Attorney’s Office to prevent other victims from getting hurt. Id. Doe VII told investigators: “[B]ack in the early 1970s, I think people believed in their priests and their clergy. Um, and, you know, a priest was the last person that [you] would have thought to be molesting kids.” (B2634).

While Chalifour was pastor in Farmington he also engaged in sexual contact with a boy named Doe VIII. (B7230). Doe VIII was not a parishioner but worked around the church during summer vacations. (B7230-31). Doe VIII was 15 or 16 years old when he began working for St. Peter’s in 1972. Id. He worked at the church every summer for 4 to 5 years. (B7230). Chalifour asked Doe VIII to rub his back initially. Id. Eventually the conduct escalated to mutual masturbation according to Chalifour. Id. The investigation has been unable to locate Doe VIII to determine whether Chalifour’s description of the abuse is accurate. According to Chalifour, no one from the Diocese learned about the abuse with Doe VIII. (B7232).

Following his incident with Doe VI in Hudson, no one from the Diocese ever followed-up with Chalifour to determine whether he was reoffending or having any inappropriate contact with children while he was in Farmington. (B7233). Other than the one meeting with Bishop Primeau in 1969, Chalifour had no contact with the Diocese about his sexual misconduct toward minors. (B7233).

#### **D. Sexual Misconduct in Manchester**

After his assignment in Farmington, Chalifour was transferred to St. Theresa's in Manchester from 1976 to 1985. (B7234). In 1982, Chalifour took an altar boy named John Doe IX on a trip to Cape Cod. Id. Doe IX was 15 years old at the time of the trip. (B7236; B7244). According to Chalifour, he asked Doe IX to rub his back. Doe IX told Chalifour he would rub Chalifour's back only if Chalifour rubbed his back first. Id. Chalifour rubbed Doe IX's back and also his lower legs and calves. Doe IX then gave Chalifour a back rub and they both went to sleep. (B7236; B7244). Chalifour told a therapist some time later that he and Doe IX were either naked or wearing only their underwear when Chalifour suggested that they hug. (B310). Chalifour also told the therapist: "it wasn't my idea to have sex with him . . . I'm not saying it wouldn't have happened but . . . I respected that boy." (B310).

According to Chalifour, sometime during the night Doe IX got up and went to the front desk to call his father. Doe IX was so upset that the front desk called the police department, who talked with Chalifour. (B7236; B7244). According to Chalifour, when he told the police his story, they decided it was just a misunderstanding and did not pursue it further. (B7235).

According to Chalifour, the following day Chalifour met with Doe IX's father and explained his actions with Doe IX. (B7247). Chalifour told his therapist that when he went to visit Doe IX's parents, he cried. (B310). According to Chalifour, Doe IX's father said that he was satisfied with the explanation and did not intend to take it further. (B7247).

Doe IX was interviewed on October 17, 2002, together with his parents. (B8916) Doe IX's parents indicated that they were devout Catholics that regularly attended church at St. Theresa's in Manchester in the early 1980s. (B8917). They had no concerns about his conduct and trusted him absolutely because he was a priest. Id. Doe IX was one of Chalifour's favorite altar boys. Id.

One evening, Chalifour came over to Doe IX's home for dinner. He asked if it would be okay to take Doe IX on a trip out-of-state for a weekend. Id. Doe IX described the purpose of the trip as a religious retreat to "get closer to God." Id. Doe IX was 15 years old at the time.

Chalifour picked Doe IX up from his parents' home and they drove to their destination where they rented a room at a hotel on the first night. Id. They decided to go swimming. (B8917-18). Doe IX wanted to go into the bathroom to change into his bathing suit but Chalifour insisted that he was a grown-up and could change in front of Chalifour. (B8918). They then went swimming in the pool and played a game where they would hold hands and see how long they could stay under water. Id.

After they were finished in the pool, they went back to the room. Id. Doe IX went into the bathroom and when he came out, Chalifour was lying on the bed naked. Id. He asked Doe IX to give him a backrub. Id. Doe IX began giving Chalifour a backrub at the top of the back and worked his way down. Id. Chalifour then rolled over onto his back. Id. He had an erection. Id. Doe IX began by rubbing Chalifour's chest. Id. As he worked his way down, Chalifour grabbed Doe IX's hands and pulled them toward his genitals. Id. Doe IX pulled away and

quickly rubbed Chalifour's thighs. Id. Chalifour then grabbed Doe IX's hand and pulled Doe IX toward him. Id. Chalifour reached over with his other arm and gave Doe IX a bear hug and pulled Doe IX on top of him. Id. Chalifour was still naked. Doe IX pushed himself off of Chalifour. Id. Chalifour said to Doe IX, "stop being a little boy, don't you love me?" Id. Doe IX continued to struggle with Chalifour, eventually grabbing the hair on Chalifour's chest and grabbing him by the neck to escape. Id. Chalifour responded: "Are you happy now?" Id. Doe IX does not remember all of the dialogue that was taking place during the incident but remembers feeling the awkwardness of Chalifour wanting him to touch his genitals. Id.

Doe IX lay down in one bed and Chalifour lay in the other bed, closest to the door. Id. Doe IX listened to Chalifour's breathing patterns until he felt that Chalifour was sleeping. Id. He then got up and went to the hotel lobby to call his parents. Id. He told his father that Chalifour is "gay and he's after me." Id. Doe IX's father contacted the local police department. Id.

The police arrived and met Doe IX in the lobby. Id. They took him back to the hotel room to get some of his belongings. Id. They asked Chalifour to identify himself. Id. Chalifour identified himself as a priest. Id.

Doe IX was taken to the police station and gave a statement to the police. (B8916A-8916C). He then lay down in a jail cell to wait for his parents. (B8918). The police provided Doe IX's parents with a copy of the police report. (B8919). The police urged them to pursue the matter. Id.

The next day, Chalifour arrived at Doe IX's residence to drop off the rest of Doe IX's belongings. Id. He was crying and apologized for his actions. Id. He asked for forgiveness and offered to pay for Doe IX's education. Id. Doe IX's mother said that she felt that Chalifour was looking for sympathy for himself. Id. She told him to leave. Id.

Doe IX's father made an appointment to discuss the matter with Bishop Gendron. Id. Doe IX's parents met with the Bishop approximately a week after the incident. Id. They gave him what Doe IX's mother described as the "original" police report. Id. Notably, despite a thorough search, this police report was not included in the files obtained by the State from the Diocese during the investigation.

The police report that Doe IX's parents gave to Bishop Gendron describes the events with Chalifour. (B8916A-8916C). Although Doe IX's statement to the police does not reference Chalifour's erection, it is clear that the assault was sexual in nature. The report clearly states that Chalifour was completely naked. (B8916B). He and Doe IX engaged in mutual backrubs with cream. Id. Chalifour then pulled Doe IX down on top of him while Chalifour was still naked. Id. He said to Doe IX: "[H]ug me." "I get so lonely." Doe IX told police: "He was trying to pull me closer to him and he said I get so lonely." (B8916C). Doe IX told Chalifour "no, Father" and pushed him away. Id. Finally, he was able to get away and went to bed. Id. When the police spoke with Chalifour, he denied that anything sexual had taken place, but admitted that he hugged Doe IX and "told him that he did so out of love for him." (B8916A). Chalifour also admitted to the police that they had engaged in mutual backrubs with cream. Id.

When Doe IX's parents provided this information to Bishop Gendron, he seemed unfazed. (B8919). Doe IX clearly remembers Bishop Gendron telling him: "[S]o what, what do you want me to do about it?" Id.

Doe IX also remembers meeting with the Bishop. Id. His father brought him. Doe IX knelt before the Bishop and kissed his ring. Id. While Doe IX does not remember anything particular that was said in the meeting, he clearly remembers thinking that everything would be alright because the Bishop knew what had happened. Id.

Bishop Gendron contacted Chalifour and asked him to come into the office. (B7234; B7247). Gendron ordered Chalifour to see a therapist named Dr. Henry Guertin-Ouellette for four months. (B7234; B7237). Dr. Guertin-Ouellette was the official Diocesan psychologist at the time. (B7238). Dr. Guertin-Ouellette is a former priest who subsequently married and left the priesthood shortly before he became the Diocesan therapist. (B7239; B10738). Chalifour understood that Dr. Guertin-Ouellette would report the results of their sessions back to the Bishop and that the therapist's recommendations could affect Chalifour's future assignments. (B7239).

The therapy consisted of between four and twelve sessions. (B7239; B310; B10816). The therapy concluded with a letter from Dr. Guertin-Ouellette that reads, in relevant part, as follows: "By mutual agreement it seems that Father had benefited from the sessions and he seems more confident that he will be able to render the level of service for which he is known." (B307). Bishop Gendron acknowledged this letter: "I am pleased to learn that you [Dr. Guertin-Ouellette] feel that Father Chalifour has benefited from these sessions . . . ." (B308).

Chalifour told investigators that Bishop Gendron had told him he needed to see the therapist because the police were involved. (B7237). According to Chalifour, because of the police involvement, Gendron wanted to "take it one step further" or "cover his bases." (B7237; B7248). Chalifour felt that he was referred to a therapist "because if charges were ever brought, ah, [the Bishop] could claim that he had done the right thing by sending me to a doctor." (B7238). At no point during the meeting with the Bishop or subsequently did Chalifour's misconduct toward Doe VI Hudson in 1969 come up. (B7238).

According to Chalifour, he covered all of his past sexual misconduct with minors with Dr. Guertin-Ouellette during his therapy sessions. (B7240). Chalifour was "very open" with the therapist and "didn't hide anything" from him. Id. Chalifour was also aware that Dr. Guertin-Ouellette would report back to the Bishop but was unaware of what Dr. Guertin-Ouellette actually reported to the Bishop. Id. There was no evidence that the therapist reported any of the prior abuse to the Bishop.

During the course of the investigation, Dr. Guertin-Ouellette was questioned about his treatment of Chalifour. (B10776). His ability to discuss the particulars of his treatment of Chalifour was limited by his memory and the privilege that applies between a therapist and his patient. Nonetheless, Dr. Guertin-Ouellette was able to tell investigators that he did not receive the police report that Doe IX's parents provided to the Bishop. (B10804). He did not remember

whether the Diocese informed him orally that Chalifour had been involved with the police regarding the Doe IX incident. (B10810). While his memory of the events surrounding Chalifour was limited, after reviewing his correspondence to the Bishop, Dr. Guertin-Ouellette stated that his letter to the Bishop “doesn’t express seriousness in what I’m dealing with.” (B10812). Although Dr. Guertin-Ouellette could not remember whether a report had been made to DCYS as required by law, he stated: “If I had, for instance, suspected in any way that it was, that I was dealing with a reportable crime, that letter would not sound this way, it would not be this way.” (B10812). Dr. Guertin-Ouellette stated further that if he had information that Chalifour’s situation was serious the therapy would not have been limited to four months. (B10817).

After the 1982 incident with Doe IX, there was no interruption in Chalifour’s ministry. (B7241; B7249). There were also no restrictions placed on Chalifour’s ministry at that time. (B7249). Doe IX and his parents never received any apology from the Diocese and were never informed of any action. (B8919). In fact, Doe IX remembers driving by St. Theresa’s for the next two years and seeing Chalifour’s name on the sign posted outside the church. (B8919).

Neither Doe IX, nor his parents, had any idea that the Diocese had knowledge of Chalifour’s prior problems of sexual misconduct with minors before the incident with Doe IX. (B8917). They did not know, until investigators met with them on October 17, 2002, that the Diocese was aware of Chalifour’s sexual misconduct prior to the 1982 incident. (B8917).

Chalifour informed investigators that he chose his victims because he was close to them. (B7254). In all but two instances, they were altar boys. (B7254). According to Chalifour, they would be alone together and then spontaneously he would engage in the inappropriate conduct with the boys. (B7254). There is no evidence that Chalifour engaged in any sexual misconduct with anyone after his counseling in 1982. (B7253-54). However, Chalifour told one of the counselors that he had several opportunities to engage in sexual encounters with youth but avoided these situations. (B310). Moreover, Doe IX has specific knowledge that Chalifour continued to have close contact with minors even after he and his family met with the Bishop. (B8919-20). His friend and his friend’s brother continued to be altar boys for Chalifour. (B8919).

### **III. THE DIOCESE’S RESPONSE TO SUBSEQUENT ALLEGATIONS OF ABUSE**

As discussed above, John Doe I first made a claim of sexual abuse against Chalifour in 1988. (B367) At that time, Msgr. Christian met with Chalifour, who admitted to fondling 2 or 3 “young men” over the years, but denied abusing Doe I at the time. (B368; B7259). In 1988, Christian knew that these “young men” were actually minors. (B367; B5430). Moreover, Christian informed Doe I that he was the first person to report Chalifour’s abuse, despite the fact that the Diocese knew about Chalifour’s misconduct in 1969 and in 1982.<sup>5</sup> (B375).

When Christian confronted Chalifour with Doe I’s accusations, he denied abusing Doe I. Nonetheless, Christian stated that he believed the abuse occurred. (B368). Despite this knowledge, Christian took no action other than to warn Chalifour that if he “weakened” he

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<sup>5</sup> Christian did disclose to Doe I that Chalifour had been in counseling in the early 1980s. (B374).

should return to therapy “both out of concern for future victims as well as the fear of what the law would do if he in fact did slip in this regard.” (B368). Moreover, while Christian told Doe I that Chalifour admitted to having sexual problems, Christian did not tell Doe I that Chalifour “absolutely denied” any contact with Doe I. (B368).

Only in 1991, when John Doe I brought a formal claim for monetary recovery against the Diocese -- three years after Doe I first brought the matter to the Diocese’s attention -- did the Diocese require Chalifour to attend in-patient counseling with the Servants of the Paraclete in Jemez Springs, New Mexico. (B309; B7260-61). Following Chalifour’s therapy in New Mexico, the Diocese sent the report from the New Mexico treatment center to Dr. Guertin-Ouellette for his assessment. (B324). Christian noted that the therapist in the New Mexico program voiced concern about Chalifour because he had not attained a valid score on one of the psychological tests. (B333). As a result, Christian requested a second opinion from Dr. Guertin-Ouellette. (B333).

After Dr. Guertin-Ouellette retested Chalifour, Chalifour received a valid result on the test. (B333). Dr. Guertin-Ouellette noted that Chalifour was not a high risk of reoffending at that time but recommended several conditions, including that Chalifour “not be given any ministry with young people in any way.” (B328). In response to this letter from Dr. Guertin-Ouellette, the Diocese allowed Chalifour to continue in ministry “primarily with the elderly and infirm.” (B370). Notably, however, there is no explicit condition that Chalifour not have contact with children, despite this requirement in Dr. Guertin-Ouellette’s letter. According to Chalifour, he did not have direct involvement with children in any of his ministry work at that time. (B7262-63). This does not appear to be accurate. He filled in on a temporary basis for various pastors at different parishes. (B7262-63). Between 1992 and 2000, Chalifour filled in “in at least half of the parishes in Manchester, parishes in Nashua, Laconia, Hampstead, Sandown, [and] 22 months in Goffstown.” (B2957). It is impossible to believe that Chalifour had no contact with children during this time through his parish work. Chalifour’s ministry was not formally suspended until February of 2002. (B7263-64).

More importantly, Dr. Guertin-Ouellette informed investigators that based on his recommendations in his 1992 evaluation it would only be appropriate to assign Chalifour to ministry “if there were a position in that parish where there was no contact with children but with monitoring. You don’t let him go on his own . . . [w]here he could on the sly have contact.” (B10828). Dr. Guertin-Ouellette stated that “if he’s dealing with families, you’ve got kids. Then I’d say whoa beware. That kind of a, general, I, I mean you know, ah, ah, some parishes have one priest he’s the pastor of it and that I would say no. Because by the very nature of the work indirectly he might come in contact, even with monitoring or anything else. But in a larger if you notice I said a larger, where the work can be secluded or segregated, in a certain way with monitoring, I would say yes.” (B10829).

While the exact nature of Chalifour’s temporary assignments is unclear, he stated that he was acting “kinda full time” in Goffstown. (B7262). He would perform weddings, funerals, say mass, meet with CCD parents, and conduct other duties. (B7262). There is absolutely no record in the Diocese files that Chalifour’s ministry was limited in any way or that he was monitored at all.

Chalifour also noted during his interview that the Diocese never had any formal training for priests about sexual abuse issues until the Fall of 2001, which was postponed until the Spring of 2002 as a result of the events of September 11th. (B7265). He was also unaware of any written policies that the Diocese had regarding sexual misconduct. (B7265). According to Chalifour, priests also never received any training on reporting cases of suspected child abuse. (B7266).

#### **IV. CIVIL SETTLEMENTS AND CONFIDENTIALITY AGREEMENTS**

Sometime in the Fall of 1991, after the issue was first raised in 1988, Chalifour's misconduct with John Doe I was brought to the Diocese attention again. (B309). As a result of Doe I's renewed accusations in 1991, the Diocese entered a civil settlement with Doe I for \$15,000. (B346). As part of the settlement agreement, the Diocese insisted that Doe I enter into a confidentiality agreement. (B341, 344). Doe I initially balked at the request to sign a confidentiality agreement. (B343). On December 1, 1992, he wrote a letter to Msgr. Christian requesting clarification of the confidentiality agreement. (B343).

Among the inquiries posed by Doe I to the Diocese was the question: "If Gerry is arrested in the future for sexual abuse charges, can I come forward?" (B343). Handwritten in the margin of Doe I's letter, in what appears to be Msgr. Christian's handwriting, is the note "not without me." In its formal response to Doe I's question, Christian responded: "If Gerry should be arrested in the future, you may come forward only after consulting with the Diocese. In other words, your testimony could very well be unnecessary if the facts of the case at hand are clear enough and/or if other witnesses have already come forward. If your testimony would not be necessary for justice to be done in the case at hand, then you would not need to come forward." (B344).

Another question posed by Doe I regarding the confidentiality agreement was: "Am I allowed to speak about being sexually abused (neither his name nor the amount of the agreement would be divulged) to family, close friends, or persons who were also sexually abused by priests? Furthermore, as part of my own healing process, can I write about the experience (if the situation arises)? Once more, no name nor amount would be given. One issue for me is that there has been much negative press about the Church. Part of my own healing has been the church and the offender's response. Can this be alluded to anonymously?" (B343). Christian responded to this question as follows: "Without being specific as to the person or the resolution of the issues, you may speak about your own situation to family and friends, or others in similar circumstances, insofar as that is truly necessary for your well-being or those of other parties. We would ask, however, that you not in any other fashion – speaking or writing – bring your situation to a wider public. Our reason for this request is simply that it would make you subject to subpoenas even in unrelated cases by prosecutors who are looking for information, and that subpoena would then unfairly require you to divulge privileged information." (B345). Christian did inform Doe I that if he was subpoenaed he would be allowed to testify truthfully without jeopardizing his settlement, "such subpoena not being the result of anything you have previously said or done." (B344).

On January 2, 1993, the Diocese and Doe I signed a “Release and Confidentiality Agreement.” (B346). Doe I received \$15,000 from the Diocese. In exchange, he agreed to “be foreclosed from bringing any further civil claim or criminal charges against Chalifour or the Diocese on account of any matters from the beginning of the world to the date hereof.” (B346) (emphasis added). In addition, the parties signed a mutual confidentiality agreement. Notably that agreement provided: “In the event that such Confidentiality Agreement is violated by John Doe I, any payments made hereunder shall be returned to Chalifour.” (B347). The confidentiality agreement contained no provision for remedy for Doe I if the Diocese breached the confidentiality agreement.

Shortly after John Doe I’s renewed accusation against Chalifour in the Fall of 1991, on December 6, 1991, John Doe II, a former altar boy of Chalifour, who has refused to be interviewed for this investigation, also sought money from the Diocese to cover the costs of counseling as a result of his sexual abuse by Chalifour and another priest named Fr. Eugene Belanger. (B321). In 1983, Doe II first disclosed in general terms that he had been sexually abused by two priests. (B5430). It is unclear whether the Diocese knew that these priests were Chalifour and Belanger.

On March 12, 1992, approximately 10 months before the Diocese entered into the settlement agreement described above with John Doe I, the Diocese settled with John Doe II for \$7,000. (B331). While Doe II’s settlement does contain a confidentiality agreement, it is not as comprehensive as Doe I’s agreement. Moreover, it does not explicitly reference criminal charges as Doe I’s does. (B331).

On March 26, 1992, just two weeks after Doe II’s settlement agreement, John Doe I formally presented his request for monetary damages against the Diocese. (B372). The very next day, Christian wrote a letter to Attorney Brad Cook expressing concern that John Doe II disclosed to John Doe I the fact that he got a settlement from the Diocese. (B333).

In 1995, John Doe III made a claim for counseling costs and damages to the Diocese. (B355). When Doe III’s lawyer drafted a civil lawsuit, sent a copy to the Diocese, and threatened to file it in court, the Diocese agreed to settle with Doe III for \$60,000. (B4751, 4753). As part of this settlement agreement, Doe III was also required to sign a confidentiality agreement. (B4747). Doe III felt that the Diocese really did not want Doe III to communicate with other victims and that the Diocese treated his complaint as “a PR problem,” that “they d[idn’t] want it publicized,” and they wanted to “keep it quiet.” (B4736).

## **V. CONCLUSION**

The State was prepared to prove that the Diocese knew of Chalifour’s sexual misconduct with a minor in 1969 when the conduct came to the attention of Bishop Primeau. At that point the Diocese took no action to restrict Chalifour’s ministry or protect minors. After the Diocese first learned that Chalifour posed a danger to children, Chalifour sexually assaulted two boys in the 1970s and attempted to sexually assault a third boy in the early 1980s. Based on these facts and the other information set forth above, the State was prepared to present one or more indictments to the grand jury for the crime of endangering the welfare of a minor.

## **ROBERT DENSMORE**

### **I. INTRODUCTION**

Robert Densmore was born in 1932. (B1030). He was ordained a priest on December 20, 1961. Id. The Diocese limited his ministry in 1993, after receiving a complaint that Densmore had sexually assaulted a minor. There is no evidence that Densmore abuse any other children after the first complaint came to the Diocese attention. The Diocese, however, did not revoke Densmore's ministry entirely until the initiation of the State's investigation of the Diocese in February 2002.

### **II. ALLEGATIONS OF SEXUAL ABUSE OF MINORS AGAINST DENSMORE**

#### **A. Sexual Misconduct In New London**

The first known incident of Densmore engaging in sexual abuse with a minor occurred sometime between 1972 and 1974. (B1036). Densmore was assigned to Our Lady of Fatima parish in New London at the time. (B1030). John Doe X was an altar boy for Densmore. Doe X was between 11 and 13 years old. He reported that one Saturday afternoon, he arrived early to serve the 5 o'clock mass. He showed up for mass wearing shorts, sneakers, and no socks. Densmore slapped him across the face and told him that he should go to the rectory and get a pair of socks. Then Densmore said, "No, better yet I will take you over." When they went into the bedroom in the rectory, Densmore pulled down Doe X's shorts and spanked him 5-6 times. Each time, Densmore fondled Doe X's buttocks. Densmore then gave Doe X a pair of socks and admonished him, "you don't go into God's house without socks on." Doe X quit being an altar boy after that experience. Doe X did not report this conduct to anyone until he read the names of the priests in the newspaper earlier this year. (B1036).

John Doe XI also reported the he was sexually abused by Densmore at Our Lady of Fatima parish. This abuse occurred between 1972 and 1974, while Doe XI was between 6 and 8 years old. Doe XI had four brothers and Densmore would often babysit them. During these occasions, Densmore would give Doe XI and his brothers a bath. Densmore would then fondle the genitals of Doe XI and his brothers. When Doe XI and his brother slept overnight with Densmore, Densmore would make them sleep in the same bed as him. (B5005). When they slept with Densmore he would fondle them. Doe XI and his brother often tried not to be the person who slept closest to Densmore because this person would most likely get fondled. The abuse ended for Doe XI when he began staying over with a neighbor and he would no longer stay with Densmore. Doe XI and his mother first reported the abuse in 1993, when Doe XI was 26 years old. (B5006). The circumstances of that report will be discussed in further detail below.

## **B. Sexual Misconduct in Charlestown**

Jane Doe was a parishioner at St. Catherine's parish in Charlestown in the mid-1980s. (B4731). Fr. Robert Densmore was the assistant pastor at that church and befriended Jane Doe's family. (B4731). At some point, Jane Doe began to suspect that there was inappropriate contact between Densmore and her son. At first, she contacted the pastor of the parish. (B4732). He put her in contact with Msgr. Francis Christian. (B4732). On Oct. 7, 1985, Jane Doe reported to Christian that Densmore had a homosexual experience with her son. She reported that his first sexual experience with Densmore was two years earlier. When Christian interviewed Densmore about Jane Doe's accusations, Densmore admitted his homosexual experience with Jane Doe's son. (B474). He also admitted to smoking marijuana and drinking too much. (B474).

Although Jane Doe's son was 19 years old when his mother reported his sexual contact with Densmore, he was only 17 at the time of his first sexual contact with Densmore. (B4731). It is unclear whether Jane Doe conveyed her son's age to Fr. Christian when she reported the matter in 1985.

During his meeting with Fr. Christian, Densmore "indicated that he understood that he had compromised his situation in Charlestown and it would be necessary for him to resign the parish." (B475). After Jane Doe's complaint, Densmore took a leave of absence. He was reassigned to hospital ministry and "limited weekend ministry" in St. Christopher's parish in Nashua. (B1030; B5721). There was absolutely no limit on his parish ministry. In fact, the letter of assignment to Fr. Karl Dowd reads: "He will . . . provide you with weekend assistance at Saint Christopher's and be willing to help in whatever other ways his primary ministry makes possible." (B5722).

In December 1985, the Bishop attempted to require Densmore to attend counseling at St. Luke's Institute. (B476). This counseling was to focus on Densmore's alcohol problems, although the Diocese acknowledged that his homosexual conduct presented a problem for his reassignment. (B476). There was absolutely no indication about whether Densmore's conduct involved sexual contact with minors. Densmore refused to be admitted for in-patient treatment to St. Luke's Institute. The Bishop reluctantly allowed him to see Dr. Henry Guertin-Ouellette. (B476).

Until 1993, none of the subsequent medical evaluations and status reports refer to Densmore's sexual problem. Although Jane Doe first reported the sexual contact between her son and Densmore in 1985, it does not appear that she clearly identified her son as a minor at the time the contact occurred. In 1993, the Diocese received a second report of sexual misconduct by Densmore.

## **III. DIOCESAN RESPONSE TO SUBSEQUENT REPORTS OF SEXUAL ABUSE**

In February 1993, John Doe XI and his mother reported to Christian that Densmore had sexually abused Doe XI and his younger brother when they were very young (4-8 years old).

(B483). As indicated above, Doe XI was 26 years old at the time he reported this conduct. Christian wrote in a memorandum dated February 24, 1993, that “[i]t appears to me that with the appropriate reimbursement for his counseling expenses, and as long as he is satisfied with the steps the Diocese has taken, the Diocese and Father Densmore may not be in danger of any civil or criminal liability. [Doe XI] is, however, an angry and troubled young man who, in my estimation, might easily be pushed over the edge.” (B483-84)

When Christian confronted Densmore about Doe XI’s accusations, Densmore denied the abuse. Christian told Densmore that Doe XI believed Densmore had admitted to the abuse. Christian concluded that “any change in [Densmore’s] story in [Doe XI]’s eyes would be extremely detrimental to him. He understands this, even though he continues to protest that these things did not happen. Father Densmore has volunteered to pay for the cost of the counseling involved, even though he recognizes that this is a kind of admission of guilt, but he also understands that not to pay would be a denial of guilt which [Doe XI] would not readily accept.” (B484).

Despite Densmore’s denial that he abused Doe XI, Christian wrote to Doe XI on March 11, 1993, informing Doe XI that Densmore had admitted the conduct. Christian wrote that Densmore “recognizes his responsibility [sic] and sincerely wishes and prays for your forgiveness and your recovery.” He informed Doe XI that Densmore would not be allowed to return to parish ministry and that he was limited to hospital or institutional ministry. (B485).

Christian offered to pay for Doe XI’s counseling costs on a condition that Doe XI sign a release and confidentiality agreement. (B482, B486). Doe XI responded:

Having asked me (as a condition of the ‘Agreement and Release’) to ‘keep the nature of any discussions . . . confidential’ has made quite clear to me your neglect to appreciate what happened to me.

Some twenty years ago Father Densmore said to me ‘. . . this is what the big boys do . . .’ and made it easy for me to understand that I need not tell anyone. This in a sense was a ‘code of silence’ I lived with.

I know all too [sic] painfully how destructive silence is. Silence empowers an abuser and weakens the abused.

My silence has ended!

I will not sign an ‘Agreement and Release’ requesting I be silent.

(B488).

Christian responded to Doe XI’s letter, urging him to reconsider his refusal to sign the confidentiality agreement:

. . . Making those problems public would destroy [Densmore's] ability to contribute further and would affect his problems. Your coming forward has been helpful and we trust has helped you. Should Father Densmore ever engage in destructive behavior, we would want you to come forward with that information, either to us or to the appropriate authorities. However, going public now with the events about which we have corresponded would not only put you in a compromising position due to the publicity, but would also jeopardize Fr. Densmore's limited ministry, to no constructive end.

It is for these reasons alone that we sought the confidentiality agreement. Should you wish to discuss these more fully, I would be pleased to sit down with you.

(B489). John Doe XI refused to sign the confidentiality agreement or settle with the Diocese at that time.

Prior to John Doe XI's allegations, Densmore had received substantial in-patient and out-patient therapy for his alcohol abuse. In 1993, the Diocese inquired whether sexual issues had been addressed during these counseling sessions. St. Luke's Institute responded that Densmore had covered sexual issues during his counseling. (B455-57). While St. Luke's recommended some after-care treatment regarding the sexual issues after the Diocese's 1993 inquiry, the therapists did not recommend any limitation on Densmore's ministry. (B455-57). According to Diocesan records, Densmore's therapy ended in 1995. (B473).

Densmore remained in hospital ministry until May 12, 2000, when he retired from full-time active ministry. (B5724). It is unclear whether he continued to engage in weekend ministry after this. His priestly faculties, however, were not revoked until February 15, 2002.

#### **IV. CONCLUSION**

Three victims reported that Fr. Robert Densmore had engaged in sexual misconduct with minors. Some of the accusations were reported to the Diocese. The Diocese did not immediately remove Fr. Densmore from parish ministry. In 1993, the Diocese limited Fr. Densmore's ministry to hospital or other institutional settings, but his priestly faculties were not revoked until February 15, 2002. There is, however, no evidence that Densmore engaged in sexual misconduct with a minor after the Diocese first learned of Densmore's misconduct. Accordingly, this matter would not have provided a basis to pursue criminal charges against the Diocese.

## **ROGER FORTIER**

### **I. INTRODUCTION**

Father Roger Fortier was convicted in 1998 for several counts of aggravated felonious sexual assault and felonious sexual assault and is currently serving a lengthy prison term in the New Hampshire State Prison. Fortier perpetrated these assaults between 1994 and 1997 on two minor victims from his Farmington, New Hampshire parish. Although he was not convicted until 1998, the Diocese first learned that Fortier was a sexual threat to minors in 1984. In 1984, the Derry Police Department investigated Fortier's conduct with minors. The Derry investigation uncovered that Fortier was watching pornography and providing alcohol to minors in his rectory room in Manchester and at the home of a friend in Derry. That investigation further revealed that Fortier assaulted a minor from his Manchester parish during an overnight trip to Derry. When confronted by police, Fortier admitted to this conduct. In 1984, Father Christian learned the details of the Derry police investigation. Christian then confronted Fortier with these allegations. According to a confidential memorandum in Diocesan files, Fortier admitted again to this conduct. At around the same time, one of the minors that Fortier invited to his rectory room reported Fortier's conduct to the Diocese, in person. He alleged that Fortier was providing alcohol and pornography to minors. He also reported that Fortier had attempted to solicit him.

Following Fortier's conviction in 1998, a probation and parole officer invited the Diocese to provide background about Father Fortier for purposes of his pre-sentence investigation of Fortier. Despite Bishop Christian's knowledge of Fortier's conduct in 1984, Bishop Christian reported in a 1998 letter to the probation and parole officer that Fortier's "sexual problems with youth were unknown to the Diocese."

Based on the information below, the Attorney General's Task Force was prepared to present one or more indictments to the Hillsborough County Grand Jury charging the Diocese of Manchester with endangering the welfare of minors.

### **II. FORTIER'S EARLY ASSIGNMENTS**

After his second year at the seminary, Fortier was assigned for the summer to St. Joseph's parish in Salem between June 14 and August 9, 1978. (B2298). He served under Father Karl Dowd. (B2298). Prior to his ordination he also worked as a Deacon under Father Desjardins at the Sacred Heart parish in Manchester. (B2308). He was ordained on April 26, 1980. (B2306). At the time of his ordination, Fortier identified his areas of interest as vocation work and youth work. (B2304). Following his ordination, he was appointed to be the Associate Pastor of St. John the Baptist parish in Manchester as of June 18, 1980. (B2307).

### **III. THE DERRY POLICE DEPARTMENT'S 1984 INVESTIGATION OF FORTIER AND TASK FORCE INTERVIEWS WITH THE CHILDREN INVOLVED**

In 1984, Derry Police Officer Vernon Thomas (now Lieutenant) conducted an investigation which focused on Father Fortier's involvement with various minors from his parish in Manchester and from the Derry area. The investigation began when Thomas received information that John Doe XXII, the owner of a local arcade, was luring children to his home on Beaver Lake in Derry and molesting them. (B8607; 9241). As Thomas began conducting surveillance of Doe XXII's home, he observed a number of teen-aged boys frequenting the residence. On several occasions, he also observed Father Fortier's vehicle in the driveway. (B8607). The Task Force secured Thomas' police reports during its investigation.

On September 12, 1984, Officer Thomas spoke with Officer Steinmetz of the Manchester Police Department regarding Fortier. Steinmetz reported that Fortier "propositioned" a parishioner at St. John the Baptist in Manchester as well as the parishioner's son. (B9256). Task Force investigators spoke with Officer Steinmetz on November 18, 2002, but he had no specific memory of Father Fortier and did not have any additional information. (B9668).

Officer Thomas also spoke with Manchester Officer Armand Forest on September 12, 1984. (B9257). Forest explained that he was a parishioner at St. John's and that he had spoken with a fellow parishioner who alleged that Fortier "propositioned" his son. (B9257). Officer Thomas met with the boy on September 12, 1984. (B9258). In Officer Thomas' reports, the boy was anonymous and was referred to only as "Info. 1." (B8614). The Task Force recently learned that "Info. 1" is John Doe XXI who was 17 at the time of his contact with Fortier. (B10732). Doe XXI explained to Officer Thomas that he and his friends had gone to Fortier's rectory apartment at St. John's. (B9258). Fortier invited the boys to the rectory to show them pornography and drink beer. Fortier had a collection of pornographic videos. Two other teens, John Doe XXIII and John Doe XXIV also frequented Fortier's rectory room. Doe XXI reported that Doe XXIII had confided in him about his contact with Fortier. Doe XXIII told Doe XXI that Fortier solicited him. Doe XXIII also told Doe XXI that Fortier invited him to Doe XXII's house in Derry for the weekend and Doe XXIII went along. Doe XXIII and Fortier watched pornography and drank beer. When they went to bed, Doe XXIII told Doe XXI that he woke up with Fortier's hand down his pants. Doe XXIII hit Fortier. (B9260). Doe XXI also reported that Fortier spent a lot of time with a teenager named John Doe XXV. (B9260).

Task Force investigators interviewed Doe XXI (born in February of 1967) on December 4, 2002. (B10731). He confirmed that Manchester Police Officer Armand Forest arranged for him to speak anonymously with a Derry Police Officer in 1984 when he was 17 years old. (B10732). During his interview with the Task Force, Doe XXI explained that, growing up, he was a parishioner at St. John the Baptist in Manchester. (B10732). He was an altar boy. (B10733). He got to know Fortier because he was

involved in various church organizations. (B10733). Doe XXI confirmed that Fortier invited he and his friends to Fortier's rectory apartment. (B10734). During these visits, they drank beer and viewed pornography as a group. (B10734-36). Doe XXI abstained from consuming any alcohol. (B10734). The movies involved adult homosexual content. (B10735). This occurred on dozens of occasions. (B10743-43). Doe XXI also reported that about a month after he spoke with Officer Thomas in 1984, Fortier made an unwanted advance toward him at the rectory. (B10737-38). He was with some friends who were talking about watching a pornographic movie. (B10739). He was standing next to Fortier and they were facing each other. Fortier placed his hand on Doe XXI's left shoulder and put his arm behind Doe XXI's neck. (B10739). Fortier pulled Doe XXI closer to him and placed his hand on Doe XXI's stomach. (B10739). Doe XXI backed up, distancing himself from Fortier. (B10739). Doe XXI explained that similar contact occurred on other occasions while he was serving as an altar boy for Fortier. (B10742).

During his interview with the Task Force, Doe XXI also explained that he had contact with Father Phil Petit. (B10748).<sup>1</sup> At around the same time as his encounter with Fortier, Petit invited him for pizza. Petit picked him up from school. (B10748). When he got in the car, Petit stated that he just wanted to talk. They went to St. Anselm's College and parked near the monastery. They walked to a gazebo. Petit told Doe XXI that he was gay. (B10748). Eventually, they got back into Petit's car. As they were leaving St. Anselm's, Petit attempted to grab Doe XXI's penis. (B10749). Petit touched Doe XXI's penis over his pants. (B10750). Doe XXI defended himself, punching Petit two or three times. (B10749-50). Petit brought Doe XXI home. Before Doe XXI got out of the car, Petit said to him, "if you were gay, I would enjoy you." (B10750). Doe XXI exited the car without further incident. (B10750).

Doe XXI explained that he reported his contact with Petit to his youth group coordinator. (B10752, 10754). The youth group coordinator urged Doe XXI to talk to someone about the incident, but Doe XXI was concerned that he could be accused of assaulting Petit because he hit him. (B10752). Within a month, Doe XXI stated that he received a phone call from Attorney Norman Champagne. (B10753). Attorney Champagne asked him if he wanted to press charges. (B10753). Doe XXI declined, but indicated that he was interested in speaking with someone from the Diocese. (B10754).<sup>2</sup> A couple of months later, Doe XXI called the Diocese of Manchester and he was invited to come in during the afternoon. (B10756). He went to the Diocese on his own. (B10756). He recalls speaking with a representative of the Diocese. (B10756). Although he is not certain, he believes that he spoke with Bishop Gendron. (B10756). He explained to the Diocese that he was a CYO member. (B10757). He reported "absolutely" everything regarding the incidents that occurred with both Petit and Fortier to the Diocese. (B10755, 10759-60). With regard to Fortier, Doe XXI explained that Fortier provided beer and pornography to him and his friends. He also reported that

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<sup>1</sup> Doe XXI had previously reported his contact with Father Petit to Officer Thomas when he met with him to discuss the Derry Police investigation of Fortier. (B9261).

<sup>2</sup> Task Force investigators spoke with Judge Champagne. He stated that he could not specifically recall speaking with Doe XXI about his contact with Petit. However, he explained that if he had received such a report, he would have encouraged the victim to press charges. (B10768).

Fortier attempted to solicit him. (B10759). He explained that the Diocesan representative listened to his report, thanked him for his time, and promised to “take care of it.” (B10758, 10760).

On September 16, 1984, Officer Thomas spoke with John Doe XXIII (born in April of 1965). Doe XXIII reported that in the late Summer and early Fall of 1982, when he was 17 years old, Fortier brought him to Derry to watch pornographic movies and drink beer. (B9267). At the time, Doe XXIII was not aware that Fortier was homosexual, and he agreed to go. (B9267). Fortier drove Doe XXIII to a green cottage on a dead end road by a lake in Derry. The cottage belonged to a friend of Fortier’s named Doe XXII. After they arrived, Doe XXIII and Fortier began to drink beer and watch pornographic movies. He and Fortier were alone in the cottage until approximately 11 PM when Doe XXII came home and went to bed. Thereafter, he and Fortier went to bed in a room adjacent to Doe XXII’s. During the night, Doe XXIII awoke to find Fortier’s hand on his buttocks. Doe XXIII grabbed Fortier’s hand and pulled it off of him. The following morning, Fortier drove Doe XXIII home to Manchester. (B9267). Approximately a month later, Doe XXIII told his parents about his contact with Fortier in Derry. According to Officer Thomas’ report, Doe XXIII’s father spoke with a priest from another parish to report the incident. The priest told Doe XXIII’s father that the Diocese was providing Fortier with psychological treatment for his problem already. (B9268). Because he believed that the church was addressing the problem, Doe XXIII’s father did not pursue the matter further. (B9268). A few weeks later, Fortier left St. John’s for a period of time. Task Force investigators interviewed Doe XXIII’s father on December 3, 2002. (B10678). He did not recall making a report to a priest regarding Fortier’s contact with his son. (B10683).

Task Force investigators spoke with John Doe XXIII on November 21, 2002. (B11329). He confirmed that Fortier had sexual contact with him in Derry when he was a minor and provided more detail about the assault.<sup>3</sup> Doe XXIII explained that he served as an altar server at St. John the Baptist in Manchester. (B11329-30). He met Fortier when he was in eighth grade through the church. (B11329-30). It was common for his family to invite the parish priest to dinner on Sundays. (B11329). When he was in high school, Fortier attended Doe XXIII’s church league basketball games and became friendly with several of his teammates. (B11331-33).<sup>4</sup> On several occasions, Doe XXIII and his teammates drank alcohol with Fortier in his rectory apartment. (B11331, 11333-35). Doe XXIII believes that this occurred during his junior year, when he was 17 years old. (B11346, 11356). On one occasion, Fortier brought Doe XXIII and John Doe XXVIII to visit another priest in Alton.<sup>5</sup> (B11337-38). Fortier and the other priest took

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<sup>3</sup> Doe XXIII recently stated that he believed that he was 15 or 16 years old at the time that Fortier assaulted him. (B11336). However, he reported to Officer Thomas in 1984 that he was 17 years old. It appears that he was 17. His birthday is in the Spring of 1965 and he reported to Officer Thomas that Fortier assaulted him in the late Summer or early Fall of 1982. (B9267). Thus, Doe XXIII appears to have been 17 at the time of the assault.

<sup>4</sup> Doe XXIII named several boys that Fortier became friendly with including, John Doe XXVI, John Doe XXVII, John Doe XXVIII, John Doe XXIX, and John Doe XXX. (B11332).

<sup>5</sup> When Thomas interviewed Fortier in September of 1984, he stated that he was close friends with Father Raymond LaFerriere, a priest at St. Joan of Arc parish in Alton, NH. (B9272).

them to a movie theater, to watch a pornographic movie. (B11337-38, 11343-44, 11357-58). Doe XXIII questioned how they would get into the movie because they were not of age. (B11338). The priests told them not to worry because “you’re with us.” (B11338). After the movie, they all returned to the rectory and went to bed without incident. (B11345). Soon thereafter, Fortier asked Doe XXIII to join him on a trip to Derry and Doe XXIII agreed. (B11347, 11352). On the way, they stopped at a “place” to play video games. (B11348). They then traveled to the home of one of Fortier’s friends. (B11347). That night, they drank beer and watched movies. (B11348). They went to sleep in the same bed. (B11349). Doe XXIII was confused about why they were sleeping in the same room. (B11349). He woke up to find Fortier’s hand “rubbing [his] butt.” (B11349). He described that Fortier was “squeezing” and “rubbing” his “butt” underneath his underwear, in his “crack.” (B11349, 11358). Doe XXIII asked Fortier what was doing and Fortier stopped. (B11349).

Officer Thomas interviewed John Doe XXV (born in December of 1966) on September 17, 1984. (B9273). Doe XXV explained that he had been close friends with Fortier for about three years, but that Fortier had never touched him or propositioned him. (B9273). Doe XXV acknowledged that he joined Fortier on overnight trips to Doe XXII’s house, but stated that the most they ever did was play video games and watch “R” rated movies on HBO. (B9274). Task Force investigators recently spoke with Doe XXV regarding the Derry police investigation in 1984. Doe XXV confirmed that he met Fortier when he was an altar server at St. John the Baptist in Manchester and the two became close. However, he denied that Fortier ever sexually assaulted him. (B9605; 8616).

Also on September 17, 1984, Officer Thomas interviewed John Doe XXXI. Doe XXXI stated that he visited Fortier at the church rectory and at Doe XXII’s house in Derry. Doe XXXI observed other teens drinking beer with Fortier on these occasions, but stated that he did not drink. (B9275). They watched movies and played arcade games. (B9275). Task Force investigators met with Doe XXXI on October 9, 2002. (B8605). Doe XXXI confirmed that he met Fortier through Doe XXV and that he spent a great deal of time with Fortier at the rectory at St. John’s and at Doe XXII’s home on Beaver Lake in Derry. (B8605). Doe XXXI stated that he never had sexual contact with Fortier, denied that he watched pornographic movies with Fortier, and denied the Fortier provided him with alcoholic beverages. (B8605).

Officer Thomas interviewed John Doe XXIV on September 17, 1984. (B9277). Doe XXIV related information that he learned about Fortier from a friend, John Doe XXVIII. According to Doe XXIV, Doe XXVIII had a confrontation with Fortier. Specifically, when Doe XXVIII was 17 years old, Fortier took him to a location in Derry and asked Doe XXVIII if he wanted a “blow job.” (B9277). The Task Force attempted to interview Doe XXVIII in early December of 2002. His attorney declined the interview on Doe XXVIII’s behalf. (B10769). He explained that Doe XXVIII was very emotional and too upset to speak about his involvement with Fortier. (B10769).

Officer Thomas spoke with Fortier in person on September 17, 1984, at the Holy Rosary parish in Rochester, NH. (B9269).<sup>6</sup> Fortier waived his Miranda rights. (B9269; 9270). Officer Thomas told Fortier that he was a “potential suspect in a crime.” (B9270). With regard to his relationship with John Doe XXII, Fortier explained that Doe XXII had been a personal friend for the past 18 years. Fortier visited him frequently, as much as twice a month since his transfer to Rochester. Before that, he visited Doe XXII more often. Occasionally, during his visits to Doe XXII’s home, he brought different boys from his parish in Manchester including John Doe XXXI, John Doe XXV, and John Doe XXIII. (B9270). These visits were social in nature -- they would celebrate birthdays for Doe XXII’s daughters, have cook-outs, and play video games. (B9271). Fortier agreed that Doe XXII was homosexual. When asked if Doe XXII ever touched any of the boys that Fortier brought to Derry, Fortier explained that such information would be privileged between Fortier and Doe XXII because Fortier was a priest. (B9271).

Fortier admitted to Officer Thomas that he was homosexual. He also admitted to “the incident involving John Doe XXIII,” but claimed that “it was a big mistake and he still regrets it.”<sup>7</sup> He denied any other sexual contact with the boys that he brought from Manchester to Derry. (B9271). However, Fortier admitted to showing pornographic movies to the boys and providing them with beer both at Doe XXII’s home and at the rectory of St. John’s in Manchester. (B9272). Fortier agreed that, at the beginning of his friendships with Doe XXIII, Doe XXXI, and Doe XXV, they were minors. (B9272). He explained that he was the closest with Doe XXV. (B9272). When asked if he ever had sexual contact with Doe XXV, Fortier responded: “I’d rather not say.” (B9272). He denied having sexual contact with the other boys. (B9272). Fortier also explained that there were other teen-agers around Doe XXII’s home when he was there, including John Doe XXXII, XXXIII, and XXXIV.<sup>8</sup> During the interview, Fortier stated that he was concerned that he would lose his priesthood. (B9272).

#### **IV. DIOCESAN KNOWLEDGE OF THE DERRY POLICE DEPARTMENT’S 1984 INVESTIGATION OF FORTIER**

There is a confidential memorandum in the Diocesan files dated September 26, 1984, relating to an investigation conducted by the Derry Police Department of Fortier. (B2314-15). The memorandum explains the following:

On September 26, 1984, Father Christian received a call from John Doe XXV’s mother, a parishioner from St. John the Baptist in Manchester. (B2314). Doe XXV’s mother reported to the Diocese that Officer Thomas of the Derry Police Department came to her home interested in speaking with her son. Officer Thomas explained that he was investigating reports

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<sup>6</sup> Effective as of June 27, 1984, the Diocese assigned Fortier as the Associate Pastor of Holy Rosary Parish in Rochester to work under Monsignor Simard. (B2311; 2312).

<sup>7</sup> The Task Force interviewed Lieutenant Thomas on December 5, 2002. (B10712). He explained that during his interview with Fortier, he confronted Fortier with Doe XXIII’s allegation that Fortier touched him on the buttocks. Thomas made clear that Fortier admitted that he had. (B10716-18).

<sup>8</sup> Fortier was likely referring to John Doe XXXIII, XXXIV, and John Doe XXXII. (B9274; 9276; 9286).

that Fortier was bringing “young men” from the parish in Manchester “to the home of a homosexual” in Derry. (B2314).

Father Christian contacted Officer Thomas to discuss the matter. Officer Thomas was under the impression that the Diocese was aware of “these matters.” (B2314). Father Christian assured Officer Thomas that it was not. Father Christian also told Officer Thomas that that if Fortier did “have these problems,” the Diocese wanted to ensure that he was “not harming anyone else.” (B2314).

Officer Thomas told Father Christian that he spoke with Fortier, Fortier acknowledged that he was a homosexual, and admitted “to one case of solicitation,” that he had served alcohol to minors, and showed “a pornographic film to minors.” (B2314).

On September 27, 1984, Father Christian met with Fortier. Fortier admitted that “he had experienced some difficulties while at St. John’s.” (B2314). He also admitted “to each of the charges the police officer had indicated.” (B2314-15). Fortier explained “that he realized these actions had been wrong and that since he had been in Rochester he had turned over a new leaf and started fresh.” Father Christian requested that Fortier begin seeing Dr. Henry Ouellette “of the Clergy Counseling Services” and asked that Fortier allow Dr. Ouellette to write to Father Christian if Fortier were to leave treatment prematurely. (B2315).

The memorandum concludes:

“[Father Christian] stated that if Father Fortier did not bring this problem under control and he were convicted, he would certainly end up in jail with the Bishop being helpless to assist him. He also indicated that in the event of any public scandal there was every likelihood that the Bishop would be unable to allow Father Fortier to function as a priest in the Diocese of Manchester, and that it was probable that he might not even be able to function as a priest anywhere.”

(B2315) (emphasis added).

Dr. Ouellette wrote to Father Christian at the Diocese on October 25, 1984, to report that Fortier gave him permission to tell the Diocese that he was visiting with Dr. Ouellette regularly, was dealing “with the material that was discussed by you at his meeting with you recently concerning complaints received by you from the Derry Police Department.” (B2316). Fortier executed a release so that Dr. Ouellette could share information with Father Christian. (B2317). A review of the Diocesan file indicates that there are no evaluations from Dr. Ouellette from this time period.

Task Force investigators spoke with Lieutenant Thomas on December 5, 2002. (B10712). He confirmed that he spoke with Father Christian about his investigation of Fortier. (B10719). He believed that he spoke with Christian more than once. (B10719). Although, he could not specifically recall the substance of his first conversation with Father Christian, he reviewed Father Christian's memorandum of the conversation. (B10720-22) (referring to (B2314-15)). Thomas confirmed that he provided Father Christian with the information in the memorandum. (B10720). He further explained that when Father Christian stated in his memorandum that Fortier had admitted to "one case of solicitation," Father Christian was using his own words and was likely referring to Thomas' statement to him that Fortier admitted to assaulting Doe XXIII by placing his hand on Doe XXIII's buttocks. (B10721). Thomas further stated that Father Christian called him back about a year after his investigation concluded, sometime after June of 1985. (B10719; 10727). During that conversation, Father Christian questioned where Thomas' investigation was headed and explained that Fortier's heart problems had flared up as a consequence of the investigation. (B10727-28). Thomas told Father Christian that Fortier's heart problems would not change the direction of his investigation. (B10727).

Lieutenant Thomas explained that he concluded his investigation without bringing charges against Fortier. He stated that the statute of limitations would have run with regard to any charge relating to providing alcohol to minors. (B10725). While he suspected that Fortier sexually assaulted Doe XXV based on Fortier's statements to him, Thomas felt that he could not go forward without Doe XXV's cooperation. (B10725-26). As for any assaults involving Doe XXIII, Thomas believed that statute of limitation concerns would have barred prosecution. (B10725).

## **V. FORTIER'S ASSIGNMENTS TO THE HOLY ROSARY PARISH IN ROCHESTER AND TO PARISHES IN NASHUA**

On June 27, 1984, the Diocese transferred Fortier to the Holy Rosary Parish in Rochester where he remained until June of 1988. (B2311; 2312; 2323).

Detective Thomas spoke with Detective Paul Moore of the Rochester Police Department on September 19, 1984, to inquire about Fortier's conduct in Rochester and to warn the Rochester Police Department about Fortier's contact with minors in Manchester and Derry. Officer Moore stated that he met Fortier at the Holy Rosary parish. He explained that Fortier was already in the process of involving himself with church youth groups at the parish. (B9282).

While he was serving in Rochester, on August 21, 1986, Bishop Gendron wrote to Fortier to tell him that the Diocese had appointed him to the Diocesan School Board. (B2318). He served a three year term on the school board and was reappointed in 1989. (B2372).

A medical report from Dr. Sidney Alexander on November 24, 1987, states concerns about Fortier's cardiac problems, his weight and his daily stress. (B2319).

Fortier provided this report to Bishop Gendron (B2320), and requested a six month sick leave effective as of January 4, 1988. (B2321). Bishop Gendron granted this request. (B2322). Bishop Gendron stated: "I pray that this period of recuperation will allow you to begin ministry again in the early summer in a happy and fruitful fashion." (B2322). Fortier took a leave of absence for "reasons of health" from January to June of 1988.

When he returned from leave, Bishop Gendron appointed Fortier as the Associate Pastor of the Infant Jesus parish in Nashua effective on June 15, 1988. (B2323). Fortier took another leave of absence for health reasons in August of 1989. (B2372). Effective as of October 4, 1989, Bishop Gendron assigned Fortier as the Associate Pastor of Our Lady of Perpetual Help in Manchester. The Bishop explained to the Pastor at Our Lady of Perpetual Help that Fortier would have to return to ministry gradually upon the recommendation of his physician. (B2325). He served temporarily in Plaistow at the Holy Angels parish in October of 1990. (B2372).

## **VI. FORTIER'S ASSIGNMENT TO SAINT PETER'S PARISH IN FARMINGTON**

The Diocesan Personnel Board appointed Fortier as the Pastor of Saint Peter's Parish in Farmington effective as of February 6, 1991. (B2326).

In June of 1993, the Diocese referred Fortier to St. Michael's Center, which was run by the Servants of the Paraclete in St. Louis, Missouri, for therapy for his "lifestyle difficulties." (B2329). These difficulties related to reports that the Diocese received in 1993 that Fortier was engaged in a homosexual relationship with a "male friend" and had been having "homosexual contacts" in Nashua for a "number of years." (B2330). In making this referral, Monsignor Christian explained to treatment providers early concerns about Fortier's sexuality as well as the Derry Police investigation in 1984. Monsignor Christian wrote: "[s]hortly before his ordination a member of his family approached the Diocese, expressing concerns that [Fortier] was an active homosexual." (B2329). When confronted, Fortier denied the allegation. Monsignor Christian also explained that

[s]everal years after ordination Roger became involved in a police investigation involving the endangerment of minors. While the investigation did not lead to any legal action, Roger admitted to me at the time that he had been imprudent in bringing young men into the rectory and allowing them to view pornographic materials as well as partake of alcoholic beverages. This same sort of activity apparently also took place at the home of a male friend of long acquaintance in the town of Derry, where that man was living. Roger was requested at that time to seek counseling with a diocesan psychologist, which he did for some period of time. Again, in all of this there was never any direct evidence that Roger was acting out sexually in an active fashion.

(B2329) (emphasis added). Monsignor Christian concluded his referral by stating:

I tried to make it clear to Roger that the Diocese is concerned about both his drinking and his lifestyle problems, both because of our concerns for his personal health as well as for the Church. I tried to make it clear to him that he can minister as a priest only if and when these problems are controlled. Roger has done good work as a priest, and I would hate to see him jeopardize his future ministry because of his unwillingness or inability to deal with these issues.

(B2330). Diocesan files indicate that Fortier was on “SICK LEAVE” from May 13, 1993 to December 9, 1993. (B2372).

The Diocesan files contain a number of progress reports from the Servants of the Paraclete in St. Louis with regard to Fortier’s participation in “Aftercare Workshops.” It appears that Fortier would return to St. Louis for these workshops, which lasted about a week. These reports indicate that, aside from struggles to control his weight, Fortier was managing his alcohol and sexual issues. (B2340-44 (10/94); 2351-55 (4/95)).

Bishop Christian generated an evaluation relating to Father Fortier’s ministry in Farmington on August 6, 1997. There is no indication from this report that the Diocese limited Fortier’s ministry in any way. (B2361-63). The only health concerns addressed in Bishop Christian’s memo relate to Fortier’s heart problems. (B2363).

#### **A. Fortier’s Sexual Assaults of John Doe XXXV and John Doe XXXVI**

On October 26, 1997, John Doe XXXVI disclosed to his parents that he was sexually assaulted by Fortier on numerous occasions in the rectory in Farmington. The assaults were reported to police in Farmington, Fortier was arrested, and once the allegations became public, John Doe XXXV also disclosed to the police that Fortier sexually assaulted him in the rectory. See State v. Fortier, 146 N.H. 784 (2001).

There is an undated, hard to read, handwritten note in the Diocesan files describing Fortier’s assaults. The note indicates that first the victim was John Doe XXXVI, age 14, his parents are parishioners, Fortier kissed him, performed oral sex on him and placed his finger in Doe XXXVI’s anus. Doe XXXVI’s mother found out and called the police. (B2366). The note also indicates that the second Farmington victim was John Doe XXXV, who was assaulted by Fortier 3 or 4 times when he was 16. The assaults included oral sex. (B2366).

On October 28, 1997, Bishop Christian placed Fortier on administrative leave “in accord with the prescriptions of the Code of Canon law, and with the knowledge of Bishop Leo E. O’Neil.” (B2364). Bishop Christian’s letter instructed Fortier to “be in residence at St. Joseph Parish in Nashua until further notice.” (B2364).

Based on his assaults of Doe XXXV and Doe XXXVI, the Strafford County Attorney’s Office indicted Fortier on sixteen counts of sexual assault, including: (1) two counts of Aggravated Felonious Sexual Assault (“AFSA”) alleging that he engaged in a pattern of sexual assault on each victim, see RSA 632-A:2, III; (2) six counts of AFSA

alleging that he used his position of authority to coerce the victims to submit to sexual penetration, see RSA 632-A:2, I(k); and (3) eight counts of Felonious Sexual Assault (FSA) alleging that he inflicted sexual penetration on persons who were thirteen years of age or older and under sixteen, see RSA 632-A:3, II (Supp. 2000). See Fortier, 146 N.H. at 787.

Fortier was tried in Strafford County Superior Court in August of 1998. On August 4, 1998, the jury returned guilty verdicts on all of the charges. (NOA at 2).<sup>9</sup> The trial court (Mohl, J.) sentenced Fortier to a term of 20 to 40 years, stand committed at the New Hampshire State Prison. (NOA 1).

The following facts were adduced at trial. See Fortier, 146 N.H. at 786-87. In 1991, Fortier began serving as a priest at a Roman Catholic Church in Farmington. He met both victims, John Doe XXXV and John Doe XXXVI, through their involvement with the church.

In February 1991, when he was eleven years old, Doe XXXV began taking classes with Fortier to become an altar server. Doe XXXV frequently went to the rectory on Saturdays to help Fortier prepare the bulletins for mass. Eventually, Fortier asked him if he wanted to spend the night at the rectory. By January 1994, when he was fourteen years old, Doe XXXV was spending two or three weekends a month at the rectory. Fortier took him out to dinner on weekends and occasionally during the week. He also bought him gifts, took him to the movies and gave him money.

The two would watch television together at the rectory and at times, Fortier would joke about his homosexual attractions. One evening in January 1994, while Fortier and Doe XXXV were watching television, Fortier got up to go to bed and asked Doe XXXV if he wanted a “blow job.” Receiving no response, Fortier angrily said, “I guess not” and went to bed. The following weekend Fortier offered Doe XXXV an alcoholic drink, which he accepted. Fortier played a pornographic movie and at some point began rubbing Doe XXXV’s leg and groin area over his clothes. He pulled Doe XXXV’s pants down and performed fellatio on him. Doe XXXV said nothing because he was “kind of scared” and “didn’t know what to think.” Fortier told him that he should not tell anyone.

Doe XXXV testified that over the course of the next year, Fortier subjected him to fellatio one to three times per month. He recalled the sexual assaults occurring in the upstairs living room, the guest bedroom and the master bedroom. He also testified that on occasion, Fortier showed him pornographic movies with heterosexual or homosexual themes. The only movie about which Doe XXXV could remember any detail was the one playing at the time of the first assault.

Doe XXXV stopped going to the rectory in February 1995, at which time the sexual assaults essentially ended. He did not tell anyone about them at the time they

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<sup>9</sup> “NOA” refers to the Notice of Appeal that Fortier filed with the Supreme Court for the State of New Hampshire following his conviction.

were occurring as he was fearful that no one would believe him because “[Fortier] was a friend of the family’s [and was] a nice priest.”

Doe XXXVI first met Fortier through the church in late 1992 or 1993 when he was nine years old, and Fortier helped him prepare to receive his first communion. At twelve, he became an altar server. Fortier was close to Doe XXXVI’s family and spent evenings at their home watching television, socialized with Doe XXXVI’s mother, and attended family birthday celebrations. Fortier often took Doe XXXVI and his older brother shopping, out to eat and to the movies. At some point, Doe XXXVI’s older brother began spending occasional nights at the rectory. Envious of his older brother, Doe XXXVI asked Fortier if he could stay at the rectory as well. Fortier agreed, and in May 1997, when Doe XXXVI was thirteen years old, he began spending every weekend at the rectory. Fortier bought Doe XXXVI clothes and gifts, allowed him to watch cable television, and took him to the movies and to various recreational activities. Doe XXXVI’s mother testified that she allowed her sons to spend time at the rectory because she believed Fortier needed help with various activities due to a heart problem.

Fortier sexually assaulted Doe XXXVI for the first time during one of his early overnight visits. While Doe XXXVI was scratching his foot, Fortier suggested that he go to the master bedroom so Fortier could treat it with a spray or lotion. Once in the bedroom, Fortier applied lotion and began tickling Doe XXXVI. At some point, he briefly touched Doe XXXVI’s “private area” over his clothes and said, “feels good, [doesn’t] it?” He then kissed Doe XXXVI on his lips. Doe XXXVI said nothing because he felt scared, trapped and helpless. At some point, Fortier instructed Doe XXXVI to remove his clothes, and Doe XXXVI, feeling obligated, complied. Fortier then performed fellatio on him and played a pornographic movie depicting homosexual activities.

Fortier subjected Doe XXXVI to the same type of activity on every subsequent weekend throughout the summer and into the fall of 1997. Doe XXXVI remembered that some assaults occurred in the master bedroom while a pornographic movie was playing, and he was able to describe the substance of several different movies. He also recalled assaults occurring in the guest bedroom of the rectory in early October, and on two occasions, on the couch in the upstairs living room. The last assaults occurred just prior to Halloween in October 1997 when Fortier, while showering with Doe XXXVI, performed fellatio on him and digitally penetrated his rectum.

Based on these facts, the jury convicted Fortier.

In November of 1999, the Diocese reached a civil settlement agreement with Doe XXXV. (B2374-2378). The settlement documents specifically state that “the Roman Catholic Bishop of Manchester, as corporation sole, has denied and continues to deny any liability for damages allegedly suffered and claimed by John Doe XXXV and deny his entitlement to any relief in connection with the above-referenced Writ...” (B2374). The agreement involves a general promise by both parties to “keep all information concerning John Doe XXXV’s claims and allegations and the terms of this settlement completely

confidential....” (B2374). In addition, there is a specific confidentiality clause that prohibits Doe XXXV or his agents from discussing any information relating to his case. (B2376). There is an exception to this clause that permits Doe XXXV to disclose the terms of the settlement to his lawyers or accountants to the extent it is necessary to secure professional advice and if they agree to be bound by the confidentiality clause. (B2376). If Doe XXXV were to violate this clause, the agreement requires him to return the money to the Diocese. (B2376). The settlement also includes a release of all parties from any future litigation relating to XXXV’s claims. (B2375). The Diocese paid XXXV \$100,000 under the agreement. (B2377).

## **B. Strafford County’s Knowledge of Fortier’s Prior Conduct**

To a limited extent, the Farmington Police Department and the Strafford County Attorney’s Office were aware that Fortier engaged in prior inappropriate sexual conduct in Derry. One individual alleging to have been victimized by Fortier years prior in Derry came forward at the time of the Strafford prosecution. On October 26, 1997, John Doe XXXIII (born in April of 1963) filed a walk-in report with the Farmington Police Department in response to seeing Fortier’s name in the newspaper. (B9292). He reported that in 1983 or 1984, when he was 17 years old, he lived at John Doe XXII’s house in Derry. Fortier frequented Doe XXII’s residence at the time.<sup>10</sup> After drinking one night, he explained that he went to bed on the couch. (B9292). He woke up to find Fortier performing oral sex on him. (B9292). Doe XXXIII slapped Fortier on the head and Fortier stopped. (B9292). In addition to reporting these events to police in Farmington, Doe XXXIII testified at Fortier’s sentencing hearing in Strafford County Superior Court on October 9, 1998.

Beyond XXXIII’s report, the Farmington Police Department received anonymous calls on October 26 and 29, 1997, from individuals urging law enforcement to investigate Fortier’s conduct when he was assigned as a priest in Manchester. One of these callers stated that Fortier had been sent to a sex offender treatment center. In a recent interview, Attorney Lincoln Soldati, the prosecutor that tried Fortier in Strafford County, indicated that he recalled a reference to the fact that Fortier received treatment for a sexual problem, but he could not recall where he received that information. (B9665). Further, he indicated that there was no hard evidence at the time that he prosecuted Fortier to establish that the Diocese was aware of Fortier’s prior sexual problems. (B9665).

Other than these reports, the Farmington Police Department and the Stafford County Attorney’s Office were not aware of the Derry Police Department’s prior investigation. Moreover, neither agency learned that the Diocese was aware of Fortier’s prior misconduct with minors. Specifically, Officer Thomas from Derry stated that he did not communicate with the Farmington Police Department or the Strafford County Attorney’s Office about his 1984 Derry investigation. (B10722). Detective Boucher, the Farmington detective that investigated the case involving Doe XXXVI and Doe XXXV, reviewed his file during a recent interview with the Task Force and did not find any

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<sup>10</sup> Doe XXXIII’s report that he was 17 in 1983 or 1984 does not appear to be accurate. His birthday is in April of 1963. (B9292). Thus, he turned 20 in April of 1983.

reports indicating that he received information from the Derry Police Department. (B10708-09). Finally, the Farmington Police Department and the Strafford County Attorney's Office were not aware that Fortier had previously admitted to the Diocese that he had engaged in inappropriate conduct with minors in Manchester and Derry. (B10703; 9665).<sup>11</sup>

### **C. Bishop Christian's Misstatements To Probation and Parole Officer Stephen Carlisle**

Following jury's guilty verdicts, Stephen Carlisle, a Probation and Parole Officer, prepared a presentence investigation in order to make a sentencing recommendation to the court. In Diocesan files, the Task Force located correspondence between Carlisle and the Diocese in connection with this investigation. On September 10, 1998, Carlisle wrote to the Diocese to give it "the opportunity to provide input into the previously mentioned report concerning the performance of his duties and any other information you may have to assist the Court and myself in learning more about Roger Fortier." (B2371). On September 18, 1998 Bishop Christian drafted a letter to Carlisle, stating:

During his years of priestly ministry, Fr. Fortier was always an effective priest. He ministered well to the people and was generally well liked by them. He did have some problems with alcohol, which were treated with in-patient care for several months. Once returning from the treatment, he did not, to the best of my knowledge, ever again drink or have any problem with substance abuse. His sexual problems with youth were unknown to the Diocese and it is, in my mind, unfortunate that he did not make use of his time in treatment to deal with those other issues. Had he attempted to deal with them, and given his success in not falling back into alcohol abuse, he might very well not have engaged in the destructive behavior for which he has been found guilty.

(B2370) (emphasis added).

Bishop Christian's statements to Carlisle stand in contrast to his knowledge of the Derry Police Department's investigation of Fortier in 1984 (B2314), and his referral of Fortier to treatment for his "lifestyle difficulties" in 1993. (B2329-30). Faced with this discrepancy, the Task Force conducted follow-up investigation to determine the impact of Bishop Christian's statements on Carlisle's sentencing recommendation to the court. The Task Force filed sealed motions in Stafford County Superior Court seeking access to the pre-sentence investigation report, its attachments, and the Department of Correction's file relating to the pre-sentence investigation. Additionally, the Task Force sought court

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<sup>11</sup> As part of his investigation, Detective Wayne Boucher of the Farmington Police Department contacted the Diocese and spoke with Matthew McSorley. (B8529). McSorley stated that the Diocese was willing to assist in the investigation as best as it could. He also provided a list of Fortier's prior parish assignments. However, he indicated that the Diocese did not keep records of the altar servers that served under Fortier. (B8529). The Task Force interviewed McSorley on December 3, 2002. (B10770). He stated that at some point during Fortier's prosecution, he learned through Bishop Christian that Fortier had problems 15-20 years prior that involved showing pornography to minors. (B10770-71). However, he did not recall when he learned this information and did not recall providing this information to Detective Boucher. (B107771).

permission to interview Carlisle with regard to his investigation. The substance of the pre-sentence investigative report in the Fortier case remains confidential. However, the Task Force's investigation confirmed that Carlisle was unable to corroborate that Fortier had engaged in previous sexual misconduct with minors.

As a general matter, Carlisle explained to Task Force investigators the manner in which he undertakes a pre-sentence investigation in sexual assault cases. (B10871-74). As part of this process, he investigates a defendant's prior conduct. (B10870). Where he is able to corroborate prior allegations of sexual misconduct, he includes that information in his pre-sentence investigation report. (B10871-72). Based on a defendant's prior conduct, he explained that he may increase his sentencing recommendation to the court depending on the circumstances and the extent to which he is able to corroborate that information. (B10873-74).

## **VII. CONCLUSION**

Based on the foregoing facts, the State was prepared to present one or more indictments to the Hillsborough County Grand Jury charging the Diocese of Manchester with endangering the welfare of children in violation of RSA 639:3. When Fortier was assigned to St. John the Baptist parish in Manchester in the early 1980's, he invited minors to his rectory room and to the home of a friend in Derry. Fortier provided minors with alcohol and pornography at these locations. He assaulted John Doe XXIII during an overnight trip to Derry when he placed his hand on Doe XXIII's buttocks. He also made an unwanted advance toward John Doe XXI at the rectory in Manchester. The Derry Police Department investigated this conduct in 1984. During the investigation, Fortier admitted to providing alcohol and pornography to minors and to assaulting John Doe XXIII. Officer Thomas had conversations with Father Christian at the time, informing the Diocese of his investigation and of Fortier's admissions. Father Christian then confronted Fortier. Fortier again admitted to these allegations. At approximately the same time, John Doe XXI made an in person report to the Diocese alleging that Fortier was providing alcohol and pornography to minors and that Fortier made an advance toward him. Therefore, the Diocese had knowledge, as early as 1984, that Fortier was a threat to minors. Despite this knowledge, the Diocese violated a duty of care that it owed to minor parishioners by failing to effectively limit Fortier's contact with them. Subsequently, in 1991, the Diocese assigned Fortier to St. Peters parish in Farmington without any restriction on his ministry. During this assignment, Fortier sexually assaulted John Doe XXXV and John Doe XXXVI between 1994 and 1997.

## **RAYMOND LAFERRIERE**

### **I. INTRODUCTION**

The Task Force investigated whether the Diocese of Manchester endangered the welfare of children by failing to effectively respond to concerns regarding Father Raymond Laferriere. The State would not have charged the Diocese in this instance. It appears that the Diocese received a complaint regarding Laferriere in the early 1960's when he was assigned to St. Augustine's in Manchester. The complainant alleged that Laferriere invited two boys from Central High School to his rectory room where he had pornographic material on the walls. However, it does not appear that the Diocese had any information that Laferriere made sexual advances toward these or any other minors. In 1995, John Doe LXXX came forward to report to the Diocese that Laferriere sexually assaulted him on several occasions when he served as an altar boy at St. Patrick's in Milford. Laferriere was assigned to St. Patrick's from October of 1968 to June of 1970. Faced with these facts, there were two significant obstacles facing any potential case against the Diocese. First, it is not clear that the Diocese was aware that Laferriere was a sexual threat to minors based on the complaint they received in the early 1960's. Next, the child endangerment statute was not enacted in New Hampshire until 1973. Thus, the conduct of the Diocese prior to 1973 must be considered in light of the criminal law in place at the time -- the offense of contributing to the delinquency of minors. Given the elements of this offense, the State does not believe that there is a viable argument to toll the statute of limitations in this instance.

The State's investigation found the following facts.

Laferriere attended St. Mary's Seminary in Baltimore Maryland. (B6201). While he was there, he requested "psychiatric attention" due to his "nervousness" and "tension." (B6201). Accordingly, Father Eugene Van Antwerp, the Rector at the seminary referred Laferriere to Dr. Frank Ayd, a local Catholic psychiatrist. (B6204). Father Van Antwerp wrote a letter to Bishop Brady on May 8, 1959, discussing the situation. According to the letter, Dr. Ayd made a preliminary diagnosis that Laferriere suffered from "incipient schizophrenia with homosexual overtones." (B6201). Father Van Antwerp stated that "[t]he doctor's worry is that he feels that the schizophrenia will break down the control this young man has over his homosexual tendencies and that this could occur quickly." (B6201). In light of these concerns, Father Van Antwerp recommended that the Diocese postpone Laferriere's ordination and offered to care for Laferriere for the summer so that he could continue treatment with Dr. Ayd. (B6201). Bishop Brady accepted this recommendation and permitted Laferriere to stay the summer. (B6200). Father Van Antwerp drafted a letter to Monsignor Hansberry on December 3, 1959, stating that "[Laferriere] seems in fine shape and really ready for ordination whenever the Bishop should decide. The psychiatrist now has come around to this point of view and feels that his difficulties are pretty well cleared up." (B6210). On April 11, 1960, Dr. Ayd wrote to Bishop Primeau that "I can find no impediment to his ordination." (B6218).

Laferriere was ordained in May of 1960. (B1038). He served in various New Hampshire parishes until his retirement in 1995. (B1038). In November of 1960, the Diocese assigned him to St. Augustine's in Manchester. (B1038).

On September 11, 2002, the Task Force received a complaint from John Doe LXXIX regarding Laferriere. Doe LXXIX reported that Laferriere sexually assaulted him between approximately 1957 to 1958 when he was 11 or 12 years old. (B6281). At the time, Doe LXXIX explained that he was a student at St. Augustine's Parish in Manchester. (B6281). Diocesan records indicate that Laferriere served at St. Augustine's from November 18, 1960 until he took a leave of absence for health reasons on December 23, 1963. (B1038). Doe LXXIX alleged that Laferriere offered to teach him to drive even though he wasn't old enough to do so. (B6281). Doe LXXIX agreed. The first time that they went for a drive, Laferriere put his hand on Doe LXXIX's genitals. (B6281). On a subsequent occasion, Laferriere did the same thing. (B6281). The second time that the same conduct occurred, Doe LXXIX told his mother. She told Doe LXXIX that she planned on reporting Laferriere's conduct to another priest, but Doe LXXIX does not believe that she ever did. (B6281). There is no indication in the Diocesan files that the Diocese was aware of this conduct by Laferriere.

There is an undated letter directed to Bishop Primeau complaining about Laferriere's conduct during his assignment to St. Augustine's. (B569). The letter alleges that Laferriere invited two boys from Central High School to his rectory room where Laferriere had pornographic pictures. (B569). There is no other evidence available regarding this issue. In particular, there is no indication that Laferriere posed an overt threat to children at that time.

On May 8, 1995, John Doe LXXX drafted a letter directly to Laferriere, which is included in the Diocesan file, accusing Laferriere of "sexually molest[ing] him on many occasions" when he was a "young boy." (B565). Doe LXXX intimated that these encounters occurred "not only in Milford but in Colebrook, at the Seacoast, in your car, in the church and so on." (B566). Doe LXXX's letter also suggests that his father had previously reported the matter to the church. (B566). Diocesan records state that Laferriere served at St. Patrick's church in Milford from October 4, 1968 to June of 1970. (B6119; 1038).

Thereafter, Doe LXXX approached the Diocese, through his attorney. Ultimately, Doe LXXX settled his claim against the Diocese for \$25,000. (B557). This settlement included an agreement that both parties keep Doe LXXX's claims confidential. (B557). The settlement also included a "General Release" in which Doe LXXX agreed to release both the Diocese and Laferriere from any future claims.

Task Force investigators located Doe LXXX and corresponded with him via email regarding Laferriere's abuse. (B7051; 7073). He confirmed that Laferriere assaulted him when he was serving as an altar boy at St. Patrick's in Milford. (B7073).<sup>1</sup>

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<sup>1</sup> Doe LXXX indicated that the abuse began in 1964, when he was 8 years old. (B7073). However, Laferriere was not assigned to St. Patrick's in Milford until 1968 when Doe LXXX was 12.

Doe LXXX explained that Laferriere attempted to perform fellatio on him, Laferriere fondled his genitals and he touched Laferriere's genitals. (B7073). According to Doe LXXX, his father found out about the abuse and spoke to the Diocese of Manchester. (B7073). Soon thereafter, Doe LXXX's father died. Doe LXXX explained that Laferriere told him that his father died because Doe LXXX's father reported the abuse. (B7073).

There is an undated, hard to read, handwritten note in the Diocesan file relating to sexual misconduct committed by Laferriere as a priest. (B570). The note indicates the following.

It never happened after 1971 or 1972 when Laferriere began to receive treatment. In 1968, he was an administrator in Milford and "began" with a 13 or 14 year old altar server. The "kid" unzipped his fly, permitting Laferriere to fondle his genitals. Within a year, this conduct stopped.

He did the same kind of things with 2 or 3 kids at St. Jeans. After that, nothing in any of other the assignments.

(B570). While it is not entirely clear, this note was likely written after 1995, when the Diocese undertook some basic investigation into Laferriere's background after receiving the complaint from Doe LXXX.

## **II. CONCLUSION**

In addition to the investigation discussed above the State conducted grand jury investigation with respect to the Diocesan response to Laferriere's conduct. The State cannot release information relating to this aspect of the investigation because the witness(es) have not consented to the release of information. For the reasons stated above, the complete investigation revealed no evidence to support charges against the Diocese.

## **LEO LANDRY**

### **I. INTRODUCTION**

There were no existing records at Diocese of Manchester with regard to allegations of sexual abuse of minors perpetrated by Father Landry. However, Landry agreed to be interviewed by the Task Force on September 3rd and 4th, 2002, and again on October 17, 2002. He provided information under a limited grant of immunity -- that the State would not use information he provided against him. During this interview, Landry offered substantial information regarding his formation as a priest, early work with the Stigmatine Fathers in Massachusetts, his transfer to the Diocese of Manchester, and his teaching career in several New Hampshire public and private schools. Landry admitted to sexually assaulting several minors during his interview and to discussing one of his sexual encounters with a minor with Bishop Primeau in 1967. The Diocese did not limit Landry's contact with minors in the wake of this incident. Landry admitted to subsequent sexual assaults with minors from parishes where he worked after Bishop Primeau was told of Landry's misconduct in 1967.

The Task Force followed up on several investigative leads suggested by Landry's interview. The pertinent facts of the State's investigation are set out below.

### **II. LANDRY'S FORMATION AND WORK WITH THE STIGMATINE FATHERS**

Landry graduated from St. John's High School in Concord, NH in 1948 and earned a football scholarship to New England College. After his first year at New England College, he left school. Soon thereafter, he entered the seminary under the direction of the Stigmatine Fathers in Waltham, Massachusetts. (B6367). The Stigmatine Fathers are a Roman Catholic religious order but are a separate and distinct organization from the Diocese of Manchester. Landry was ordained as a priest in Rome in 1958. (B6867). Records secured from the Stigmatine Fathers confirm that Landry was ordained on May 31, 1958. (B9538). Following ordination, he returned on July 28, 1958, to the Sacred Heart parish in Waltham, Massachusetts. (B9540). Thereafter, he took a pastoral year at Elm Bank in Wellesley, Massachusetts where he taught English and world history. (B6373; 6375; 9540).

Because he had a background in French, the Stigmatine Fathers transferred him to a parish in Sault St. Marie, Ontario, Canada in the Summer of 1959. (B6376; 9540). He was removed from the parish by Christmas of 1959. (B6376). Around that time, a 13 or 14 year old boy named John Doe XXXVII made an allegation against him. (B6377-78). Landry explained that the boy was afraid to undress in front of other boys from the basketball team, but Landry insisted he do so. (B6378). Landry denied that he engaged in sexual contact with the boy, stating: "I did not touch anybody." (B6378). Landry speculated that the boy's brother, who was also a priest, may have reported the allegation to the Stigmatine Fathers.

(B6378). Later, Father Egan, the Provincial for the Stigmatine Fathers addressed the allegation with Landry. (B6378-79).<sup>1</sup>

Stigmatine records indicate that Landry served at Sacred Heart in Waltham beginning on May 7, 1960. By August of 1960, he was assigned to Mt. Carmel parish in Pittsfield, Massachusetts. (B9540). On June 17, 1961, Landry was assigned to St. Anthony's in Agawam, Massachusetts. (B9540). While Landry's memory was spotty with regard to his early assignments, he recalled working at St. Anthony's parish in Agawam in the early 1960's. (B6380-81). Landry admitted that he engaged in inappropriate sexual contact with 4 or 5 minors during his years at St. Anthony's. (B6382). Specifically, Landry engaged in sexual contact with John Doe XXXIX at the boy's home when his mother was working. Doe XXXIX was 14 or 15 years old. (B6382). He also engaged in sexual contact with a 14- or 15-year-old boy named John Doe XL at the church rectory. (B6883-84). Landry admitted to "masturbating" both of these boys on 4 or 5 occasions with his hand. (B6383-84). He further admitted to engaging in sexual contact with another boy at a summer camp on a lake near Agawam on at least 3 occasions. (B6385).

Landry explained the circumstances leading up to his sexual contact with these boys by saying that he talked with them "about their bodies." (B6385). These conversations may have taken place following CCD class. (B6386). His contact with these boys stopped when he was transferred from the parish in Agawam to a parish in South Porcupine, Ontario, Canada. (B6387; 6389). Stigmatine records confirm that Landry was assigned to South Porcupine on January 16, 1962. (B9540).

At one point when he was in South Porcupine, between 1960 and 1962, Landry explained that Father Egan confronted him with "allegations" or "rumors" regarding his sexual misconduct with boys. (B6396-97). Father Egan appeared to believe that these "rumors" were true. (B6401). Father Egan recommended that Landry seek counseling with a psychiatrist from Boston University. (B6397). Landry went to approximately 3 appointments with the psychiatrist at an office on Commonwealth Avenue. (B6398). Landry openly discussed his sexual contact with boys during these sessions. However, the psychiatrist did not appear to be interested and focused on analyzing Landry's dreams. (B6398). Landry is not sure whether the psychiatrist provided an evaluation to Father Egan and the Stigmatine Fathers. (B6399). Landry returned to parish work without restriction following these sessions. (B6400). No one from the Stigmatine Fathers monitored his behavior. (B6405). Landry stated that he may have confessed his conduct to a fellow priest with the Stigmatine Fathers. (B6401).

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<sup>1</sup> Landry explained that approximately four years ago, John Doe XXXVIII alleged that Landry molested him as a boy in Sault St. Marie. Doe XXXVIII filed suit against Landry. Attorney Phil Utter represented Landry. (B6407; 6408). Eventually, the allegation was dropped. Landry denied any wrongdoing. (B6407). Sergeant Paul Callaghan of the Rochester Police Department received a telephone call from the police in Sault St. Marie in the Spring of 1998, requesting information on Landry because they were investigating sexual assaults perpetrated by Landry when he was a Catholic Priest in Canada 30 years prior. (B6618).

Landry admitted to engaging in sexual contact with a 14 year old boy in South Porcupine. Landry “masturbated” the boy, but could not remember his name. (B6390-91). Landry also “masturbated” John Doe XLI who was 13 or 14 years old. This occurred sometime before 1965.

After spending approximately a year in Canada, Landry was transferred to Woodbridge, Virginia to work as a parish priest. (B6393). Stigmatine records indicate that this transfer occurred on July 24, 1962. (B9540). He remained under the supervision of the Stigmatine Fathers. (B6393). In Virginia, he engaged in sexual contact with a 14 or 15 year old boy in the rectory. (B6393-94). Landry admitted to “masturbating” him. (B6394). By this time, Landry acknowledged that he had a problem and tried to search for a “spiritual father.” He went to local monasteries for the purpose of going to confession and, if he felt that he could confide in the priest, he would confess his conduct. (B6395).

At some point thereafter, Landry explained that he was again assigned to Sault St. Marie, Ontario, Canada. Stigmatine records do not reflect a second assignment to Sault St. Marie. However, they do indicate that the Stigmatine’s assigned Landry to Timmins, Canada on August 22, 1963. (B9540). After a short time, Father Egan visited Landry in Canada. Landry told Father Egan that he had decided to leave the Stigmatine Fathers. (B6409). Stigmatine records state that Landry returned to West Springfield, Massachusetts where he was assigned to St. Ann’s parish. (B9540).

### **III. LANDRY’S TRANSITION TO THE DIOCESE OF MANCHESTER**

When Landry returned to Springfield, he explained that he wrote a letter to the Diocese of Manchester requesting to become a Diocesan priest. Bishop Primeau of the Diocese of Manchester responded to Landry’s request and invited him to be a Diocesan priest in the Summer of 1965. (B6410). Stigmatine records indicated that he was “exclaustrated ad experimentum” to Manchester, N.H. in August of 1965. (B9540). According to Landry, the Diocese of Manchester accepted him without asking about his background. Landry is not sure whether the Diocese of Manchester communicated with the Stigmatine Fathers regarding his background. (B6411). As far as Landry is aware, the subject of his sexual conduct with minors was never discussed when he made the transition to the Diocese. (B6411). The Diocese of Manchester did not interview Landry for the position. (B6412).

Landry explained that the Diocese assigned him to a parish in Lincoln, NH in the Summer of 1965. (B6412). Landry took over the parish for a month while the pastor was in Florida. (B6413). He remained in Lincoln for approximately 2 months. The Diocese then transferred him to Laconia to fill in while the pastor of that parish underwent an operation. Landry worked in Laconia between the Fall of 1965 and January of 1966. (B6413).

### **A. Landry's Assignments in Somersworth and Manchester, NH**

In the Winter of 1966, the Diocese assigned Landry to a parish in Somersworth. He worked in Somersworth for approximately 8 or 9 months. (B6414).

John Doe XLII (born in January of 1954) contacted the Attorney General's Office on April 24, 2002, to report that Landry sexually assaulted him in the rectory of the Holy Trinity parish in Somersworth, NH between 1966 and 1967, when he was 12 and 13 years old. (B1386). He reported that Landry had sexual contact with him on approximately 20-30 separate occasions. This involved removing their clothing and fondling. (B1386). Doe XLII explained that Landry used the confessional to "target" his victims. He stated that Landry had admitted to him that he was "involved" with a boy named "John Doe XLIII." (B1366). There is no indication that the Diocese was aware of this complaint.

On April 19, 2002, John Doe XLIII (born in November of 1953) contacted the Attorney General's Office to report that Landry sexually assaulted him at the rectory of the Holy Trinity parish in Somersworth from 1966 and 1968 when he was between 13 and 16 years old. (B1372). Doe XLIII explained Landry taught boys in school that it was a sin to masturbate. Having learned that such behavior was a sin, Doe XLIII went to confession to admit to masturbating. During confession, Landry instructed Doe XLIII to find him at the rectory later. At the rectory, Landry instructed Doe XLIII to pull down his pants and he did. Landry then demonstrated for Doe XLIII how to masturbate by fondling Doe XLIII's penis. (B1372). Doe XLIII stated that the parish pastor as well as a housekeeper that worked at the rectory may have been aware of Landry's conduct. (B1372).

During his interview, Landry admitted to engaging in inappropriate sexual contact with John Doe XLII and John Doe XLIV during the 8 or 9 months that he was assigned to the parish in Somersworth. (B6414-15). According to Landry, both Doe XLII and Doe XLIV were 13 or 14 years old at the time. (B6414-15). Landry confirmed that he got to know these boys through classes where he would teach them about sin and that it was a "sin" to masturbate. (B6417). He also taught the boys that they needed to go to confession to confess their sins, including masturbation. (B6418). In addition, Doe XLIV served as an altar boy. (B6316).

Landry recalled one encounter with Doe XLII in the living room of the rectory. Landry stated that he "masturbated" Doe XLII and that Doe XLII "masturbated" him. (B6417). Landry admitted to engaging in sexual contact on several occasions with Doe XLII during the entire 8 or 9 months that he was assigned to the parish in Somersworth. (B6419). As for Doe XLIV, Landry explained that their relationship began during a trip that they took to Northern New Hampshire with other boys. Landry borrowed a couple of vans for the trip. Doe XLIV sat in the front seat of the van with Landry. It was cold and Landry was blowing on his hands to warm them up. According to Landry, Doe XLIV took Landry's hand and placed it down Doe XLIV's pants on his "privates." (B6420). Landry realized that Doe XLIV had an erection. (B6420). He had further sexual contact with Doe XLIV during a

group camping trip to Mighty Joe Young's Camp Ground in Milton. He and Doe XLIV took a walk during which they engaged in sexual contact. (B6420).

While Landry admitted to engaging in sexual contact with Doe XLII and Doe XLIV, he stated that he did not know John Doe XLIII and denied that he sexually assaulted Doe XLIII. (B6415).

Landry stated that the Diocese assigned him to St. Anne's parish in Manchester sometime in 1966 after working in Somersworth. (B6312). Landry admitted that he continued to have contact with Doe XLIV even after he was transferred to St. Anne's. (B6420; 6310). Landry described one instance when he visited Doe XLIV. He picked Doe XLIV up from school and they went to Doe XLIV's family camp in Milton, possibly on "Milton Pond" or "Milton Ponds." (B6315; 6317; 6421). Doe XLIV was 13 or 14 years old at the time. (B6316). At the camp, Landry and Doe XLIV took off their clothes, got into bed, and "masturbated" each other. (B6317).

Landry stated that he and Doe XLIV got "caught" during this trip. (B6420). He suspects that one of the neighbors saw his car in front of the camp and checked to see if anyone was home. He speculated that a neighbor may have seen Landry with Doe XLIV on the bed. (B6315; 6421). On the way home, Landry noticed that Doe XLIV's mother passed them on the road. (B6421). Soon thereafter, Landry received a call from the Chancellor's Office stating that Bishop Primeau wanted to see him regarding an accusation that he was having sex with a young boy in Milton. (B6421). Landry met with Bishop Primeau at the Bishop's home on River Road in Manchester. (B6307). This meeting occurred after Landry had been transferred to Manchester. (B6310). Only Landry and the Bishop were present for the meeting. (B6310). Bishop Primeau told him that a lady called him and alleged that Landry touched her son at her camp in Milton. (B6307). The Bishop asked Landry if the allegation was true. (B6307). According to Landry, he stated to the Bishop: "I wish I could tell you that it wasn't true." (B6308). The Bishop acknowledged that it was a serious situation. (B6308). Bishop Primeau told him not to do it again. (B6308; 6319). The Bishop instructed Landry to stay away from "that young boy" and told him not to go to Somersworth anymore. (B6319; 6421). The Bishop also asked Landry to write a letter of apology to the boy's mother. (B6421). Landry stated that he did not write the letter because he was "scared." (B6308; 6318). The Bishop did not request that Landry seek counseling and Landry did not ask for counseling. (B6309; 6318). Landry recalled that his contact with the Bishop occurred in 1966, a couple of weeks after Doe XLIV's mother made a complaint. (B6309). To Landry's knowledge, the Bishop never documented the meeting and Landry never received any follow up correspondence from the Bishop. (B6310). In the wake of this meeting, the Diocese did not restrict Landry's ministry in any way. (B6310; 6318-19).

The Task Force interviewed John Doe XLIV's parents on December 5, 2002. (B10766). They explained that even after Landry was transferred from Somersworth in 1967, he continued to see their son as well as other boys in town. Landry would take Doe XLIV and the other boys out for ice cream. (B10766). Doe XLIV's mother also confirmed the circumstances surrounding the incident between Landry and their son at her in-law's

camp at Three Ponds in Milton in late September or early October of 1967. (B10766). She explained that she picked Doe XLIV up from school that day and Landry met them at their home. Doe XLIV was 11 years old. She allowed Doe XLIV to join Landry on the trip to the camp. She did not check up on them at the camp that day, but explained that Doe XLIV was “very quiet” and “very upset” when he returned home from the trip. (B10766). When Doe XLIV got home, he went downstairs to change his clothes. Doe XLIV then started to cry and disclosed to her what occurred earlier at the camp with Landry. (B10766). Doe XLIV told her that Landry had been “sexually abusing” him. (B10766).

Doe XLIV’s mother also confirmed that in October of 1967, 2 or 3 weeks after Doe XLIV described Landry’s abuse to her, she and her husband went to see Bishop Primeau. (B10766). They had a “face to face” meeting with the Bishop in his office. (B10766). No one else was present at the meeting. Doe XLIV’s mother explained that she told Bishop Primeau “everything” including the fact that Landry had been sexually abusing her son for “a while” and had touched his genitals. (B10766). They also explained to the Bishop that Landry had requested that Doe XLIV touch Landry’s genitals and that Doe XLIV had complied with these requests. (B10766). The Bishop promised the Doe XLIV’s parents that Landry would be placed in an assignment where he would no longer be around children. (B10767). The Bishop also apologized. (B10767). Doe XLIV’s parents stated that they did not make a report to the police and had no further contact with the Diocese. (B10767).

During his interview, Landry explained that he worked at St. Anne’s in Manchester as a parish priest until 1968. (B6311; 6320). There is no indication that the Bishop provided information about Landry’s sexual misconduct with minors to Landry’s superiors at St. Anne’s. Landry worked with children in this assignment. (B6320). Specifically, the parish pastor requested that Landry train some of the altar boys. (B6320). According to Landry, he “had a special crew” of about five boys that he prepared for the pastor. (B6320). Landry was proud of this group of altar boys because they were particularly good. (B6320). The pastor would request these altar boys to assist him during funerals and mass. (B6320).

Landry admitted that he continued to engage in sexual misconduct with boys during his assignment at St. Anne’s. (B6320). Landry engaged in sexual contact with John Doe XLV and John Doe XLVI. They were brothers. John Doe XLV was approximately 14 and John Doe XLVI was approximately 12 or 13 when this conduct began. (B6321). Landry stated that he engaged in “touching, fondling, and masturbation” with both of these boys. (B6321). They were both altar servers. (B6321). Landry stated that the younger boy came onto him. He explained that there was a group of boys having sex together. According to Landry, John Doe XLVI “chase[d]” him around the rectory and “cornered” him. (B6322). Landry stated that he “tried to push him way,” but it did not work and Landry ultimately “broke down” and engaged in sexual contact with the boy. (B6322). Landry stated that he even spoke with John Doe XLVI’s father about the problem -- Landry reported that Doe XLVI was too affectionate. (B6323). However, Landry did not tell Doe XLVI’s father about any sexual contact. Landry stated that his sexual contact with both boys continued throughout the time that he was assigned to St. Anne’s and stopped once the Diocese reassigned him to Berlin. (B6325). Landry acknowledged that he engaged in this conduct

even after his meeting with Bishop Primeau about his sexual contact with John Doe XLIV. (B6325). Landry further admitted that he may have had sexual contact with other boys while he was assigned to St. Anne's. (B6324).

## **B. Landry's Assignment to Berlin, NH**

The Diocese assigned Landry to St. Kieran's parish in Berlin in the Fall of 1969 or the Summer of 1970. (B6327).

Task Force investigators interviewed several of Landry's victims from his assignment in Berlin including John Doe XLVII, John Doe XLVIII, and John Doe XLIX. During his meeting with Task Force investigators on October 4, 2002, John Doe XLVII (born in July of 1956) stated the following:

He was born and raised in Berlin, NH and lived there until 1979 when he moved. (B7083). As a grammar school child, between first and eighth grade, he attended St. Patrick's school. He was also an altar boy at St. Kieran's parish. He served as an altar boy until he was in the eighth grade. As an altar boy, he got to know Landry as a priest at the church. (B7083). St. Patrick's School was associated with St. Kieran's parish. (B7084). Landry occasionally visited St. Patrick's school to speak to classes. (B7083).

When Doe XLVII was in eighth grade, in the Fall of 1969, Landry began to sexually assault him. (B7084). Doe XLVII was 13 when the assaults began in 1969 and 14 when the assaults ended in 1970. (B7089). On one occasion, Landry asked him if he wanted to join Landry for ice cream after the 11:00 a.m. mass. (B7084). Doe XLVII was "elated" because as a priest, Landry occupied a "very high" status in the city. (B7084). He went home, asked his parents if he could go, and they gave him permission. (B7084). Later that day, he joined Landry on a trip to the Northland Dairy Bar where they got an ice cream. (B7084). Landry then took him on a ride on Route 16 North. During the ride, Landry questioned Doe XLVII about whether he was feeling physical changes take place in his own body and whether he had touched himself in an inappropriate manner. (B7084). While Landry continued to drive, Landry asked Doe XLVII to take down his pants, and Doe XLVII complied by pulling down his pants and underwear. (B7084-85). Landry began to fondle Doe XLVII's penis. Landry also explained that Doe XLVII would get an erection and then he would have a "great feeling." (B7085). Landry eventually pulled over to the side of the road and continued to fondle Doe XLVII. Doe XLVII explained that it was the first time that he had masturbated. Landry told him that it was for his own good and it was part of his education. (B7085). Landry instructed him not to tell anyone, it was to

be kept between Doe XLVII and his priest, and that it would be inappropriate to discuss the matter with his parents or other altar boys. (B7085).

Landry had similar contact with Doe XLVII on 4 or 5 separate occasions that Doe XLVII remembers “vividly.” (B7085; 7089). However, Doe XLVII is certain that Landry’s sexually assaulted him more than 4 or 5 times. (B7089). These encounters followed a similar pattern -- Landry would take him out to eat or for an ice cream and then they would go for a ride during which Landry would sexually assault him. (B7085). On a subsequent occasion, Landry took some cash from the collection basket at the church after mass and invited him to the dairy bar for lunch. Doe XLVII was stunned to see a priest dip into the collection box. He called his parents for permission and agreed to join Landry. After lunch, Landry brought him back to the church rectory and lead him upstairs to Landry’s room. (B7086). Landry undressed Doe XLVII and placed him on the bed. Landry took out his penis and placed it between Doe XLVII’s legs. At the same time, Landry made Doe XLVII “French kiss” him. (B7086). Doe XLVII felt the roughness of Landry’s beard. Landry had bad breath. (B7086). Doe XLVII was scared because they were in the church rectory, a place that he learned was sacred. (B7086). Following each assault, Landry explained that this was part of Doe XLVII’s sexual education and that it was for his own good. (B7086).

During the Winter of 1969, Landry invited a couple of altar boys to go to Boston to see the Boston Bruins play. At the time, coming from Berlin, an opportunity to see the Bruins was considered extremely special. (B7086). Doe XLVII recalled joining Landry as well as other altar boys on a trip to watch the Bruins play the New York Rangers. Following the game, they returned to a house in southern New Hampshire. (B7086). During the night, Landry brought Doe XLVII into his bed. Landry asked Doe XLVII to fondle Landry’s penis and Doe XLVII complied. (B7086).

During that Winter of 1970 and into the Spring of 1971, Doe XLVII, other altar boys, and Landry would get together to watch the Bruins play on television. Landry brought Doe XLVII to an apartment that Landry rented in Berlin, between Glen Avenue and Green Street. (B7087). Landry explained that he rented the apartment so that he had a place to get away from the rectory. Doe XLVII also recalled that one of the other parish priests rented the apartment with Landry, but Doe XLVII did not see the other priest at the apartment. (B7087-88). The group of 5 or 6 altar boys would watch sporting events along with Landry at the apartment. (B7088). On other occasions during this time

period, Landry brought Doe XLVII to the apartment alone. They would disrobe and lie in bed together. (B7088). Landry would “masturbate” Doe XLVII or Landry would lie on top of Doe XLVII while Landry masturbated. (B7088). Frequently, Landry would have Doe XLVII lay on top of him and have Doe XLVII cross his legs over Landry’s penis until Landry had an orgasm. (B7088).

Landry owned a camping trailer that he kept near Camp Kieran in Jefferson, NH. (B7089). Doe XLVII’s father was involved with the church and assisted to build Camp Kieran, a boy scout camp. (B7089). Doe XLVII’s father built a cabin at the camp. Landry maintained his trailer in a field nearby. (B7089). Landry brought a group of boys to the camp to spend the night. Most of the boys slept in the cabin while Landry would bring one boy to the trailer. (B7089). On one occasion, Landry brought Doe XLVII alone to the cabin. (B7089). Landry also brought John Doe L to Camp Kieran. (B7090). Doe XLVII recalled one instance when he was sleeping in the same bunk as John Doe LI in the cabin. Because of the contact that he had with Landry, Doe XLVII reached over to touch Doe LI, but Doe LI told Doe XLVII “no.” (B7091).

Landry brought Doe XLVII and other boys on a trip to Boston to attend a Red Sox game in the Spring of 1970. (B7090). They spent the night at the home of a woman that lived by herself in Manchester, NH. (B7090). Landry confessed to Doe XLVII that on one occasion in Manchester, Landry and a group of boys went to a field and masturbated together. (B7091). Landry instructed the boys that masturbation was inappropriate. (B7091).

Doe XLVII’s contact with Landry ended in the Summer of 1970. After that, Doe XLVII attended public high school and was no longer in the same “environment” as Landry -- he was no longer an altar boy and out of the catholic school. (B7090). By 1972, Doe XLVII learned that Landry married and moved out of Berlin with his new wife’s family. (B7090). Until recently, Doe XLVII had not reported Landry’s abuse. (B7091).

Looking back on his encounters with Landry, Doe XLVII explained that Landry was very good at seeing people’s “weaknesses” and preying on their “desires.” (B7092). In a mill town, going out for ice cream and to professional sporting events were special occasions and a way that Landry manipulated the boys with whom he had contact. (B7092). Landry also told Doe XLVII that Doe XLVII was a “special” person. (B7092).

As an adult, Doe XLVII was active in his church. (B7096). He taught CCD for 8 years. (B7096). By being a leader within the church as an adult, Doe XLVII was trying to gain acceptance and “make amends to the church” after his dealings with Landry. (B7096). Doe XLVII never revealed his abuse to the church. (B7096). By 1994, he became “bitter” toward the church. (B7096).

Task Force investigators interviewed John Doe XLVIII (born in April of 1956) on October 15, 2002. (B8896). Doe XLVIII provided the following information.

Doe XLVIII was raised in Berlin and was a parishioner at St. Kieran’s parish. He attended St. Patrick’s School between first and eighth grade. (B8897). He met Landry in the classroom at St. Patrick’s when the nuns brought Landry by to introduce him as a new priest to the children. (B8897). Doe XLVIII believes that he was in the eighth grade at the time. It was approximately 1969. (B8897). Landry engaged in inappropriate sexual contact with Doe XLVIII in the Fall of 1969. (B8901). Landry touched Doe XLVIII in an inappropriate sexual manner on 20 or 25 different occasions in the boys room at St. Patrick’s school, at Camp Kieran, and at Landry’s Berlin apartment. (B8905-06). During these encounters, Landry fondled Doe XLVIII’s genitals. (B8901).

The first encounter occurred in the boy’s room at St. Patrick’s School. (B8906). Not long after meeting Landry, Doe XLVIII found himself at the urinal next to Landry. (B8899-8900). An “incident” occurred in the bathroom with Landry -- Landry touched Doe XLVIII’s bare penis and he believes that he touched Landry’s penis as well. (B8900).

Through the parish, Doe XLVIII became involved with events at Camp Kieran. (B8898). There was a big field at the camp and at least one building. (B8899). Doe XLVIII took part in one or two overnight trips to the camp with Landry. (B8901). During one trip, Doe XLVIII slept in the same bed as Landry and they engaged in “mutual masturbation.” (B8901). Landry fondled Doe XLVIII’s penis until Doe XLVIII reached orgasm. (B8902). Doe XLVIII was 13 years old at the time. (B8903). At one time, Landry asked Doe XLVIII if he knew any other boys that would be interested in doing the “sort of thing” that they were doing. (B8903). Doe XLVIII answered “yes” and provided Landry with the name of a neighbor. (B8903).

Landry took Doe XLVIII to an apartment that he maintained with another priest. (B8905). The apartment was on lower Pleasant Street near where the Irving Station and the Dunkin Doughnuts are

currently located. (B8905). Landry had several “liaisons” with Doe XLVIII at the apartment. (B8905). At times, Doe XLVIII would go to Landry’s apartment with other boys from school to watch hockey games. (B8909).

Doe XLVIII’s contact with Landry ended in 1970 when he moved on to high school. (B8908).

In 1974, Doe XLVIII participated in marriage preparation courses offered at the Guardian Angel parish in Berlin. During those classes, he disclosed to a priest that he had been sexually assaulted by a priest during childhood, but he did not name the priest. (B8907). The priest did not follow up on Doe XLVIII’s report. (B8907). There is no indication that Doe XLVIII reported this previously.

On October 23, 2002, Task Force investigators interviewed John Doe XLIX (born in January of 1956). Doe XLIX provided the following information about his contact with Landry in Berlin.

Doe XLIX grew up in Berlin and served as an altar boy at St. Kieran’s parish for 7 years beginning when he was approximately 8 years old and ending when he was 15. (B8992-93). Doe XLIX was a “church rat” -- he was active in the parish, helped organize church events, and was a Boy Scout. (B9002). Doe XLIX described that Berlin was a “close community,” a town that “valued” the parish priest. (B9002). Around 1969, when he was 13 and serving as an altar boy, he got to know Landry. (B8993). Beginning in 1969, Landry engaged in sexual contact with Doe XLIX. (B8993). This conduct occurred through 1970 when Doe XLIX was 14 years old. (B8997).

After mass, Landry would engage Doe XLIX in conversation. This led to sexual contact in the sacristy and the rectory following mass. (B8993-94). Landry would fondle Doe XLIX’s genitals. Landry began by touching Doe XLIX’s genital area over his clothing and this contact progressed to the point where Landry fondled his genitals beneath his clothes. (B8994). Landry was fascinated by Doe XLIX’s sexual development and wanted to observe the growth of his pubic hair, his erections, and his orgasms. (B8994). They also engaged in “mutual masturbation.” (B8994). Doe XLIX believes that Landry fondled his genitals on a “dozen or more” occasions. (B8995).

Landry brought Doe XLIX and other boys to Bruins games in Boston. Landry had a sister that lived in Southern New Hampshire, possibly in Salem. (B8996). Following games, Landry would bring the boys back to his sister’s home where he maintained a mobile home.

(B8996). Landry's sister was never home during these trips. (B8996). Doe XLIX observed Landry engage in sexual contact with other boys on these occasions. (B9001). The boys would take turns as Landry fondled their genitals. (B9001). One of these boys was John Doe L. (B9000). On other occasions, Landry brought the boys to visit his parents in the Manchester area on the way back to Berlin. (B8996).

Landry also brought the boys to Camp Kieran in Jefferson, New Hampshire. (B8996). There was a trailer at the camp. On one occasion, Doe XLIX ended up sleeping in the trailer with Landry. (B8996).

Doe XLIX also visited Landry at his apartment in Berlin, but Doe XLIX does not recall having sexual contact with Landry at that location. (B8997). They would watch hockey games and drink beer. (B8998).

During his interview, Landry admitted to engaging in sexual contact with John Doe XLVII, John Doe XLVIII, and John Doe XLIX during his assignment in Berlin. (B6329). He got to know these boys because they were altar boys. (B6331). He stated that these boys were 14 years old when the abuse occurred. (B6329). Landry touched the genitals of each of the boys -- he stated that he masturbated them. (B6329). He also explained that he was "naked" with Doe XLVIII and that Doe XLVIII "masturbated" him as well. (B6329). Landry also admitted to engaging in sexual contact on more than one occasion with these boys in his camping trailer at the Boy Scout Camp. However, he did not recall having sexual contact with any of these boys in the rectory or in his apartment. (B6330).

Landry confirmed that he took an apartment near the Dunkin Donuts in Berlin with another parish priest because they were having problems with the parish pastor -- he did not want them around the rectory. (B6327). Landry denied that he engaged in sexual misconduct at the apartment. (B6330).

While he was in Berlin, Landry explained that he recognized that he had a problem. (B6334). He also felt like the Diocese should have provided him with help for his problem and alternatives to working with children. (B6336). In light of the fact that the Diocese was aware of his sexual problems with children and continued to assign him to new ministries, Landry felt that there was no way to control his own behavior unless he left the church. (B6337-38). Landry explained that at one point he confided in a priest from St. Anselm's and explained that he had engaged in inappropriate contact with minors. (B6339). Landry could not recall the priest's name. The priest encouraged Landry to leave the priesthood because the "system" was hurting him. (B6339). Landry does not believe that this priest reported the information to the Diocese. (B6340).

#### **IV. LANDRY'S CAREER AS A TEACHER**

Landry stated that his assignment to Berlin was his last as a Diocesan priest. (B6347). In 1970, he took a leave of absence and began to teach in Lebanon. (B6347-48). In the Spring, he received a call from the Stigmatine Fathers telling him that because he left the Diocese, he reverted back to the control of the Stigmatine Fathers. (B6348). Landry explained that at about the same time, there was an "allegation" in Lebanon. He stated that there was a boy lying on a desk at school watching movies and the boy's pants were open. Landry instructed the boy to "fix his pants," but the boy refused to do so and Landry "touched his pants." (B6352). Landry speculated that the boy's mother called the school to complain. (B6352). Following this complaint, Landry told the principal in Lebanon that he had been called back to the Stigmatine Fathers. Thereafter, he returned to the Stigmatine Fathers in Wellesley, Massachusetts. (B6348). Within 3 or 4 weeks, Landry decided to leave the Stigmatine Fathers and drafted a letter requesting to leave. The letter was forwarded to Rome. (B6348). Stigmatine records confirm that Landry was granted a leave of absence in 1970, he requested laicization in 1971, and was granted laicization in June of 1972. (B9539).

After leaving the priesthood, Landry worked briefly for his brother in Bristol, NH. (B6349; 6350). At the same time, he traveled back and forth to Berlin to spend time and "court" a woman that he had met there when he was a priest. (B6349). In 1972, they married. In 1971, Landry explained that he began to teach at New Hampton School. (B6343). He taught at New Hampton from 1971-1974. (B6349-50). Thereafter, he taught at Spaulding High School in Rochester. (B6350). He worked at Spaulding until the Spring of 1994. He then taught at the St. Elizabeth Seton School in Rochester. He is currently retired.

#### **V. CONCLUSION**

The Task Force investigated whether the Diocese of Manchester endangered the welfare of children by failing to effectively respond to concerns that Father Leo Landry engaged in sexual conduct with minors. While the investigation established that the Diocese was aware that Landry sexually assaulted a minor in the Fall of 1967 and that the Diocese did nothing to limit Landry's contact with children in the wake of this incident, the conduct of the Diocese occurred prior to the time that New Hampshire enacted its child endangerment statute in 1973. As such, a prosecution under a child endangerment theory would not have been possible. While a violation of the child endangerment statute did not occur, the Task Force's investigation established that the Diocese of Manchester likely contributed to the delinquency of minors, a violation of the predecessor statute to New Hampshire's child endangerment law. However, in light of the elements of this offense, the State did not believe that there was a viable argument to toll the statute of limitations in this instance. Accordingly, the State would not have presented indictments to the grand jury with regard to the Diocese actions relating to Father Landry.

## **GORDON MACRAE**

### **I. INTRODUCTION**

Gordon MacRae is a 49 year old Diocesan priest. His priestly faculties were suspended in July 1988 after the Diocese learned of accusations that MacRae had verbally solicited a minor to engage in sex at Spofford Hall, a residential treatment facility for youth. (B3060). The Bishop had given MacRae permission to celebrate mass at Spofford Hall. (B3127). MacRae pled guilty to endangering the welfare of a child in November 1988, as a result of another incident in which MacRae verbally solicited a 14-year-old boy to engage in sexual conduct. (B3328; B8695-96). Prior to this incident, the Diocese was aware that MacRae had engaged in inappropriate sexual contact by kissing and hugging a minor in November 1983. (B3037).

MacRae was subsequently convicted in 1994 of one count of felonious sexual assault and four counts of aggravated felonious sexual assault based on conduct that occurred during “pastoral counseling” sessions at St. Bernard’s parish in Keene where MacRae was a priest. See State v. MacRae, 141 N.H. 106, 107 (1996). The conduct for which he was convicted occurred between June and November 1983, although the victim did not come forward until 1993. Id.<sup>1</sup> In 1994, the defendant also pled guilty to sexual assault or attempted sexual assault of three other boys. (S-III at 153).<sup>2</sup> He is currently serving a sentence of 33 1/2 to 67 years in New Hampshire State Prison for his crimes. (State’s Br. at 2).<sup>3</sup>

During the course of civil litigation against the Diocese and MacRae in the 1990s, the victims learned the facts surrounding MacRae’s sexual abuse of minors and the Diocesan response to those allegations against MacRae. Because the victims had discovered through the civil litigation that the Diocese was aware of MacRae’s 1983 misconduct but allowed him to continue in ministry, the State could not rely on the tolling provision of the statute of limitations. In other words, the statute of limitations for a charge of endangering the welfare of a minor expired one year after the victims learned of the Diocesan response to MacRae’s allegations through the civil litigation in the 1990s. Accordingly, the State could not have pursued criminal charges against the Diocese for endangering the welfare of a minor based on the circumstances surrounding the Diocesan response to allegations against MacRae.

### **II. PSYCHOLOGICAL EVALUATION DURING SEMINARY AND ACCEPTANCE INTO THE PRIESTHOOD**

In 1972, MacRae entered the Capuchin Order, a religious order affiliated with the Roman Catholic Church. (B6726). In 1978, MacRae decided that he wanted to leave the Capuchin Order and become a Diocesan priest. (B6748, B6755). Rev. John P. McHugh, the director of formation at St. Anthony’s Friary in Hudson, New Hampshire wrote to Fr. Paul Groleau, Diocesan vocation director, on May 24, 1978, to express some reservation about MacRae’s

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<sup>1</sup> As discussed in further detail below, this victim was different from the victim that the Diocese was aware of in November 1983.

<sup>2</sup> Citation is to the sentencing hearing in State v. MacRae held over the course of three days in Cheshire County Superior Court in November 1994 followed by the volume number.

<sup>3</sup> Citation is to the State’s brief to the New Hampshire Supreme Court in State v. MacRae.

fitness to be a priest. (B6749). While the Capuchin Order ultimately unanimously recommended MacRae for the priesthood, McHugh's letter to Fr. Groleau is significantly qualified about the recommendation. For example, McHugh writes that it might be acceptable if MacRae took "a shot at diocesan priesthood" and that the Diocese could allow him into the seminary and "see" what happens. Finally, McHugh's letter concludes that "[a]nother priest on the staff suggests that perhaps Gordon could profit from some professional counselling regarding the formation of relationships necessary for ministry. (Gordon has had some therapy before.)" (B6750).

On June 8, 1978, Fr. Paul Groleau, the Diocese's vocation director, sent Gordon MacRae for a psychological evaluation before he entered the seminary. (B3022). The evaluation begins by noting: "It appears that we are dealing with two different individuals." One of MacRae's personalities is "well-adjusted," the other is "insecure with evidence of serious anxiety and depression." (B3022). He also notes: "The feelings of anxiety, insecurity, isolation, detachment, and deprivation shown, are evidence of feelings of personal inadequacy and chronic maladjustment." (B3023). He also recognizes that "Gordon has an unresolved problem of sexual identification as heterosexual adjustment is conceived of as threatening and dangerous." (B3023-24). The psychologist notes: "It is difficult at this time to project into the future." (B3022). He concludes that MacRae should be accepted into the seminary on a trial basis. (B3022).

On July 27, 1978, the Rector of St. Mary's Seminary & University in Maryland wrote to Fr. Groleau and advised him that another therapist had evaluated MacRae's psychological test results and concluded that the seminary should not accept MacRae. (B3026). The rector rejected this recommendation because he "was relying heavily on [Groleau's] judgment and assessment." (B3026). Based on this reasoning, the second therapist changed his recommendation to "cautious acceptance." (B3026). The rector of the seminary left it up to the Diocese as to whether MacRae's acceptance should be conditioned on his agreement to attend counseling. He concluded that if the Diocese did not think it was necessary, "we can wait and see if Gordon's behavior might lead us to make such a recommendation." (B3026). That same day, the seminary sent MacRae his acceptance letter, which did not include any condition of counseling. (B3028-29).

### **III. ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY MACRAE**

#### **A. MacRae's Sexual Contact with John Doe XII<sup>4</sup>**

John Doe XII was born in 1969. Doe XII was raised as a devout Roman Catholic. He served as an altar boy and wanted to be a priest. He believed that a priest speaks for God.

Doe XII met MacRae when he was 13 years old in 1982. MacRae taught Doe XII's religious education classes at Our Lady of the Miraculous Medal parish. MacRae developed a close relationship with Doe XII. They spent a lot of time together in the parish rectory. Doe XII

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<sup>4</sup> The following factual recitation is taken from a published order from the Hillsborough County Superior Court (Conboy, J.) regarding the application of the statute of limitations to a civil lawsuit filed by John Doe XII and others against the church in 1993. See [John Doe] et al. v. MacRae et al. (Hills. North Super. Ct. Aug. 2, 1996).

loved MacRae as if he was his father. He told MacRae that he loved him and MacRae told Doe XII that he loved him.

The physical contact between MacRae and Doe XII began when Doe XII sat on MacRae's lap. This developed into kissing on the lips. MacRae had conversations with Doe XII in the rectory while MacRae was naked. MacRae talked with Doe XII about masturbation and encouraged him to masturbate.

MacRae began to touch Doe XII's genitals in what MacRae called the "spider game." MacRae would pretend that his hand was a spider. He would make the spider first touch Doe XII's left leg, then his right leg. The "spider" would "get" the middle leg. This would result in MacRae rubbing and massaging Doe XII's penis from the outside of his clothing. MacRae played the spider game with Doe XII approximately a dozen times, including at the rectory and at Doe XII's home.

One time, MacRae was lying on top of Doe XII in a recliner in the rectory. MacRae kissed Doe XII and rubbed his genitals. On another occasion, Doe XII was sitting on MacRae's lap in the rectory. They were sitting in a recliner watching television and MacRae began kissing Doe XII. Fr. Gerald Boucher came into the room, saw them kissing, and immediately left without saying anything.

At some point in 1983, Doe XII told his teacher at school that MacRae was doing things that made him feel uncomfortable, but he was afraid to confront MacRae. The teacher told Doe XII to compose a letter to MacRae. Doe XII wrote the letter, which did not contain any detail, but was intended to get MacRae to stop. He left the letter for MacRae. MacRae later told Doe XII that he got his "dirty letter."

Doe XII told Fr. Boucher that "physical things" were going on with MacRae at the rectory that made him feel uncomfortable. He did not give Fr. Boucher any details about the abuse. According to Doe XII, Fr. Boucher responded by telling Doe XII that he should not worry about it because MacRae was leaving the parish soon. Meanwhile, the kissing and spider game continued.

According to Doe XII, in the fall of 1983, he told another priest who replaced Fr. Boucher, that he had had a physical relationship with MacRae. This priest responded by saying that Doe XII was making a very serious allegation, and that he should "go home and reconsider" what he was saying.

## **B. Doe XII's Disclosure of Sexual Abuse And Report To DCYS**

Again in the fall of 1983, Doe XII began counseling with Judith Patterson, a clinical social worker from Catholic Charities. In October 1983, when Doe XII was 14 years old, he disclosed MacRae's conduct to Patterson. Doe XII asked Patterson if it was normal for a priest to kiss a boy on the mouth. (B7686). Doe XII was equivocal about whether MacRae had ever touched his genitals. (B7686). Patterson viewed Doe XII's allegations against MacRae as "clear cut sexual abuse" because of the fact that MacRae put Doe XII on his lap and kissed him in

violation of sexual boundaries. (B7687). Patterson told Doe XII that what MacRae had done was illegal and that the state authorities had to be notified.

Patterson immediately called her supervisor, Janet O'Connell, and met with her. Together they decided that the matter had to be reported to state authorities. O'Connell called Father Quinn, who was the director of Catholic Charities. Patterson spoke to Quinn. Patterson told Quinn that the allegations were "absolutely credible." She explained to Quinn the normal reporting and investigation procedures. At the time Patterson believed the abuse should be reported to the Portsmouth District Office of social services. (B7688). Quinn told her that the church had a different procedure for handling these matters. (B7691). He told her that the church's protocol was for the matter to be reported to the Bishop, who in turn would personally report the matter to the Commissioner of the Department of Welfare. (B7689).

Patterson told Quinn what the substance of Doe XII's allegations were. Initially, Quinn was very doubtful about whether Doe XII was telling the truth and did not want to report the matter. (B7690). Patterson told investigators: "He asked me several times whether I believed him and you know did I need to talk with Doe XII some more, to make sure that he was telling the truth." (B7690). Patterson was adamant that Doe XII was telling the truth and that she felt that this was a matter that required reporting to state authorities. (B7690). In response to Patterson's insistence, Quinn agreed to talk with Bishop Gendron about the allegation. (B7690). Patterson understood from her conversation with Quinn that "because it was a delicate issue that it was handled at the highest level." (B7691). In fact, Bishop Gendron did meet directly with Department of Welfare Commissioner Sylvio L. Dupuis. (B7410). According to Dupuis, he instructed Gendron that this matter needed to be reported to social services. (B7410). Dupuis then referred the matter to the Division of Children and Family Services. According to Dupuis, he had no further involvement in the matter. (B7410).

Despite Dupuis' statement that he met directly with Bishop Gendron, Msgr. Francis Christian asserted in sworn interrogatories filed in 1993 in conjunction with the civil law suits against the Diocese that: "Bishop Odore Gendron never, at any time, had any direct contact or communication with any employee of DCYS. All of the contacts with the State were conducted by Monsignor John Quinn." (B3192).

On November 21, 1983, Quinn wrote a letter to Fr. Christian about the allegations of sexual abuse by MacRae. (B3043). Quinn indicated that he was notified by Dr. Guertin-Ouellette and Judy Patterson from Catholic Charities that MacRae had "sexually abused two minor males" in Hampton during the past summer. (B3043).<sup>5</sup> Quinn explained that MacRae was currently in counseling with Dr. Guertin-Ouellette and would continue in counseling. Quinn informed Fr. Christian that Dr. Guertin-Ouellette told the Diocese that MacRae suffers from "a strong personality development deficiency and will require ongoing treatment." Quinn

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<sup>5</sup> In the course of his therapy, Doe XII informed the counselor that another male child had been abused in a similar manner. He did not provide any further information about who that child was. (B10488). Some years later the Diocese expressed confusion about the reference to a second victim. Fr. Christian speculated that Doe XII might have indicated at the time that there was someone else who was abused or that there was a misunderstanding and that two instances of abuse with Doe XII was interpreted as abuse against two separate victims. (B3172). Apparently, there was a lapse of memory about the origins of the reference to the second victim.

concluded that he was going to meet with state officials and would “most probably file the official report with the Department of Health and Welfare.” (B3043).

On November 23, 1983, Fr. Quinn met with Richard A. Chevrefils, Director of the Division of Welfare regarding Doe XII’s allegations against MacRae. (B10487-88). Chevrefils wrote a memo regarding the meeting. He noted that MacRae was then in therapy which “apparently” was “positive at this time.” Id. Chevrefils noted that Doe XII disclosed that another unknown male child was also subject to similar conduct. Id. Chevrefils also recognized that there were questions about MacRae’s relationship with a boy named John Doe XIII. Id. Chevrefils recommended that Jeannette Gagnon further discuss the situation with Quinn, that the matter be referred to the Attorney General’s Office, that there be follow-up care for the victim and family, and that there be a review of the situation with John Doe XIII. Id.

Jeannette Gagnon, an Administrator with DCYS, was also at the meeting between Chevrefils and Quinn. (B8881-82). Gagnon believed that Commissioner Dupuis was also present for the meeting. (B8882). According to Gagnon, Dupuis was very close to both the Bishop and Catholic Charities. (B8883). Gagnon characterized the meeting as “unusual.” (B8882). She said that all other similar reports are assigned to social workers in the regional district offices. (B8882). She understood that the reason that the allegation was being handled by the central office was because it involved a Catholic priest. (B8883). Gagnon stated that she was under the impression that “they would be granted some consideration because it was important that they be seen being as cooperat[ive] with this investigation, wanting to get to the bottom of this and that it involved a Catholic priest and they were not really looking for, for any publicity and they would have wanted this to be something that they would be involved in and that they could handle it and it would be quiet.” (B8883). She stated further: “I remember Father Quinn mentioning that[,] you know[,] very specifically that I would understand that this was a very serious matter and that it could[,] um, perhaps people wouldn’t understand.” (B8884). Gagnon remembers going back and forth with Quinn and emphasizing that she was very committed to the law and rules they had relative to investigations. (B8884). Gagnon did indicate that the Diocese understood that there was a reporting law and that they had to cooperate in the investigation. (B8884). She also stated that the Diocese was aware that if it became known that a priest had been molesting children over time and they had known about it and did not make a report as required by law, “it would be difficult for them and embarrassing.” (B8884). The Diocese also made assurances that they would not impede the investigation in any way. (B8886).

On December 5, 1983, Fr. Christian wrote a memo to the file about a meeting he had with MacRae regarding Doe XII’s allegations. (B3044). Christian met with MacRae regarding the incident discussed in the November 21 memo from Quinn. MacRae admitted the incident. He said he was under stress and found himself kissing the “young man.” MacRae claimed he never had any homosexual incident or activity before.<sup>6</sup> Christian also noted that MacRae was undergoing alcohol counseling and therapy with Dr. Guertin-Ouellette. MacRae promised that if he did not succeed he would seek hospitalization. Christian told MacRae they were concerned

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<sup>6</sup> This appears at odds with the psychological evaluation performed on MacRae prior to his admission into the seminary. That report indicates that MacRae “has an unresolved problem of sexual identification as heterosexual adjustment is conceived of as threatening and dangerous.” (B3023-24).

about his “ability to function happily as a priest” and “the welfare of the people he was serving.” Christian told MacRae that the Diocese had to report the incident. Christian told MacRae “that the state was not going to pursue action as long as we gave assurances that he was in proper treatment and that the problem was in check.” Christian warned MacRae that the state would prosecute him if he did it again. The Diocese would not be able to give him a priestly assignment if the problem was not under control “since he would not be able to be entrusted with the care of souls.” Christian questioned MacRae about his activity with a young man from Groveton and another from Florida. MacRae denied sexual activity with either. MacRae acknowledged both the legal and church response if he repeated his behavior. (B3044).

On December 27, 1983, Jeannette Gagnon filed a “Report of Child Sexual Abuse” with the Attorney General’s Office. (B6732).<sup>7</sup> It indicates that that allegation was that, in the early summer of 1983, MacRae had Doe XII sit on his lap and kissed him. The report notes: “Founded Abuse: Rev. MacRae has admitted the incident to his superiors.” The report lists as “Treatment/Outcome” that “Rev. MacRae is currently in active, regular therapy with Dr. Henry Guertin-Ouellette. Dr. Ouellette feels very confident that therapy is positive and that Rev. MacRae is now self-controlled enough to give some meaningful assurance that he is not likely to engage in deviant behavior.” (B6733). Gagnon learned this information from Fr. Quinn. (B8886-87). There is absolutely no indication that the Division of Welfare conducted any independent investigation of this allegation. In fact, the Division of Welfare never spoke with MacRae about the allegations. (B8886; B10920). This was a departure from the norms of an investigation. (B8886). Judith Patterson, likewise, stated that no one from social services ever spoke with her about the incident. (B7692). No one from DCYS ever spoke with Doe XII’s family about the allegations or the outcome of the investigation either.

MacRae wrote that in December 1983, “Fr. Frank Christian, the Chancellor, called me in to discuss the incident. It was felt that, since I had already resigned that parish on my own and was in counseling that no further action was necessary, but that he was waiting to hear from the attorney general’s office whether it would be prosecuted. A few months later Frank told me it would not be prosecuted, but that any future such incidents would mean I could not be assigned in the Diocese.” (B10530; B10929). MacRae was interviewed in prison on October 25, 2002. (B10916). He informed investigators that in December 1983, Christian “told [him] that [the DCYF complaint] had been investigated and was determined founded.” (B10920; B10921; B10927). Despite these facts, Christian asserted in sworn interrogatories in 1993, in conjunction with civil law suits filed against the Diocese, that “[t]he Diocese was never informed by the Division of Children & Youth Services that they had a founded finding of child molestation against Gordon MacRae with respect to the minor victim [John Doe XII] from Hampton.” (B3182).

Gagnon’s report to the AGO was sent to Attorney Peter Foley on December 28, 1983, with a note that reads: “Due to the sensitive nature of the information and the individuals involved, we would appreciate it if every precaution could be taken to ensure that this information remains confidential.” (B10489). On January 6, 1984, Deputy Attorney General

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<sup>7</sup> This report has several obvious errors. It incorrectly reported John Doe XII’s age was 15. In fact, he was 14 years old at the time of the report, and was only 13 years old at the time of the abuse. (B10632). The report even misspelled his name.

Peter Mosseau forward this report from DCYS on to Cheshire County Attorney Edward O'Brien. Mosseau stated: "I am sending this report to you for whatever further investigation and/or prosecution you believe is appropriate." (B10492).

On January 13, 1984, the County Attorney responded to Mosseau's letter. He acknowledged receipt of the report of child abuse. He stated:

Ms. Jeannette Gagnon, Administrator of the Office of Social Services, Division of Welfare, called me today to discuss your letter.

The incident occurred in Hampton, New Hampshire, Rockingham County, and subsequently, Father MacRae transferred to Keene. Ms. Gagnon informs me that she has been in touch with Rev. Quinn, Father MacRae's superior, and the incident has been admitted to by Father MacRae.

Apparently, appropriate counselling and other actions are being taken to monitor Father MacRae and in the event that there are any other incidents of child sexual abuse reported, appropriate action would be taken and reports would be filed with this office and/or the appropriate County Attorney's office.

Since this incident occurred in Rockingham County and not in Cheshire County and since Father MacRae is receiving counselling and is being strictly monitored, I do not plan to take any further action at this time unless I hear further from Ms. Gagnon or Rev. Quinn.

(B6731) (emphasis added).

Former Cheshire County Attorney O'Brien has no specific recollection of the complaint regarding MacRae or any communication he had with respect to the matter. (B7704). Jeannette Gagnon informed investigators that she spoke with O'Brien and conveyed to him that the matter had been resolved. (B8890). Gagnon recalls receiving assurances from Quinn that MacRae behavior would be monitored and supervised. (B8890). O'Brien's statements in the letter that the State was informed that MacRae was being closely monitored are also corroborated by Judith Patterson's understanding of the disposition of the allegations involving Doe XII. She was advised that MacRae would go into counseling and would not be permitted to have any further contact with children. (B7692). She understood that MacRae's job was going to be administrative only. (B7692).

On January 26, 1984, Jeanette Gagnon followed up on the MacRae matter by speaking with Quinn. (B6847). MacRae had been very close to a boy named John Doe XIII. In fact, Doe XIII had lived with MacRae for a period of time. (B10488). Gagnon expressed concern that MacRae continued to visit Doe XIII and buy him gifts. (B6847). Gagnon requested Quinn "to review this matter and to advise how the investigation will be conducted." (B6847). Quinn conveyed this information to Christian who spoke with MacRae. (B3045). Christian instructed MacRae to stop seeing Doe XIII and MacRae agreed. (B3045).

Task Force investigators interviewed Doe XIII. (B6276). Doe XIII was born in 1968. He met MacRae while MacRae was working as brother with the Capuchin Order in Groveton. (B6276). Doe XIII's parents divorced and MacRae assumed the father role in his life. At one point, Doe XIII was going to be sent to YDC for his behavior. MacRae agreed to take him in and Doe XIII lived with MacRae for a year in Hampton. (B6276). In fact, the Portsmouth District Court formally appointed MacRae as Doe XIII's guardian in 1982. Doe XIII denied that MacRae ever engaged in any inappropriate conduct with him. (B6276). He said that when the Diocese instructed MacRae that Doe XIII had to leave, MacRae found him a family to live with. After that, however, Doe XIII began to get in trouble again. (B6276). Doe XIII never saw MacRae abuse any children, but could not rule out that it happened. (B6276). MacRae often bought gifts for Doe XIII and Doe XIII viewed MacRae as his "hero." (B6277). He acknowledged, however, that MacRae told him many lies over the years. (B6276-77).

In 1985, MacRae wrote to Bishop Gendron and expressed his displeasure over problems he was having in his ministry in Keene. (B6729). MacRae acknowledged his problem with alcoholism and observed that it was particularly pronounced while he was in Hampton. (B6729). At that time, MacRae began to see Dr. Guertin-Ouellette and made physical, emotional, and spiritual progress with the therapist.

On March 28, 1986, John Doe XII reasserted the allegations he made in 1983 about MacRae's abuse of him. Doe XII disclosed to his high school psychologist that he had been molested by a priest and expressed concern that this priest might still be in contact with teenagers. This disclosure was reported to DCYS. Doe XII was interviewed by his school counselor and a DCYS case worker. During that interview, he disclosed that MacRae had hugged and kissed him on the mouth. He also described the "spider game." (B10497).

On March 31, 1986, DCYS referred the allegation to the Rockingham County Attorney's Office. (B10494). The Rockingham County Attorney, in turn, forwarded the matter to the Hampton Police Department for investigation. (B10496). The county attorney requested that the police conduct a joint law enforcement/social service investigation of Doe XII's allegations and requested the police file a final report with the county attorney's office. (B10496).

On April 18, 1986, DCYS social worker Marilyn Fraser reviewed the case with her supervisor, Geraldine O'Connor, another social worker, Elizabeth Davis, and Roger Desrosier, Administrator of DCYS. (B10503). Desrosier instructed the social workers to close the investigation. (B10503). On that day, O'Connor wrote to Davis that "Roger Desrosier, Administrator, at the State Office has ordered on April 18, 1986, an immediate halt on any investigatory activity relating to the [John Doe XII] sexual abuse report, which was received by the Portsmouth District Office on March 31, 1986." (B10504). On April 24, 1986, David Bundy, Director of DCYS reviewed the matter and concluded the 1986 allegations involved conduct that occurred in 1983. (B19597). Bundy expressed concern about why the matter was being investigated and suggested that O'Connor should have handled the matter in a way that "would have avoided the waste of valuable personnel time and probable confusion in the community." Id. Bundy concluded by stating: "In the future, when there is a sensitive case involving a prominent community member, religious or otherwise, I expect you to exercise good

judgment in assigning staff and conducting the investigation. Notify the Area Administrator if you are in doubt about which investigations should be assigned differently.” Id.

On April 29, 1986, Marilyn Fraser wrote to Det. Wardle of the Hampton Police Department and informed him about the 1983 allegation by Doe XII. (B10506). She noted that at that time the matter was investigated, founded, and “[a] treatment plan was formulated and monitored.”<sup>8</sup> Id. She concluded that DCYS was closing the investigation because “the recent report covers the 1983 allegations; no new or additional data was obtained.” She also confirmed that based on this information, Hampton Police Department was going to close their investigation as well. Id.

On May 7, 1986, Marilyn Fraser met with Doe XII and his parents at their home in Hampton. (B10508). John Doe XII’s parents informed Ms. Fraser that they never learned what the outcome of the 1983 allegation was. Judy Patterson had told them that it was “taken care of” in the church, but no one from the Diocese ever spoke with them. Ms. Fraser explained the outcome of the 1983 investigation. She told them “that the priest had admitted these difficulties, and further that a treatment plan had been developed and monitored.” She noted that “[John Doe XII’s parents] were relieved to hear this information.” The family was still upset at the church for the way that they handled the matter. When Fraser stated during the meeting that the 1986 allegation did not raise any new issues, Doe XII corrected Fraser by noting that he had never previously disclosed the “spider game” and “made several suggestions that there was even more conduct that occurred.” Based on this Ms. Fraser decided to “[f]ollow-up old record [sic] and any other available information from Father Quinn, the psychologist, Hampstead Hospital, [and] Catholic Charities to see if there are any clues of additional activity.” (B10509).

On May 15, 1986, Fraser contacted Quinn regarding Doe XII’s renewed allegations that MacRae abused him. (B10510). Quinn expressed concern that the family was never notified about what happened with MacRae. He offered to meet with them. Quinn informed Fraser that he had not received any written report on the results of MacRae’s treatment with Dr. Guertin-Ouellette. Id. He informed Fraser, however, that he remembered monitoring the case and receiving a verbal report that the treatment was satisfactory. Id. Quinn indicated that there were no new reports regarding MacRae. He noted that “the Father has done ‘remarkable work’, not with youth, but in the field of drug/alcohol abuse. Father Macrae is still in the Keene parish.” Id. (emphasis added). Fraser also checked with Det. Wardle, who interviewed Doe XII after the renewed allegations. Id. Det. Wardle told her that Doe XII did not disclose any masturbation, oral sex, or other sexual contact. Id.<sup>9</sup>

Ms. Fraser followed-up with Doe XII’s therapist, Det. Wardle, and Fr. Quinn about the “spider game” or other sexual activity between Doe XII and Fr. MacRae. She was unable to confirm any additional information. The matter was closed on June 9, 1986, when Fraser wrote

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<sup>8</sup> In reviewing the files, no treatment plan or monitoring was located, other than the Diocese’s assurances to the civil authorities that MacRae was going to Dr. Guertin-Ouellette and that he would be strictly supervised.

<sup>9</sup> It is unclear why Det. Wardle told Fraser that Doe XII did not disclose any sexual contact. Det. Wardle’s notes of his interview with Doe XII clearly indicate that MacRae engaged in the “spider game,” which is described as “[h]is hand was spider – R leg – L leg then middle leg.” Det. Wardle’s notes do indicate that Doe XII disclosed hugging, kissing, and fondling in 1983. (B10525).

to John Doe XII's family.<sup>10</sup> She reiterated the fact that a protective investigation was conducted in 1983. She noted that “[a] finding of sexual molestation was made. A treatment plan was developed and monitored for the perpetrator.” (B10517). Fraser indicated that she was unable to discover any evidence of additional mistreatment but urged Doe XII or his therapist to contact Roger Desrosiers at the central office of DCYS if new information arose. (B10517).

On June 2, 1986, Fr. Quinn forwarded a letter to Ms. Fraser from Dr. Guertin-Ouellette regarding MacRae’s therapy. Dr. Guertin-Ouellette wrote:

I have been seeing Father MacRae weekly for more than three years. During that time, we have dealt with the incident that was reported from the East coast of New Hampshire. I feel that we have delved into this incident so as to bring about helpful insights that Father MacRae can use. Also, Father MacRae has seen fit to continue his visits here since that time to deal with matters that are not related to this incident in any way.

As regard the query you made about the “spider game”, it was never brought up in therapy. Also, when presented with this query, Father MacRae said he did not know what it could mean. Having dealt with Father MacRae for a long period of time I feel confident that he is telling the truth.

I also feel confident in the growth that Father MacRae has exhibited and I feel that this matter has been dealt with and resolved on his part. I feel strongly that harm may come by the resurrection of this incident at this time.

Father MacRae is aware of the re-emergence of this matter at this time. He has given me the proper release to communicate with you, or with any other appropriate person about the status of his progress at this time.

(B10545).

On June 3, 1986, Janet O’Connell from Catholic Charities reported to Marilyn Fraser the history of events between MacRae and Doe XII. (B3308). She indicated that in 1983, Doe XII disclosed fondling at that time.

In 1994, MacRae pled guilty to engaging in sexual conduct with Doe XII. (S-III at 153). The Cheshire County Superior Court made the following observations about MacRae’s conduct toward Doe XII:

I find clear and convincing evidence that [John Doe XII] was befriended by you, Mr. MacRae, while he was in his early teens and very vulnerable. He was having trouble in school and at home. You gained his confidence, encouraged a

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<sup>10</sup> Det. Wardle indicates that the allegations against MacRae in 1983 were resolved when the Attorney General’s Office approved a treatment plan for Gordon MacRae. (B6822; B8730). After the referral of the matter in January 1984 to the Cheshire County Attorney’s Office, there is no evidence that the Attorney General’s Office had further involvement in the investigation or resolution of the allegations against MacRae.

dependence and reverence for you, and then sexually assaulted him numerous times. When he attempted to confront you, you denied your acts. The psychological impact on [Doe XII] included a deep sense of betrayal, nightmares, suicidal impulses and eventual diagnosis of Post Traumatic Stress Disorder. Moreover, you destroyed [Doe XII's] dream of becoming a priest. . . .

(S-III at 156).

While MacRae did continue in counseling with Dr. Guertin-Ouellette for some time following the original report about the incident in 1983, there is absolutely no evidence that the Diocese restricted MacRae's ministry in any way as a result of the allegations involving Doe XII. In fact, MacRae continued to have contact with children after this. He abused three brothers before, during, and after this incident. He also abused other boys in the late 1980s, and was accused of abusing one boy at Spofford Hall, which is an adolescent drug and alcohol counseling center where MacRae was assigned and had been granted permission to celebrate mass.

### **C. MacRae's Sexual Assaults Of Jane Doe II's Children**

During the summer of 1979, while MacRae was still in the seminary, he was assigned to work at Sacred Heart parish in Marlborough, New Hampshire. (B6748). Several of his evaluations from this assignment note that he was particularly adept at working with the youth in the parish. (B3269, B3272). It was during this time, that MacRae befriended Jane Doe II and her children. (B6808). In fact, on July 23, 1979, Jane Doe II wrote an evaluation of MacRae. (B3272). In that evaluation, she noted that MacRae is most effective in his ministry to youth. (B3273). In particular, she noted that MacRae had become very close to her 14 year-old son, who had feelings of unworthiness and insecurity. (B3273).

#### ***1. John Doe XIV<sup>11</sup>***

John Doe XIV is the son of Jane Doe II and was born in 1965. Jane Doe II was a strict Roman Catholic and created a home where religion was a dominant factor in her family's life. Doe XIV believed that a priest "is someone who is the next thing to God, a messenger from God." The priest made moral judgments – decided what was right and what was wrong. Jane Doe II taught the children to do whatever they were told to do by priests.

During the summer of 1979, Doe XIV first met MacRae while MacRae was a seminarian. He was introduced to MacRae by Fr. Horan, the pastor at Sacred Heart. Doe XIV and MacRae became very close. MacRae was Doe XIV's best friend and Doe XIV called MacRae "Dad." The first physical contact occurred during a car ride to MacRae's parents in Massachusetts. MacRae instructed Doe XIV to sit closer to him and pulled Doe XIV toward him. He told Doe XIV that he wanted to bond. He put his hand on Doe XIV's leg and rubbed it.

Gordon MacRae was ordained on June 5, 1982, and assigned to Our Lady of the Miraculous Medal Parish in Hampton on July 10, 1982. (B3120). On June 15, 1983, MacRae

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<sup>11</sup> Except as otherwise noted, the recitation of events in this section was taken from the factual findings in the court order on the statute of limitations in the civil lawsuit. (B6880-85).

was assigned by the Diocese of Manchester to St. Bernard's parish in Keene. (B3030, B3120). John Doe XIV maintained close contact with MacRae at each of these assignments. MacRae began taking Doe XIV over to the rectory at St. Bernard's in Keene. (B6882). MacRae began giving alcohol to Doe XIV, who would feel, "fuzzy," "blurry," and "strange." Drinking became a regular part of the activity at the rectory. Doe XIV began spending the night at the rectory with MacRae. During these overnight visits, MacRae would massage Doe XIV's back, legs, and buttocks. He would then have Doe XIV roll over and MacRae would massage Doe XIV's chest and genitals. MacRae called this the "spider game." (B6882). MacRae would tell Doe XIV that these activities were "normal" and part of their bonding experience. (B6882). On some occasions, Doe XIV would drink so much he would pass out. (B6883).

Doe XIV described how, on one occasion in 1981 or 1982, MacRae brought him to the rectory in Hudson. Doe XIV guzzled some alcohol. MacRae then brought Doe XIV into the bedroom and made Doe XIV undress. He told Doe XIV he would no longer be his friend if he did not do it. According to Doe XIV, MacRae then left the room and another man, whom Doe XIV believed was a priest, came into the room and anally raped Doe XIV. A second man came in and had anal intercourse with Doe XIV as well. MacRae then came back and took Doe XIV to dinner and a movie. They never talked about the incident.

During MacRae's ordination in May 1982, Jane Doe II and her family were seated in the VIP section of the church. Doe XIV graduated high school in 1983 and entered the Army. During this time, he maintained contact with MacRae. Doe XIV was discharged from the Army in 1987 and decided to return to New Hampshire in 1988. When Doe XIV returned to New Hampshire he moved in with MacRae. He told MacRae that he needed some money. MacRae told Doe XIV he could earn a couple of hundred dollars by just laying there. Doe XIV understood this to be a sexual proposition. Shortly thereafter he moved out of MacRae's residence. Thereafter, he was contacted by Keene Det. James McLaughlin. He told McLaughlin about the solicitation, but did not report the other sexual contact at that time. (B6884).

In early 1989, Jane Doe II learned that there had been a problem with MacRae and a boy at Spofford Hall. She was advised to speak with her sons about their contact with MacRae. She did so and learned that they had been abused by MacRae. (B6884).

While MacRae was not charged with his sexual misconduct toward Doe XIV, in 1994, during MacRae's sentencing hearing, the court found clear and convincing evidence that MacRae had sexually assault Doe XIV many times. (S-III at 154). The court also found that "[t]he evidence of your taking [John Doe XIV] to Hudson for sexual gratification of two of your associates is clear and convincing. The evidence of your suggestion that [John Doe XIV] prostitute himself is clear and convincing." (S-III at 156).

## 2. *John Doe XV*<sup>12</sup>

John Doe XV was born in 1969. He had the same religious experience in his upbringing as his brother Doe XIV. He met MacRae in 1979 when he was 10 years old. MacRae became very close to the family.

Over the next several years, Doe XV became very close to MacRae and developed trust in him. MacRae would often buy him gifts, including sneakers, clothes, a Walkman, and tapes. In 1982, he attended MacRae's ordination with the rest of his family.

When his parents separated in 1982, Doe XV suffered emotionally. MacRae provided support to Doe XV. The first abuse occurred in the spring or summer of 1982, when Doe XV was 13 years old. He and MacRae took a weekend trip to the rectory in Hampton. During the trip to the rectory, they discussed Doe XV's parents' divorce. When they arrived at the rectory, MacRae took Doe XV up to the living quarters, where there was a bar. MacRae began to serve alcohol to Doe XV, who became sick. Doe XV ended up on the bed in his underwear. MacRae touched Doe XV all over, including on his genitals. MacRae then performed fellatio on Doe XV. He also tried to have anal intercourse with Doe XV but Doe XV resisted.

After this episode, MacRae told Doe XV not to tell anyone. On the way home from the weekend, MacRae purchased Doe XV a Walkman and some tapes. When they finally arrived back at Doe XV's home, MacRae told Jane Doe II that he thought Doe XV's problems stemmed from his sexual identity and he told Jane Doe II that he thought Doe XV was gay.

Following this incident, Doe XV continued to have contact with MacRae through the fall of 1985. MacRae brought Doe XV to rectories in Groveton, Rye, and Keene. The sexual contact continued, including masturbation and oral sex by MacRae on Doe XV. Doe XV estimates that there were 50 instances of sexual contact, at least 10 of which were oral sex.

The last instance of oral sex occurred in the fall of 1985 at the Keene rectory. MacRae served Doe XV mixed drinks. At one point, MacRae left the room, and someone else came in and performed oral sex on Doe XV.

In the fall of 1985, MacRae counseled Doe XV in preparation for confirmation. Doe XV received no spiritual guidance. Instead, MacRae solicited him to engage in prostitution. He told Doe XV that all he had to do was lie there. After Doe XV's confirmation, the sexual contact with MacRae ended.

In 1987, however, Doe XV was in MacRae's rectory office. MacRae had a gun and was joking around. He held the gun to his head and said that "if things got out, things would happen." Doe XV did not take MacRae seriously, but had not disclosed the abuse.

After he graduated from high school, Doe XV joined the Navy. He began to have personal problems and entered counseling. In 1989, he told the counselor that he had suicidal

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<sup>12</sup> This recitation of events taken from the factual findings in the court order on the statute of limitations in the civil lawsuit.

thoughts and homicidal thoughts toward the person who sexually abused him. Doe XV was discharged from the Navy that year for medical reasons.

At some point in 1989, Jane Doe II asked her son if MacRae had ever done anything to him that would upset him. Doe XV “fell apart.” Doe XV finally spoke with Keene Det. James McLaughlin in 1992 about his sexual contacts with MacRae.

In 1994, MacRae pled guilty to sexually assaulting Doe XV. (S-III at 153).

### **3. *John Doe XVI***<sup>13</sup>

John Doe XVI was adopted by Jane Doe II when Doe XVI was one-year-old. He was born in 1967. He was raised in the same devout Catholic setting as his brother Doe XIV. As with his brother, he was raised on the belief that priests were representatives of God and were to be treated with reverence. Doe XVI was 11 years old when he first met MacRae in 1979. During that summer, Doe XVI was delivering newspapers with his brother. He delivered a paper to the rectory and was invited inside for something to eat. As Doe XVI was leaving, MacRae rubbed his body against Doe XVI’s and fondled Doe XVI’s genitals over the clothing.

After MacRae left Marlborough, he continued his contact with Doe XVI’s family. In 1981, Doe XVI accompanied MacRae on the trip to the airport to drop Doe XVI’s brother off. During the drive home, Doe XVI fell asleep. He awoke to find MacRae fondling his penis.

In 1982, MacRae visited Doe XVI’s home. He then took Doe XVI for a ride to Keene to get some food. During the trip, MacRae fondled Doe XVI’s genitals through his clothing.

As indicated above, in 1982, Doe XVI’s parents separated. Doe XVI felt responsible for their separation and ultimate divorce. His abuse of alcohol, which had begun several years earlier, got significantly worse. At that time, MacRae, who lived in Hampton, continued to maintain contact with Doe XVI’s family. Jane Doe II encouraged her children to spend time with MacRae because they needed a male role model in their lives.

In June 1983, MacRae was assigned to St. Bernard’s parish in Keene. MacRae began visiting Doe XVI’s family on a daily basis. Jane Doe II confided in MacRae her family’s problems, including Doe XVI’s substance abuse. MacRae, who had a degree in counseling and experience with alcohol abuse, offered to counsel Doe XVI. Jane Doe II encouraged Doe XVI to talk with MacRae. Doe XVI began seeing MacRae at the rectory to talk about his problems, although no formal sessions were scheduled.

On four separate occasions in the summer of 1983, during these counseling sessions, MacRae sexually assaulted Doe XVI. As Doe XVI explained his problems, MacRae would belittle or berate Doe XVI, who would break down and cry. MacRae then sought to comfort Doe XVI. During this time, MacRae performed an act of fellatio on Doe XVI.

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<sup>13</sup> The facts with respect to this matter are taken from the State’s brief on appeal from the conviction of MacRae.

During the same summer, MacRae also assaulted Doe XVI once during an overnight visit. Doe XVI had been sleeping in MacRae's living quarters in the rectory when he awoke to find his penis in MacRae's mouth.

The abuse continued through the summer of 1986, when Doe XVI was 19 years old.<sup>14</sup> Over this time, Doe XVI began to abuse drugs and his use of alcohol worsened. Doe XVI's relationship with his mother also worsened to the point that it was all but severed. MacRae was the main person in Doe XVI's life. During that summer, Doe XVI begged MacRae to get him help for his drug and alcohol problem. MacRae arranged for Doe XVI to go to Derby Lodge in Berlin for treatment. The night before Doe XVI was to leave for Derby Lodge he stayed in the rectory and MacRae again performed fellatio on him.

During his treatment at Derby Lodge, Doe XVI disclosed his sexual contact with MacRae for the first time. Doe XVI's counselor reacted with disbelief and told him that a priest could not do something like that.

When Doe XVI's treatment at Derby Lodge ended, he resumed his relationship with MacRae. Approximately six to nine months after Doe XVI revealed the abuse to his counselor at Derby Lodge, MacRae told Doe XVI that he was aware of the conversation and threatened to kill Doe XVI if he told anyone again.

Doe XVI's relationship with MacRae, and accordingly the abuse, ended in 1987, when Doe XVI was 20 years old. Doe XVI had been living at that point in an apartment in Manchester. His roommate committed suicide and he could no longer afford the apartment. MacRae, who was at that point on a leave of absence from the priesthood, agreed to allow Doe XVI to live with him in Keene. One day, Doe XVI found some videotapes in the apartment. They showed a young man lying naked on the bed. Doe XVI thought he recognized the young man as John Doe XVIII and he heard MacRae's voice on the videotape. Doe XVI got scared and took all of the videotapes and video camera equipment and brought the items to his mother's house. Once Doe XVI deposited the items in storage at his mother's house, he took off on his bicycle. MacRae intercepted him and demanded his stuff back. MacRae told Doe XVI he wanted to kill him and threatened him with a gun. Doe XVI eventually got away from MacRae.

Following this encounter, Doe XVI moved to Maine and then California. In 1989 or 1990, while Doe XVI was in California his mother asked him whether MacRae had ever done anything to him. Doe XVI avoided the question. Eventually, Doe XVI learned that MacRae had also abused his brothers. At that point he came forward. In 1994, MacRae was convicted by the Cheshire County jury based on his sexual abuse of Doe XVI.

#### **D. MacRae's Sexual Misconduct With John Doe XVII**

John Doe XVII first met MacRae in December 1985 through St. Bernard's parish in Keene when Doe XVII was 15 years old. (S-II at 13-14). Doe XVII was learning-disabled and was very disruptive in school. (S-II at 13). Doe XVII's mother was working for a Catholic school when she heard good things about MacRae's work with children. (S-II at 13). She set up

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<sup>14</sup> These facts are drawn from the court order on the statute of limitations in the civil lawsuit.

a meeting for her son to enter counseling with MacRae. (S-II at 13). Doe XVII and MacRae became “fast friends” and spent “night and day together.” (S-II at 14). Doe XVII and MacRae spent a significant amount of time together in the rectory over a six month period of time. (S-II at 5). On one occasion, MacRae and Doe XVII were together and MacRae asked to play a game called the “road map game.” (S-II at 6-7). MacRae went down the buttons of Doe XVII’s shirt with his fingers. (S-II at 7). Doe XVII did not understand what MacRae was doing, but he “had so much trust in him” that he did not think anything was wrong. (S-II at 7). As MacRae worked his way down Doe XVII’s shirt he started to go beneath the boy’s belt line on his pants. (S-II at 7). Doe XVII jumped up in a panic and ran out of the parish. (S-II at 7). He told his mother what had happened, but made her promise never to tell anyone. (S-II at 10). When Doe XVII’s mother took him back to the rectory to confront MacRae, MacRae denied the conduct. (S-II at 10).

#### **E. MacRae’s Sexual Misconduct with John Doe XVIII**

John Doe XVIII first met MacRae in 1983 when he was 12 years old. (B8864). During the spring of 1987, when Doe XVIII was 15 years old, MacRae engaged in sexual misconduct with Doe XVIII. Id. MacRae masturbated Doe XVIII on five or six occasions. Id. MacRae also played a game that he called the “robot game.” Id. Doe XVIII would give instructions to MacRae who would act like a robot while his hand was on Doe XVIII’s penis. Id. On one occasion, MacRae performed oral sex on Doe XVIII. Id. All of the sexual activity took place on the third floor of the rectory at St. Bernard’s in Keene. Id. The sexual activity ended when Doe XVIII stole MacRae’s check book in order to buy a gun to kill MacRae. Id. At that point, MacRae knew that Doe XVIII was serious about the fact that Doe XVIII wanted the abuse to stop. (B8860).

As described above, John Doe XVI recognized Doe XVIII engaging in sexual activity on a videotape that Doe XVI saw in MacRae’s apartment. (S-II at 34). Doe XVIII was not aware that MacRae was videotaping their activity, but recognized that it was possible that MacRae had done so surreptitiously. (B8860). In 1994, MacRae pled guilty to engaging in sexual activity with Doe XVIII. (S-III at 153).

#### **F. MacRae’s Sexual Misconduct with John Doe XIX**

In June 1987, MacRae requested a temporary leave of absence from his parish ministry from Bishop Gendron. (B3053). MacRae requested the leave of absence so that he could pursue a job as the Executive Director for Monadnock Region Substance Abuse Service, a drug and alcohol rehabilitation agency. (B3052; B3056). On June 15, 1987, Bishop Gendron granted MacRae a one-year leave of absence from priestly ministry with the Diocese. (B3057). Bishop Gendron urged MacRae to continue his counseling with Dr. Guertin-Ouellette. Id. He also stated: “You understand that with the exception of specific instances for which I would grant you faculties at your request, you would not have the faculties to function as a priest during the period of this year.” Id.

On August 18, 1987, Bishop Gendron granted MacRae permission to celebrate Mass for patients at Spofford Hall. (B3127). Spofford Hall was a drug and alcohol counseling facility

located in Chesterfield, where MacRae was working as a counselor. (B7635; B7638). Gendron granted MacRae permission to perform mass at Spofford Hall “because of the manifest spiritual needs which you have so clearly described, as existing among the patients at the hospital.” (B3127). Rev. Leonard Zecchini, the Director of Pastoral Care at Spofford Hall, also wrote to the bishop. “He, too, has very well described the unusual circumstances of the hospital and the ongoing need the Catholic patients have for regular spiritual care in their total recovery process.” Id. Bishop Gendron noted: “I know that, in addition to your other talents and responsibilities, your priestly ministry in this regard will be of great assistance to the patients at the hospital.” The bishop specifically warns MacRae of the “need to avoid public confusion about your present leave of absence from the Diocese and about your ministry as a priest in these rather particular circumstances. I know that you will take the necessary precautions in this regard.” Id.

On March 11, 1988, MacRae wrote to Msgr. John Quinn to update him on his drug and alcohol counseling work. (B6852). MacRae noted that, with Bishop Gendron’s permission, he had been providing pastoral care at Spofford Hall on a weekly basis and was performing mass at that facility once a week. (B6853). He noted that he was also providing penitential services and spiritual direction for individual patients. (B6853). MacRae also included a description of his duties with Monadnock Region Substance Abuse Service. (B6854). This description noted that the organization provided services to “children of alcoholic parents” and community education for various organizations, including schools. Id. In fact, MacRae was engaged in one-on-one counseling with adolescents who were substance-abuse dependent. (B7705-06). MacRae would also see adolescent clients out of the clinic in violation of Monadnock’s policy. (B7706).

On March 23, 1988, Bishop Gendron granted MacRae an additional year leave of absence. (B6850). Bishop Gendron stated: “As we discussed, I would be most anxious to have you return to ministry at the end of this period of time.” Id. He also confirmed that MacRae continued to have priestly faculties to celebrate mass at Spofford Hall. Id.

The Diocese did not warn the staff at Monadnock Region Substance Abuse Services, Spofford Hall, or the other priests or parishioners at St. Bernard’s parish in Keene about MacRae’s admitted sexual misconduct with Doe XII in 1983. (B3129). According to the president of Monadnock, the clinic did not do a background check on MacRae when he was hired because of his vocation as a Catholic priest. (B7705). The clinic relied on the fact that MacRae appeared to be a priest in good standing with the Diocese. (B7705). They received no information to the contrary from the Diocese. (B7705). Had the clinic been aware that MacRae had abused a boy in the past, they would not have hired him. (B7705-07). MacRae was fired by Monadnock when new sexual abuse allegations surfaced in 1988.

On July 14, 1988, New Hampshire State Police received a report of sexual abuse against MacRae. (B7638). John Doe XIX, a 17-year-old patient at Spofford Hall, alleged that he had requested to see MacRae after the celebration of Mass for the purpose of counseling. (B3046).<sup>15</sup> Doe XIX alleged that MacRae attempted to touch him sexually during this time. (B3046). The Director of Spofford Hall informed Msgr. Christian that it was possible that Doe XIX was lying about the incident and it would be difficult to learn the truth. (B3046). Doe XIX refused to be

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<sup>15</sup> In a memorandum to the file, Msgr. Francis Christian reported that Doe XIX’s age was 18 or 19 at the time of the incident. (B3046) This is incorrect. Doe XIX was only 17 years old. (B7638).

interviewed by state police in 1988 or by Task Force investigators in connection with the present investigation.

When MacRae was confronted about the accusations by state police, he related the following story: Doe XIX approached MacRae after mass one day at Spofford Hall to request that MacRae take Doe XIX's confession. (B7640). Initially, MacRae resisted because the policy required that a meeting be scheduled ahead of time. Id. When Doe XIX insisted, MacRae entered a private office with Doe XIX. (B7641). Following a discussion, Doe XIX grabbed MacRae from behind and then began to masturbate himself. Id. According to MacRae, when he tried to leave he heard voices in the hall and was concerned about how it would look. Id. MacRae said that the encounter lasted 60 seconds and when it ended, he did not inform any of the staff at Spofford Hall about the incident. Id.

On July 14, 1988, Auxiliary Bishop Gerry wrote to MacRae to inform him that any priestly faculties he had been granted were suspended as a result of the incident at Spofford Hall. (B3059). Bishop Gerry wrote: "You have read enough, I know, to realize that the decision to suspend you from faculties in no way is meant to be judgmental on the 'incident,' but to safeguard the Church so that she cannot be accused of knowing and still letting the priest operate under her auspices when he could be taking advantage of adolescents." Id. (emphasis in original).

#### **G. MacRae's Sexual Misconduct With John Doe XX**

Just two months after the allegations at Spofford Hall, MacRae was again accused of soliciting a minor to engage in sexual activity. John Doe XX first met MacRae when he was 9 years old at St. Bernard's parish in Keene. (B6956). MacRae was Doe XX's favorite priest in the parish and they became close friends. (B6956). Doe XX viewed MacRae as the father he never had. (B6956).

During 1988, while Doe XX was 14 years old, he spent a lot of time alone with MacRae. (B6956). MacRae would often steer the conversation toward sex. He would tell Doe XX that there is plenty of money if he only knew how to earn it. MacRae told Doe XX about a male friend who earned \$600 an hour acting as a male prostitute. MacRae would also ask Doe XX how he felt about cuddling and touching someone of the same sex in bed. Doe XX told MacRae he thought homosexuality was sick. MacRae would end the conversation by saying: "I'm just letting you know." (B6956).

One Sunday in October 1988, Doe XX confided in MacRae that he needed money for a school dance. MacRae had often given Doe XX money and gifts in the past. MacRae again steered the conversation toward sex. He asked Doe XX if he would pose for pictures. MacRae then took Doe XX back to his apartment. He took a camera out and instructed Doe XX to undress. MacRae then took pictures of Doe XX in various poses, including holding his genitals. When MacRae ran out of film, he gave Doe XX \$20 and some change. (6956).

Later that week, Doe XX saw MacRae again. This time he asked him for \$10. (B6956-57). MacRae asked Doe XX to pose for more pictures. They went to MacRae's apartment

again. This time, MacRae asked Doe XX to give himself an erection. When MacRae ran out of film, he gave Doe XX \$50. (B6957).

The following weekend, MacRae and Doe XX were riding around in the car. Doe XX asked for more money. MacRae again took Doe XX to his apartment and took pictures of him. This time MacRae instructed Doe XX to ejaculate, which he did. When MacRae ran out of film, he took Doe XX home again. (B6957).

Doe XX's sexual contact with MacRae ended when Keene Det. James McLaughlin called Doe XX into his office for an interview, and Doe XX revealed what had happened to him. (B6986). Initially, Doe XX only disclosed the conversation with MacRae about prostitution. (B8724-25). At that time, Doe XX denied that any physical sexual contact occurred between himself and MacRae. (B8726).

Det. McLaughlin interviewed MacRae regarding his contact with Doe XX. MacRae admitted to soliciting Doe XX for sex. (B8759; B8763). Following MacRae's admissions, on November 18, 1988, MacRae pled guilty to one misdemeanor count of endangering the welfare of a minor for soliciting Doe XX to engage in sexual contact. (B6995).

#### **IV. MACRAE'S PSYCHOLOGICAL EVALUATIONS**

As noted above, in the early 1980s, MacRae was involved in psychological counseling with Dr. Guertin-Ouellette, the therapist retained by the Diocese to counsel priests and other religious personnel. When Doe XII's allegations surfaced in 1983, the Diocese informed State officials that "Rev. MacRae is currently in active, regular therapy with Dr. Henry Guertin-Ouellette. Dr. Ouellette feels very confident that therapy is positive and that Rev. MacRae is now self-controlled enough to give some meaningful assurance that he is not likely to engage in deviant behavior." (B6733). When Doe XII's accusations resurfaced in 1986, Dr. Guertin-Ouellette again issued an assurance that MacRae had adequately dealt with his sexual problems. (B10545).

Following MacRae's conviction for endangering the welfare of a minor in 1988 with Doe XX, he was sent for psychological evaluation. MacRae was first evaluated by the House of Affirmation in Massachusetts in December 1988. (B3063). Despite Dr. Guertin-Ouellette's earlier assurances that MacRae's behavior had been adequately treated, the House of Affirmation issued a blunt report about MacRae's inability to control his sexual behavior:

Father MacRae reported several inappropriate sexual encounters with adolescents. Although he experiences intense shame and guilt for the behavior, he indicated that he does not feel in control of such behavior. Father MacRae is in the early stages of understanding and arresting the inappropriate sexual encounters with minors. Although alarmed by it and very frightened of legal and personal consequences, he has little awareness of the impact of the behavior upon the adolescents, and he has little confidence that he can cease such involvements. He still tends to transfer some responsibility for the behavior to the adolescents and has difficulty acknowledging the sexually addictive nature of the behavior. These

factors indicate that Father MacRae is a sexual offender who currently is not able to curtail such behavior without professional support. We recommend that he receive professional support immediately.

(B3068).

MacRae received further psychological evaluation from Strafford Guidance Center in January 1989. Despite Dr. Guertin-Ouellette's earlier assurances, Strafford Guidance issued a scathing report about MacRae's sexual problems:

The above data are indicative of severe and deep-seated psychopathology that has had many ramifications in his recent past and in his present psychological condition. The data indicate a severe personality disorder with related serious psychosexual and substance abuse problems. He has tremendous difficulty in intimate relationships, sexual or otherwise, and in fact tends to sexualize most relationships in one form or another. While he longs for sexual and emotional intimacy with others, he appears to be almost completely incapable of establishing and maintaining such intimacy in any real way. As a result, he has an extremely active and involved fantasy life, which I suspect is driven by only semi-repressed sado-masochistic drives. . . .

I strongly recommend long-term intensive psychotherapy. He fits the profile of what is known in the literature as a "fixated" sexual offender. For this reason, he may not be appropriate for the SATP of the Strafford Guidance Center, which is not geared specifically to deal with sexual offenders of this type. He is in clear need for insight-oriented psychotherapy to address the psychodynamics as outlined above, as well as a program specifically geared to deal with fixated sexual offenders. . . .

(B6746-47).

A second therapist at Strafford Guidance reached similar conclusions in February 1989:

Mr. MacRae appears to fit the description of a fixated sexual offender, a man who has a primary sexual interest in children, usually males, though with the possibility of attraction to and sexual activity with adults; who identifies with his child victims and who relates to children as peers, scaling his behavior to the child's level or acting in a "pseudo-parental role." Other characteristics of fixated offenders which apply to Mr. MacRae are the lack of a precipitating stressor, the compulsive quality of the behavior, and a pervading characterological immaturity.

. . .

As fixated offenders do not respond to outpatient treatment and have the best record of recovery when treated in an inpatient setting, initially in a program specifically tailored to sexual offenders, it is important that Mr. MacRae undergo

treatment in such a modality. It is important that Mr. MacRae not be deferred to as special in treatment because he is a priest.

. . .

It is of great importance that Mr. MacRae not be allowed to place himself in a position of authority over minors in the future, and that he continue to take responsibility for this and for other potentially dangerous behaviors.

(B6738-39).

Based on the evaluation from Strafford Guidance, MacRae attended in-patient therapy with the Servants of the Paraclete in Jemez Springs, New Mexico. (B6739). MacRae began treatment with the Servants of the Paraclete on March 14, 1989, and was a resident with the facility for slightly more than one year. (B3090; B3347). On April 15, 1989, Bishop Gendron wrote to Dr. Peter Lechner, Director of Villa Louis Martin ("VLM"), the residential treatment center run by the Servants of the Paraclete. In that letter, Bishop Gendron thanked Dr. Lechner for the progress report on MacRae. (B6725). Bishop Gendron then wrote: "I will, as you request, destroy the various psychological reports you included." (B6725). While there are no progress reports in Diocesan files on MacRae from VLM prior to April 15, 1989, the Diocese did retain subsequent psychological reports from VLM on MacRae.

Dr. Lechner indicated that the only misconduct that VLM was aware of with respect to MacRae was the following: "Gordon was referred to us as a 'sexual offender' who needed professional treatment. During the course of the treatment it became evident that his sexual offenses consisted in limited sexual activity with adults before ordination, some sexual activity with adult prostitutes after ordination (for the Villa Louis Martin program this was regarded as a moral offense and unacceptable behavior for a priest), as well as having a young man sit on his lap, hugging him and attempting to kiss him (Gordon had been drinking alcohol at the time), and in imprudent conversation with a young man who said he would do anything for money. We were aware of no other sexual offenses." (B3348). Dr. Lechner did not view MacRae as a sexual offender in the sense of "someone who repeatedly sexual[ly] abused others in an illegal fashion and was likely to continue doing so without professional help . . . ." (B3349). Dr. Lechner disagreed with the conclusions reached by the House of Affirmation and Strafford Guidance Clinic. Specifically, he stated:

When Gordon first came to us, his presence was preceded by reports from House of Affirmation and Strafford Guidance Clinic. The House of Affirmation report was written after Gordon was there for five days and the Strafford Guidance Clinic report was written, according to their report, after two hours of interviewing – lengths of time that would not seem adequate to accurately evaluate the complex problems Gordon suffered from. These reports were very condemnatory of Gordon and pictured him as a child offender with little conscience. It was only after time that it became clear that Gordon did not fit the description of the House of Affirmation and Strafford Guidance Clinic. He had a depth of conscientiousness and sensitivity to others, and a very high degree of

ethical concern that did not fit with what the reports said of him. These conclusions were more consonant with the conclusions of Dr. Guertin-Ouellette who had seen Gordon in psychotherapy for a period of four years.

(B3355).

In September 1990, after completion of his residential treatment at VLM, MacRae was offered a job by the Servants of the Paraclete to be the assistant director of the Foundation House, a sister program to VLM. (B3107; B3109). Bishop O'Neil granted MacRae permission to accept the position with the Servants of the Paraclete. (B3110).

The Servants of the Paraclete continued to support MacRae even after his arrest, conviction, and sentencing. In fact, on November 30 2001, Dr. Peter Lechner, one of the counselors who evaluated MacRae at Villa Louis Martin, wrote to Bishop John McCormack to offer assistance to MacRae in his legal fight against his convictions and sentences. (B6866). Dr. Lechner acknowledged receiving correspondence from Bishop McCormack regarding the fact that the Diocese was considering a lawyer to check into MacRae's sentencing. Dr. Lechner stated: "I would like to offer any help possible, and would be happy to send the brief I wrote several years ago in his regard." Id. Dr. Lechner also noted that the General Council of the Servants of the Paraclete "recommended that I contact you and suggested the possibility of a small fund being started to help finance legal work for Gordon. We would be willing to contribute a few thousand dollars if this would help." Id.

## **V. MACRAE'S CRIMINAL TRIAL AND SENTENCING**

In 1994, following a lengthy criminal trial, MacRae was convicted of engaging in various acts of sexual assault with John Doe XVI. MacRae also pled guilty to sexual assaults involving John Doe XII, John Doe XV, and John Doe XVIII. Judge Arthur Brennan held a three-day sentencing hearing in November 1994. During the hearing, Judge Brennan heard from multiple witnesses, including the victims, their family members, and expert witnesses. MacRae also called witnesses, including Father David Deibel, a Catholic priest, canon lawyer, and consultant for the Servants of the Paraclete. (S-I at 102). Deibel met MacRae in 1992, while MacRae was working for the Servants of the Paraclete. (S-I at 110). Fr. Deibel testified that he felt MacRae's rehabilitation was well underway and that prolonged incarceration would be counterproductive. (S-I at 122).

After hearing the testimony of all of the witnesses, Judge Brennan made the following comments in support of the sentence he imposed on Gordon MacRae:

I've listened to the evidence presented at the sentencing hearing and used my own education and experience and the constitutional and legal standards for sentencing to render an appropriate sentence for the convictions against Gordon MacRae resulting from his assaults on [John Doe XVI]. I want to thank the witnesses who testified at this hearing, both for and against Gordon MacRae. I found, with the exception of Father David Deibel, the priest and lawyer, that you all spoke in good faith, whether I agreed with what you said or not. I believe that Father

Deibel attempted to mislead the Court, that he intentionally minimized the behavior of Gordon MacRae, and that he is not a credible witness. I hope and trust he is not representative of the attitudes of the governing body of the Catholic church concerning sexual predators within its clergy.

Recently I read some words about the lack of heroes in this generation. They were written by a college student who was nearly the same age as the young men we have called victims in this case. And while I understand what the writer means, I disagree, and instead believe that heroes are with us every day. We need only open our eyes. Heroes include the woman who throws off the cloak of a battering partner, the trooper who gives the life he risked so many times, the people who overcome their own physical and mental disabilities or those of their family, the victims who find the courage to face this awkward and admittedly intimidating legal system. Heroes are people who are thrown into a journey of danger, injury, pain, or humiliation. Sometimes they are killed or destroyed; but whether they live or they die, whether they succeed or fail, they present us with an important message about what we can be and about what we should do.

Courtroom One in Cheshire County has some of those heroes here today. May the rest of us understand their message and may they heal and wear their scars proudly.

. . . .

I presided over your trial, Mr. MacRae. The jury was fair and impartial. Attorneys Koch, Davis, Reynolds, and Gainor performed aggressively, competently and honorably. Later, I took your pleas of guilty to the sexual assaults of [John Doe XV, John Doe XII, and John Doe XVIII]. They, too, were young teen-age boys when you assaulted them. You admitted that you committed those acts and you intended to commit them. . . .

I heard the convincing evidence from [Doe XV, Doe XIV, and Doe XVI] of the many times you sexually assaulted each of them when they were boys. You cloaked yourself in the authority of the Catholic Church and deceived their mother into putting her sons in your trust. You befriended each of them. You gave them things she could not. Movies, trips, money, your undivided attention. Surrounded by the aura of the Catholic Church, and all that it meant to this family, you gave them time in your rooms at the rectory, a place filled with a certain sense of knowledge, strength, and institutional sanctity, particularly for these young and vulnerable teen-age boys who revered priests. You infiltrated their home, constantly increasing their dependence upon you and your authority over them. And when they were away from home with you, you made certain they were alone. You encouraged and accepted their confidence and you used your education and your sophistication to bind these boys to you. Then you raped them again and again and over and over. And they could not tell anyone. They did not tell each other. They carried the guilt of your sexual assaults and they

each carried that terrible weight alone. And with each assault, you violated a sacred trust of their mother, whom you continuously deceived as you undermined her family and ultimately her faith.

It goes without saying that you scorned the most fundamental teachings of the religion you stood for. Your acts against those children, now young men, is a nightmare to decent people. The evidence of your possession of child pornography is clear and convincing. The evidence of your taking [John Doe XIV] to Hudson for the sexual gratification of two of your associates is clear and convincing. The evidence of your suggestion that [John Doe XIV] prostitute himself is clear and convincing. The evidence that you told [John Doe XVI] that no one would ever believe him is clear and convincing. [John Doe XII] – I find clear and convincing evidence that [John Doe XII] was befriended by you, Mr. MacRae, while he was in his early teens and very vulnerable. He was having trouble in school and at home. You gained his confidence, encouraged a dependence and reverence for you, and then sexually assaulted him numerous times. When he attempted to confront you, you denied your acts. The psychological impact on [Doe XII] included a sense of betrayal, nightmares, suicidal impulses and eventual diagnosis of Post Traumatic Stress Disorder. Moreover, you destroyed [Doe XII]’s dream of becoming a priest. . . .

[John Doe XVII]. I find by clear and convincing evidence that when [John Doe XVII] was 15 years old, his mother referred him to you for counseling because she had heard of your work with troubled boys. Once again, you gained a mother’s confidence. You then exploited the vulnerability of the boy and his family. When you attempted to sexually assault him, [John Doe XVII] resisted and confided in his mother. [Doe XVII] pleaded that she never tell; and, understandably, she did not. It was not until he ran away that she telephoned you in desperation searching for her son and confronted you. You denied everything, and instead you made counter-accusations that have become the trademark of your struggle against justice.

. . . .

. . . I conclude that you, Mr. MacRae, remain an extremely dangerous and high risk sexual offender. The compulsiveness and repetitiveness of your sexual assault against young boys, documented from 1979 to 1988, the selection and grooming of vulnerable boys and families, the deceitful use of both the authority of a Catholic priest and the corresponding spiritual power that the religion represents, the evidence of your solicitation and prostitution of young men for the gratification of yourself and others of your ilk, the evidence of child pornography and multiple victims, your complete lack of remorse, your aggressive denial of wrongdoing, your merciless attack on the character of the victims who confronted you, the ruthless application of your intelligence, education and experience as a counselor to undermine these children and their families and your total lack of compassion for your victims and the friends you continued to mislead, I

considered all of these things in deciding your sentence for the attacks on [John Doe XVI]. And I find that the prospects for your rehabilitation are very poor. There is no credible evidence that you have responded to the treatment that you have received. Throughout these proceedings, I have listened to your witnesses and I have watched you closely. I detect nothing in you at this time that gives me a reasonable basis for releasing you into the community ever. I hope that in the years to come effective treatment will be developed and that you will embrace it. Perhaps you will someday understand the depth and damage of your acts and perhaps we will someday develop the technology to allow you to be released into society and at the same time ensure the safety of the children and families that you prey upon. But I am not persuaded that we have the knowledge or technology today and I will not put this community's children at risk for your benefit.

(S-III at 151-59).

## **VI. DIOCESAN RESPONSE TO MACRAE'S CONVICTIONS AND SENTENCES**

In 1998, MacRae wrote to the Vatican to complain about the way he felt that the Diocese had treated him during the criminal trial. (B3401). In February 1999, after receiving information from Diocesan officials who were familiar with MacRae's case, Bishop McCormack responded to MacRae's complaints to the Vatican. Bishop McCormack related the following information to the Vatican. Beginning in the Fall of 1983 and until his conviction, several accusations were made by different young men against MacRae. All accusations involved different levels of sexual activity. Some more serious than others "but always they involved inappropriate sexual conduct." MacRae was required to attend increasing levels of counseling culminating in long-term in-patient care with the Servant of the Paraclete. During his leave of absence, "he was formally suspended from priestly ministry as a result of the public nature of one of these charges." McCormack noted that "[t]he extent of the guilt or innocence of Gordon MacRae is difficult to establish, even though the civil court found him guilty. He did admit to diocesan officials inappropriate caressing and kissing of a young man in at least one situation." Bishop McCormack then summarized the conflicting psychological evaluations discussed above. The Bishop went on to note that "[w]hatever the truth is about his guilt or innocence, the Diocese of Manchester was in a difficult situation during his public trial. The Diocese supported him privately with funds while at the same time not defending or supporting him in a public way. For example, the Diocese helped to fund his defense." Bishop McCormack concluded: "Some believe his prison sentence is unduly harsh and lengthy. This is due in part due [sic] to the way the law of New Hampshire is written, and also to the public sentiment about such crimes. There are people in prison who are serving much shorter sentences for very serious crimes. Furthermore, it is probable that at the time of his arrest and later conviction that he had his impulses under greater control and was not longer a serious threat to society. His lengthy jail sentence is even more inappropriate given his rehabilitation. I am sympathetic with Gordon MacRae's concerns in this regard, but do not feel that the Diocese can publicly advocate on his behalf without risking grave public misunderstanding about the seriousness of its understanding with regard to sexual misconduct by clergymen." (B3472-74).

On November 16, 1999, Bishop McCormack wrote a memo to the file regarding observations made by Auxiliary Bishop Christian about MacRae's conviction. (B3513). That memo concluded: "The sentencing in the [John Doe XVI] case was not proportionate to the sentencing in similar cases. He was convicted as a pedophile. The [John Doe] children possibly lied. Even though there may be some irregularities in the handling of his criminal trial because of the lying, based on the fact that he was criminally convicted, the Diocese did not think it could win a civil case or be able to defend, therefore, that they had supervised him appropriately and correctly." (B3513).

On November 14, 2001, Attorney Bradford Cook wrote to Bishop McCormack with his comments and observations on MacRae's continued challenges to his convictions and sentences. (B3515). Cook made the following observations to Bishop McCormack: "Throughout the process, it was obvious that all of [Jane Doe II's children] were expansive in their testimony and it was aimed at getting a certain result and frankly, none of the attorneys involved in the criminal or civil cases trusted their testimony to be completely accurate. Whether it was all trumped up or totally manufactured is impossible to know, but unlikely. That it was embellished was clear." (B3515). There is absolutely no indication on what Attorney Cook based these conclusions.

## **VII. SETTLEMENT OF CIVIL CLAIMS AGAINST THE DIOCESE**

In 1997, the Diocese entered into civil settlements with John Doe XIV, John Doe XV, and John Doe XVI, after extensive civil litigation. (B3381; B3388; B3394). Each of the settlement agreements contained a confidentiality clause that prohibited the victims from disclosing the facts surrounding the abuse or the settlement itself. If the victims breached the confidentiality provisions they would forfeit the money paid to them by the Diocese. The settlement agreements did not provide any penalty if the Diocese disclosed information about the victims. Id.

## **VIII. CONCLUSION**

While the facts detailed above would have supported a prosecution for endangering the welfare of a minor against the Diocese, such a prosecution likely would have been barred by the statute of limitations. Based on the civil law suits filed by the victims in the 1990s, it is clear that the victims knew that the Diocese breached a duty of care to them by failing to take effective steps to protect them from MacRae's sexual misconduct when the Diocese first learned of MacRae's misconduct in 1983. Because the victims were aware of the Diocesan response to MacRae's conduct more than one year before the present investigation, the State could not have relied on the discovery provision to toll the statute of limitations.