

# Memorandum

To: Philip T. McLaughlin, Attorney General

From: James D. Rosenberg, Assistant Attorney General  
N. William Delker, Senior Assistant Attorney General

CC: Task Force Investigators

Date: July 2, 2002

Re: Investigation of the Diocese of Manchester

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## I. INTRODUCTION

The Office of the Attorney General is committed to protecting children from sexual abuse. Over the past months, specific allegations of sexual abuse perpetrated by Catholic priests against minors have surfaced. In February of this year, the Attorney General's Office undertook an inquiry to determine whether the Diocese or any of its agents knew of potentially criminal sexual conduct by its priests, but failed to report that conduct to the appropriate authorities. Unfortunately, the State's initial inquiry heightened, rather than dispelled, suspicions that the Diocese engaged in such conduct. Through the grand jury process, the State recently received substantial material from Diocesan files regarding allegations of sexual abuse by priests against minors. An initial review of this material supports the view that certain agents of the Diocese were aware of specific allegations of sexual misconduct by priests and, in some instances, reassigned the accused priest to a new post where that priest continued to engage in sexual misconduct.

At this juncture, the State must define the nature and scope of its investigation of criminal conduct on the part of the Diocese of Manchester. The purpose of this memorandum is to identify the goals of the State's investigation, set out a strategy for pursuing that investigation, identify potential theories of criminal liability on the part of the Diocese, and describe some of the resources that the State will need to continue its investigation.

## II. INVESTIGATIVE GOALS

There are two goals of the States investigation. First, to identify specific allegations of sexual abuse against minors by individual priests and refer those cases to the appropriate County Attorney's Office. Once a referral is made, the County Attorney will be responsible for investigating and prosecuting cases against individual priests. In accordance with prior communications between this office and the county attorneys, the county attorneys will keep this office apprised of any major decisions, including decisions to charge a particular priest, enter a plea bargain or close a case.

The second goal of this investigation is to identify chargeable criminal conduct by the Diocese, itself, and any of its agents for sexual assaults perpetrated by priests against children. To the extent that the State's investigation reveals culpable conduct on the part of the Diocese or its agents, the Attorney General's Office will prosecute meritorious cases that fall within the statute of limitations.

### **III. TIMELINE**

The Attorney General's Office hopes to conduct its investigation and decide whether to bring any criminal charges against the Diocese and/or its agents by October 1, 2002. At the onset, the State recognizes that this is an optimistic goal in light of the volume of material that it must evaluate, the number of investigative leads that it must exhaust, and the complexity of the potential theories of criminal liability against the Diocese. However, the gravity of the potential offenses demands the speedy investigation and, if possible, prosecution of any offenders.

### **IV. THE INVESTIGATIVE STRATEGY AND THE RESOURCES NECESSARY TO PURSUE THE CASE**

This investigation will proceed in several stages to determine how the Diocese responded to allegations of sexual abuse by priests. The Attorney General has assembled an investigative task force to pursue the investigation of this case. Task force investigators will begin by contacting local law enforcement agencies to gather additional information. At the same time, two assistant attorneys general will review the material provided by the Diocese to generate additional investigative leads. From there, task force investigators will interview alleged victims and their family members. Finally, investigators along with an assistant attorney general will interview the accused priests and Diocesan officials in order to get a first hand understanding of Diocesan policy regarding child sexual abuse by clergy. Once the Attorney General's Office has gathered sufficient facts, it will assess whether the Diocese or any of its agents have engaged in criminal conduct, determine whether the applicable statute of limitations permits prosecution of offenses, and prosecute any appropriate cases.

#### **A. The Attorney General's Task Force For The Investigation Of The Manchester Diocese**

To address the anticipated workload in this matter, the Attorney General has assembled a task force to investigate any potential criminal conduct on the part of the Diocese or its agents. This task force is comprised of law enforcement officials from both inside and outside of this office who are experienced in sexual assault investigations and victim/witness issues. All investigators will report to Senior Assistant Attorney General N. William Delker. In his absence, investigator will report to Associate Attorney General Ann M. Rice and/or Assistant Attorney General James D. Rosenberg. Both SAAG Delker and AAG Rosenberg can be reached 24 hours a day / 7 days a week at the

following numbers with regard to any issues that arise during the course of the investigation:

Will Delker

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Jim Rosenberg

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Investigators assigned to the task force will be responsible for conducting interviews and pursuing investigative leads. Investigators assigned to this task force have a background in law enforcement, experience in investigating sexual assaults, and the interpersonal skills necessary to succeed in a wide variety of interview settings -- ranging from meetings with local law enforcement officials to interviews of adult victims of childhood sexual abuse to interviews with high-ranking Diocesan officials. More specifically, the task force is comprised of investigators from the Attorney General's Office, State Police, county law enforcement and local law enforcement officials. In this way, a diversified team of investigators will be able to bring a wide range of investigative skills to bear on the case inside of the time frame defined by the Attorney General.

In addition to the investigators and prosecutors assigned to the task force, the Attorney General's Office has retained an expert psychologist who has extensive experience working with victims of sexual assault. This expert has been retained to provide detailed training to the investigators and prosecutors with respect to the issues that they may encounter when they deal with victims, family members, and witnesses throughout the investigation of this matter. This expert will provide initial training to the investigators. In addition, the expert will attend the regular briefings of the task force in order to provide advise and consultation on issues that arise during the course of the investigation with respect to victims and witnesses.

#### **B. Organization of the Task Force**

Six investigators will be assigned to conduct the primary interviews, which are discussed in more substance below. These investigators will be assigned in three teams of two investigators each.

Each team will be assigned to investigate the manner in which the Diocese handled allegations of sexual abuse against a particular priest. SAAG Delker and/or

AAG Rosenberg will assign particular cases to each team. As a team exhausts leads or completes its investigation with respect to a particular priest, that team will receive a new case involving allegations against another priest.

In addition to the six investigators assigned to conduct interviews, Chief Investigator G. Michael Bahan and Investigator Paul E. Brodeur will be assigned to provide support by identifying leads and organizing documents, reports, and information gathered during the course of the investigation.

All reports will be dictated or typed by investigators within 72 hours of an interview. A draft of any dictated reports will be transcribed by a secretary at the Attorney General's Office within 3 days. Investigators are required to review the draft interview report and make any corrections within 2 days.

The task force members will meet at least once each week to discuss progress on the investigation. During the weekly briefing, each team will provide a summary of the information that they have gathered during the course of the prior week's investigation. These weekly meetings will provide an opportunity to discuss problems and/or dead-ends encountered during the investigation and generate additional leads. The psychologist retained to advise the task force will be available for these weekly briefings in order to offer advice and guidance to the task force members for victim/witness issues that arise during the investigation.

#### C. Press Contact

Press interest in the State's investigation regarding clergy abuse has been very high. The AG's Office has received a number of press calls each week. As the task force begins the next phase of the investigation by contacting law enforcement officials and victims and witnesses that contact is likely to generate additional press interest. It is important that all contact with the press in this matter be made by a prosecutor because of the nature of this case. Obviously, this investigation involves highly sensitive personal information. It also involves the use of documents and information gathered through the grand jury. Finally, as prosecutors, we have an ethical obligation under the N.H. Rules of Professional Conduct to ensure that a potential defendant is not unfairly prejudiced by comments made to the press. As prosecutors, we have an obligation to ensure that the investigators working with us adhere to the ethical rules. **For these reasons, all press contact must be made by the Attorney General, Will Delker, Jim Rosenberg, or Ann Rice.**

#### D. Contacting Local Police Departments

Task force investigators will begin by contacting local police departments to identify instances over the years where local departments reported allegations of sexual misconduct involving priests in their localities to the Diocese of Manchester. The goal of this phase of the investigation is to determine what the Diocese knew about specific allegations of sexual abuse, when it knew about those allegations, and what action it took

to address the allegations. Local law enforcement may have records and/or institutional knowledge of these contacts. Accordingly, investigators will request any police records relating to contact with the Diocese as well as identify any local law enforcement officials that spoke with Diocesan leaders. In turn, investigators will interview local law enforcement officials with knowledge of reports made to the Diocese regarding allegations of sexual abuse by priests. Investigators will conduct these interviews with the following questions in mind:

- Who was the victim?
- Who was the accused priest?
- What was the nature of the alleged assault?
- When did the assault occur?
- When was it reported to the police?
- Was this the first sexual assault reported to the department regarding the accused priest?
- What action did the department take when it received the accusation?
- Did the department contact the Diocese to report the accusation?
- When did it contact the Diocese?
- Which Diocesan officials did law enforcement speak with to address the allegation?
- Did Diocesan officials meet with local law enforcement?
- Did Diocesan officials propose any action with regard to the accused priest?
- Did the Diocese promise to remove the priest from the locality where the assault occurred?
- Did Diocesan officials promise counseling or therapy to the priest to address the problem?
- Did the police department conduct any follow up to determine if the Diocese had fulfilled any promises it made to the police department to address sexual misconduct with the accused priest?
- Does the department have any information that the Dioceses reassigned the priest to a new post following the allegation?
- Does the department have any information that the same priest engaged in subsequent acts of sexual misconduct?

An initial review of the material provided by the Diocese indicates that law enforcement officials in Dover, Hudson, Manchester, and Nashua may have had contact with the Diocese over the years with regard to sexual abuse by priests. Additionally, it appears that accused priests may have been reassigned to parishes in Berlin and Concord. Accordingly, investigators will contact these departments first.

#### **E. Review Of Diocesan Files**

While task force investigators contact these police departments, SAAG Delker, AAG Rosenberg, Chief Investigator G. Michael Bahan, and Investigator Paul Brodeur will perform a detailed review the material provided by the Diocese on June 20, 2002.

SAAG Delker and AAG Rosenberg will also begin gathering and reviewing additional documents from the Diocese. The goal of this review will be to generate a database of potential investigative leads. These individuals will also determine what additional requests for documents from the Diocese are necessary to complete the document trail. A further goal of this review is to identify the names of potential victims, the names of accused priests, the dates that any reports were made to the Diocese; as well as to determine what action the Diocese took to address the needs of accused priests, whether the Diocese reassigned accused priests to new posts, and whether the accused priests continued to commit sexual assaults after a reassignment.

## F. Interviews Of Victims And Their Families

Following the review of the material provided by the Diocese, task force investigators will be assigned to meet with alleged victims of sexual abuse by priests and families of the victims.<sup>1 2</sup> The purpose of these interviews will be to determine what contact individual victims of sexual abuse and their families had with the Diocese regarding their allegations. Thus, Investigators should conduct these interviews with the following questions in mind:

- When did the assault take place?
- How long had the priest served at a particular assignment prior to the time that the assault occurred?
- Was the assault reported to the Diocese?
- When was a report made to the Diocese?
- Which Diocesan official(s) received the report?
- Did the Diocese promise to take any action with regard to the accused priest?
- Was there any civil litigation as a consequence of the alleged abuse?
- Did the victim and the Diocese ever reach a settlement of potential civil claims?
- Did the victim threaten to go to police?
- Did the victim threaten civil litigation?
- The victim resist a confidentiality agreement?
- Did the victim insist on a confidentiality agreement?
- Was there was a confidentiality agreement as part of any civil settlement?
- Is the victim or his/her family aware of any other specific sexual assaults perpetrated by the same priest?

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<sup>1</sup> Prior to meeting with alleged victims, Investigators will contact the County Attorney's Office in the County where the assault allegedly occurred to determine whether County officials have already begun to investigate the case. Investigators will make an effort not to duplicate efforts with local law enforcement. In this vein, Investigators will secure any recent interview reports with victims to determine whether an additional interview is necessary.

<sup>2</sup> Several of these victims are likely involved in current civil litigation against the Diocese relating to these assaults. Assistant Attorney Generals assigned to the case will evaluate the appropriate course of conduct for contacting victims who are represented by civil counsel.

- Is the victim and/or his/her family aware of whether the same priest engaged in prior sexual misconduct at previous parish or other assignment?<sup>3</sup>

### G. Interviews With Priest Perpetrators

Next, the State will seek to interview priests that have been accused of sexual abuse. For these interviews, a task force investigator will be coupled with SAAG Delker and/or AAG James Rosenberg. The purpose of these interviews will be to explore contacts between the accused priest and the Diocese regarding allegations of sexual abuse. Investigators and attorneys will conduct these interviews with the following questions in mind:

- When did the priest have contact with Diocesan officials regarding allegations of sexual abuse?
- Did the Diocese offer counseling to priests following an accusation?
- Did the priest engage in counseling?
- What were the results of the counseling, if any?
- Were the results of that counseling provided to the Diocese?
- Did the Diocese reassign the priest in response to a complaint?
- Did the priest commit a subsequent assault at a new post following reassignment?
- At any time after the Diocese became aware of an allegation of sexual assault involving a priest, did the priest commit a subsequent assault?
- Did the priest ever come to the Diocese requesting help for his problem?
- If the priest requested help from the Diocese, what was the response from Diocesan officials?
- Did the priest ever request not to be assigned to posts where he could be engaged in youth ministry?
- Did the Diocese comply with that request?
- Did the priest ever admit to the Diocese that he had committed a specific assault?
- Did the priest commit the assault for which he has been accused?<sup>4</sup>
- Did the priest ever request that Diocesan officials keep accusations of sexual abuse confidential?
- Did Diocesan officials ever agree to keep accusations of sexual abuse against the priest confidential?

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<sup>3</sup> This question is important with regard to a potential statute of limitations issue involving the offense of Endangering the Welfare of a Child. As discussed in greater detail below, the statute of limitations for this offense may be tolled until such time as the victim discovered the crime. With regard to the offense of Endangering the Welfare of a Child, the discovery of the offense did not occur until the victim became aware that the Diocese breached a duty of care to him/her by receiving an allegation of sexual abuse against a priest, doing nothing in response to that allegation or reassigning the accused priest to a new post, thereby permitting the priest to commit a subsequent assault against the victim.

<sup>4</sup> To the extent that these questions implicate a priest's rights against self-incrimination, assistant attorney generals in conjunction with the county attorneys, will determine, on a case by case basis, whether to permit a priest to make a statement under a grant of immunity.

- Did the priest ever request that the Diocese destroy records relating to allegations of sexual abuse or treatment for that abuse?
- Did Diocesan officials ever agree to destroy such documents?
- Which Diocesan officials addressed issues relating to allegations of sexual assault with the priest?

## H. Interviews With Diocesan Officials Past And Present

Once information has been gathered from local law enforcement, Diocesan files, victims, and priests, the State will seek to interview Diocesan officials. For these interviews, a task force investigator will be coupled with SAAG Delker and/or AAG James Rosenberg. The purpose of these interviews will be to present relevant information to the Diocese for its comment and response. Specifically, the State will confront the Diocesan agents with any instances where it appears that the Diocese was aware of allegations of sexual abuse against a specific priest and did nothing to protect children or dealt with those allegations by reassigning the priest to a new post.

## V. THEORIES OF CRIMINAL LIABILITY

While this investigation is in its early stages, there are several potential theories of criminal liability involving the Diocese. Outlining these theories now will assist both task force investigators and attorneys to identify relevant facts when interviewing witnesses and reviewing documents. Because the target of the investigation is the Diocese, itself, and many of the assaults committed by priests occurred years ago, there are two challenges when considering any potential theory of criminal liability: 1) imputing criminal liability to the Diocese for the acts of its agents; and 2) determining whether the applicable statute of limitations bars a prosecution.

### A. Corporate Liability For The Acts Of Its Agents:

In New Hampshire, a "corporation may be held criminal 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 principle 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 below, the Diocese is equally responsible for the criminal offense.

### B. Child Endangerment – RSA 639:3

“A person<sup>5</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. This is a misdemeanor offense. See RSA 639:3. A one-year statute of limitations typically applies to the prosecution of misdemeanor offenses. See RSA 625:8. However, there is an exception to the statute of limitations for “any offense, a material element of which is either fraud or a breach of a fiduciary duty...” RSA 625:8, III(a). In cases where 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).

The 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); but see H.R.B. and BB. v. J.L.G., and Archbishop Justin Rigali, and Church of the Immaculate Conception School and Parish, 913 S.W.2d 92, 98-99 (Mo. Ct. App. 1995) (refusing to analyze and define the scope of fiduciary duty owed to persons by their clergy for fear that such an analysis would require the court to consider fundamental approaches to counseling inherent in the beliefs and practices of that denomination, thereby fostering excessive entanglement with religion). Because the Diocese is in a fiduciary relationship with the children that it serves, it owes them a duty of care. Breaching a duty of care is a material element of the offense of endangering the welfare of a child. See RSA 639:3, I. Assuming the investigation gathers admissible evidence, the State could prove that the Diocese breached its fiduciary duty to children when it became aware of allegations of sexual assaults against a specific priest and reassigned that priest to new post where he continued to engage in sexual misconduct. Alternatively, the State could prove that the Diocese breached its duty when it learned of an allegation of sexual assault, but did nothing to respond to the concern, permitting the priest to perpetrate subsequent assaults. 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, there is a strong argument that the tolling provision of RSA 625:8, III(a) applies to this offense, in this case. To fall within the statute of limitations, 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

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<sup>5</sup> Our criminal code defines the term “person” to include corporations and unincorporated associations. See RSA 625:11, II. This office will conduct further investigation to determine exactly what corporate form the Diocese takes as a matter of law.

require the victim not to have known until recently that the Diocese had knowledge of prior accusations against the priest, but did nothing or assigned the priest to a new post, and a subsequent assault took place involving the victim. 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.

### C. 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.

Based on an initial review of Diocesan documents, it appears that Diocese 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. If the Diocese required confidentiality in return for remuneration, it may have 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.

### D. Hindering Apprehension or Prosecution – RSA 642:3

“A person is guilty of an offense<sup>6</sup> if, with a purpose to hinder, prevent or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he: (a) harbors or conceals the other; or (b) provides such person . . . a disguise or other means for avoiding discovery or apprehension; or . . . (d) conceals, destroys or alters any physical evidence that might aid in the discovery, apprehension or conviction of such person...” RSA 642:3, I.

The Diocese may have hindered apprehension of priests for sexual assaults by concealing physical evidence. The State’s initial investigation has revealed that the Diocese maintained complaints of sexual abuse by priests in secret files. Only the Bishop, the Vicar General, and the Chancellor had access to these materials. By keeping records of potentially criminal offenses without informing the appropriate authorities, the Diocese may have hindered the apprehension of certain priests. Further, the Diocese may have committed this offense by providing priests with “means for avoiding discovery.” If the Diocese responded to an allegation of sexual abuse against a priest by reassigning the priest, the Diocese may have provided the accused priest with a vehicle to avoid apprehension.

### E. Tampering With Witnesses and Informants – RSA 641:5

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<sup>6</sup> This offense is generally a misdemeanor unless the actor knows that the charge liable to be made against “another” is a class A felony, in which case, hindering apprehension is a Class B Felony. The statute of limitations for a Class B Felony is 6 years. See RSA 625:8. If the underlying assault in this case is a Class A Felony, any resulting act by the Diocese to hinder apprehension amounts to a Class B Felony.

“A person is guilty of a class B felony if believing that an official proceeding . . . or other investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to testify or inform falsely; or withhold any testimony, information, document or thing...” RSA 641:5, I (a) & (b).

The difficulty in this case will be to demonstrate that the Diocese believed that an investigation into sexual assaults by priests was pending or about to be instituted when it induced victims to withhold information from authorities. If we discover evidence that satisfies this element, an initial review of documents provided by the Diocese indicates that there are instances where the Diocese encouraged victims not to report assaults to authorities and, in some cases, required confidentiality agreements in return for settlements of civil claims.

#### **F. Falsifying Physical Evidence – RSA 641:6**

“A person commits a class B felony if, believing that an official proceeding . . . or investigation is pending or about to be instituted, he alters, destroys, conceals or removes anything with a purpose to impair its verity or availability in such proceeding or investigation...” RSA 641:6.

As in the case of witness tampering, the challenge in pursuing this theory of liability is to find instances where the Diocese believed that an investigation was about to be instituted at the time that it either destroyed or concealed evidence. Putting aside this problem for the moment, the State’s initial investigation has revealed instances where the Diocese willingly destroyed medical records relating to a priest for fear that the information contained in those records may someday come to light and implicate the priest in sexual wrong-doing. Further, as noted above, the Diocese maintained allegations of sexual abuse by priests in secret files with extremely limited access. By “concealing” this evidence, the Diocese may committed this offense.

#### **VI. CONCLUSION**

In the coming months, the Office of the Attorney General will vigorously investigate whether the Diocese of Manchester or any of its agents bears criminal responsibility for sexual assaults perpetrated by its priests against children. Success in this endeavor will require the cooperation of this office, the investigators assigned to the task force, and local law enforcement. When the investigation is complete, the Office of the Attorney General will evaluate whether the Diocese or any of its agents bears criminal responsibility. Consistent with its commitment to protect children from sexual abuse, this office will prosecute any meritorious cases.