

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

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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 Viette

**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