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

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

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<sup>106</sup> Email from Msgr. Murphy to IRB members dated May 18, 2011.

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

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

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

### **3. Conclusion**

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

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<sup>107</sup> Email from Jim Caccamo to other IRB members dated June 2, 2011.

<sup>108</sup> Bishop Finn's letter to Fr. Tierney dated June 1, 2011.

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

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

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

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

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

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

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

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

#### **D. Father Shawn Ratigan**

##### **1. Early Assignments**

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

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

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

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

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<sup>111</sup> Fr. Ratigan was not asked to take individual pictures.

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

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

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

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<sup>112</sup> Interview of M. Fisher, July 15, 2011

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

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

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

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<sup>113</sup> Interview with M. Burgess July 14, 2011

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

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

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

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

## **2. St. Patrick's Parish**

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

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

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

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

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

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

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

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

### **3. The May 19, 2010 Report of Principal Hess**

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

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

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<sup>114</sup> Letter from Julie Hess to Msgr. Murphy dated May 19, 2010

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

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

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

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

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

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

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

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<sup>116</sup> Mo. Rev. Stat. Ann. 210.115.1

<sup>117</sup> Id.

<sup>118</sup> Interview with Rhonda Stucinski July 20, 2011

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

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

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

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

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

<sup>120</sup> Email from Julie Hess to Msgr. Murphy dated May 20, 2011, cc: Sheri Dishong

<sup>121</sup> Email from Julie Hess to Msgr. Murphy dated May 20, 2010 and Msgr. Murphy's response.









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

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

### **5. Monsignor Murphy Receives the Laptop**

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

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

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

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

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

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<sup>126</sup> Internal memo by Msgr. Murphy dated December 16, 2010.

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

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

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

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

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<sup>127</sup> From interview with Msgr. Murphy, August 3, 2011

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

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

## **6. What Was Found on the Laptop**

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

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

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

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

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

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

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

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

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

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

Julie found the following: hundreds of photos of girls mostly under the age of 10 with some clothing (swimsuits, underwear, etc), photos of one female between 2-3 years of age showing full vaginal exposure and full buttocks exposure, multiple saved Flickr links, multiple links to young female Facebook pages, a "favorite" to a spy pen that allows you to take photos (looks like a ballpoint pen) and a "favorite" for two way mirrors (no longer a valid website so we were not able to identify purpose of site).

In the hundreds of photos it became obvious the viewer is focusing on the female pelvic region. It is also obvious that some photos were taken from a camera positioned under a table in which girls were sitting in their swimsuits or under playground equipment in which girls were climbing above. There is also a photo with a little girl sleeping and someone has changed the location of her hand and clothing while she sleeps to take the photos. It appears that 4-5 photos were downloaded while the others seem to have been taken from a personal camera...

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<sup>128</sup> Memo from Julie Creech to Msgr. Murphy dated December 17, 2010.

<sup>129</sup> Interview with Julie Creech, August 2, 2011

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

## **7. Father Ratigan’s Attempted Suicide**

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

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

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

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

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

### **8. Monsignor Murphy Contacts Diocesan Counsel**

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

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

<sup>131</sup> Additionally, neither Msgr. Offutt nor Ms. Summers reviewed any photos from the laptop.

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

Missouri law defines the term “child pornography” in § 573.010(2), RSMo, as:

(a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or

(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct.

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<sup>132</sup> Mr. Haden has stated that in rendering legal opinions to the Diocese, he viewed only those images that had been printed and attached to the Creech and Moss memorandum, which were only a subset of all of the images viewed by Ms. Creech and Ms. Moss and described in their memo.

<sup>133</sup> Ms. Creech recalls that she had a conversation with Mr. Haden on December 17, 2010, and that he offered her the same opinion, *i.e.*, that the pictures did not constitute child pornography. Mr. Haden could not recall this conversation.

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

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

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<sup>134</sup> RSMo § 573.010(18)(e).

<sup>135</sup> 18 U.S.C. § 2256.

<sup>136</sup> *State v. Helgoth*, 691 S.W.2d 281 (Mo. 1985); *State v. Oliver*, 293 S.W. 3d 497 (Mo. en banc 2009).

<sup>137</sup> Msgr. Murphy recalls that he asked Bishop Finn what the Diocese should do to recover any additional images given Ms. Creech’s difficulties, and Bishop Finn advised he should let the attorneys “take the lead.” However, Mr. Haden informed the Firm that it was not until months later, in May 2011, that he became aware that Julie Creech had expressed concern about her ability to retrieve data on the hard drive.

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

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

### **9. The Diocese's Actions As Father Ratigan Recovered**

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

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

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

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

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

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

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

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

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

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

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<sup>140</sup> Internal memo from Msgr. Murphy dated December 29, 2010.

<sup>141</sup> Email from Msgr. Offutt to Bishop Finn, Duty Bound

<sup>142</sup> When Dr. Fitzgibbons was later told that Fr. Ratigan had been arrested and that the arrest was based in part upon images appearing on the hard drive that Dr. Fitzgibbons had been provided several months earlier, Dr. Fitzgibbons responded by denying that he had seen any child pornography on the drive.

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

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

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

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

“would be like yelling fire in a crowded theater.”<sup>143</sup> However, as discussed below, the lack of notification could have enabled Fr. Ratigan to continue to have contact with unwitting parish families and children.

### **10. Assignment to Vincentian Mission House**

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

Bishop Finn formally notified Fr. Ratigan of the restrictions he was to follow in a letter dated February 10, 2011<sup>144</sup>. The restrictions were as follows:

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

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<sup>143</sup> In her interview, Principal Hess was asked whether the Diocese should have notified St. Patrick’s parents about the laptop. She voiced similar concerns about the impact of such an announcement on the school.

<sup>144</sup> Letter from Bishop Finn to Father Shawn Ratigan dated February 11, 2011

<sup>145</sup> Fr. Ratigan continued to have counseling sessions with Dr. Fitzgibbons via conference call.

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

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

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

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<sup>146</sup> Covenant Eyes is a computer software program whereby a counselor receives a report of any internet sites visited by the computer user.

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

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

### **11. A Flag of the Reddest Color**

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

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<sup>147</sup> Interviews with Fr. Michael Mulhearn and Fr. Dick Gielow, August 16, 2011

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

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

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

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

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

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<sup>148</sup> Email from Deacon Mike Lewis to Msgr. Murphy March 28, 2011

<sup>149</sup> Email chain from Bishop Finn to Dr. Fitzgibbons, March 31, 2011

<sup>150</sup> Email from Msgr. Offutt to Bishop Finn, April 8, 2011, Subject: Duty Bound Comment

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

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

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

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<sup>151</sup> Email chain with Becky Summers to Jon Haden, May 25, 2011

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

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

## **12. Report to Police and Arrest**

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

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<sup>152</sup> Email from Solon Haynes to Msgr. Murphy, Becky Summers, May 24, 2011

<sup>153</sup> Interview of Msgr. Murphy, August 3, 2011

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

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

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

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

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

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

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

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

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

<sup>155</sup> Interviews of Paula Moss, Msgr. Offutt and Rebecca Summers

At the listening session at the Co-Cathedral, participants were asked to write a “hurt” and a “hope” on cards which would be read aloud. Among the “hurts” conveyed were two anonymous comments:<sup>156</sup>

“The images of my daughter’s private areas that the FBI showed me, they are forever burned into my brain. ... Shawn Ratigan was in my house, around my children in February, and I thought my children were completely SAFE!!”

“You let one of your priests hurt my children and you saw the pictures and decided to cover it up. That monster was in my house in February 11’ to prey on my children and I let him in, since you felt you were above the law and made that decision not to turn in photos of my kids.”

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

### **13. Conclusions**

#### **a. The Hess Report**

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

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<sup>156</sup> Email from Rebecca Summers to Jon Haden, June 20, 2011

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

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

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

#### **b. Fr. Ratigan's Laptop**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **E. Conclusions**

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

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

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

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

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

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

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

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

## Section V

### **Recommendations**

#### **A. Introduction**

#### **B. Recommendations and Rationale**

##### **1. Bolstering the Process for Reporting and Acting Upon Suspected Abuse**

###### Recommendations

- 1-1.0 Office of the Ombudsman
- 1-2.0 Independent Review Board
- 1-3.0 Procedure for Handling Complaints of Abuse by Minors

###### Rationale and Comment

- (1) General Comment
- (2) Office of the Ombudsman
- (3) Independent Review Board
- (4) Procedure for Handling Complaints

##### **2. Clarifying the Scope of the Policy**

###### Recommendations

- 2-1.0 Individuals whose conduct is covered
- 2-2.0 Covered conduct
- 2-3.0 The standard for determining whether an allegation is credible
- 2-4.0 What constitutes a complaint

###### Rationale and Comment

- (1) General Comment
- (2) Covered Individuals
- (3) Covered Conduct
- (4) Preponderance of the Evidence

##### **3. Expanding the Extent of Reporting to Authorities and the Public**

###### Recommendations

- 3-1.0 Reporting to Civil Authorities
- 3-1.1 Reporting to the public

###### Rationale and Comment

- (1) Reporting to authorities
- (2) Reporting to the public

##### **4. Providing Support for Victims**

###### Recommendations

- 4-1.0 The role of the Victim Advocate

###### Rationale and Comment

- (1) General Comment

##### **5. Ensuring the Adequacy of Training**

###### Recommendations

- 5-1.0 Expanding the scope of training
- 5-2.0 Safe Environment Programs Coordinator
- 5-3.0 Training for priests and clergy
- 5-4.0 Making materials available

###### Rationale and Comment

- (1) General Comment

#### **A. Introduction**

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

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

- (1) the process for reporting and acting upon suspected abuse;
- (2) the scope of conduct subject to the Policy;
- (3) the extent of reporting to civil authorities and the public;
- (4) the means by which support is extended to victims; and
- (5) the adequacy of training and compliance with the Policy and codes of conduct.

## **B. Recommendations and Rationale**

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

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

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

*Recommendations*

**1-1.0 Office of the Ombudsman**

(a) The Ombudsman should be responsible for:

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

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

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

**1-2.0 Independent Review Board**

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

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

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

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

(c) Five members shall constitute a quorum.

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

### **1-3.0 Procedure for Handling Complaints of Abuse by Minors**

(a) Initial action and reporting.

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

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

(b) Ombudsman's independent reporting duties.

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

(c) Ombudsman's initial investigative action.

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

- ii. It will be the duty of the responsible supervisor to advise the priest or employee that he or she is being placed on administrative leave effective immediately, and that his or her cooperation in the investigation is requested.
  - iii. The Ombudsman shall notify the Vicar for Clergy and Chair of the IRB.
  - iv. Upon notification of a serious allegation, the IRB Chair will convene a meeting of the Independent Review Board within seven days to hear the report of the Ombudsman.
  - v. The Ombudsman shall immediately conduct an appropriate investigation into the allegation.
- (3) If the allegation could not be true, or if the allegation does not involve one of the above serious allegations, or if the allegation occurred more than five years ago:
- i. The Ombudsman shall notify the IRB Chair and Vicar for Clergy.
  - ii. The Ombudsman will ensure that any investigation necessary to determine the nature of the allegation is conducted.
  - iii. The Ombudsman will prepare a written report on the actions taken and present that report to the IRB at its next quarterly meeting.
  - iv. The Ombudsman shall document all reports and related correspondence, phone calls, investigative steps and other matters related to complaints.

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

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

(e) Action by the Independent Review Board.

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

(f) The Bishop's Determination

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

- (3) If the Bishop determines the allegation is credible and constitutes abuse of a minor, the Bishop should take the following actions:
  - i. Remove the accused priest(s) from active ministry; and
  - ii. Make official notification to the Congregation of the Doctrine of Faith.

(g) Other IRB communications with the Bishop

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

***Rationale and Comment***

**[1] General Comment**

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

## **[2] Office of the Ombudsman**

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

## **[3] Independent Review Board**

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

## **[4] Procedure for Handling Complaints**

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

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

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

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

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

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

**2. Recommendation Two:  
Clarifying the Scope of the Policy**

***Recommendations***

**2-1.0 Individuals whose conduct is covered**

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

**2-2.0 Covered conduct**

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

(1) Sexual abuse of a minor

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

(2) Sexual misconduct with a minor

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

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

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

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

- (a) The standard for determining that an allegation is credible should be preponderance of the evidence. Preponderance of the evidence is defined as more likely than not.
- (b) The IRB should be free to determine that some facts or circumstances making up an allegation are credible, while some are not.

**2-4.0 What constitutes a complaint**

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

***Rationale and Comment***

**[1] General Comment.**

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

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

## **[2] Covered Individuals**

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

## **[3] Covered Conduct**

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

#### **[4] Preponderance of the Evidence**

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

### **3. Recommendation Three: Expanding the Extent of Reporting to Authorities and the Public**

#### ***Recommendations***

##### **3-1.0 Reporting to Civil Authorities**

###### **(a) Initial action and reporting.**

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

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

###### **(b) Ombudsman's independent reporting duties.**

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

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

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

### **3-2.0 Reporting to the public**

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

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

### **Rationale and Comment**

#### **[1] Reporting to authorities**

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

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

## **[2] Reporting to the public**

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

### **4. Recommendation Four: Providing Support for Victims**

#### ***Recommendations***

##### **4-1.0 The role of the Victim Advocate**

- (a) The Advocate will be solely responsible for meeting with victims and offering support. The Advocate may coordinate professional counseling for victim's pursuant to the Diocese's current policies, or turn to a priest to offer an apology to a victim on behalf of the Diocese.
- (b) As before, the Advocate should be a professional in the field of health care, mental health care.
- (c) The Advocate should report abuse to the Ombudsman and, if desired by the victim, be present at any interviews and IRB proceedings. The Advocate should continue to be an *ex officio* member of the IRB who may attend meetings with or without a victim.
- (d) The Advocate should continue to have knowledge of and be able to develop working relationships with various victims' outreach and support groups.
- (e) The Advocate should foster an approach and environment that encourages abuse victims to come forward, make complaints/reports of abuse to the Diocesan Ombudsman, and utilize the reporting and investigative process outlined above.
- (f) The Advocate should encourage public support of victims of abuse by the leadership of the Diocese.

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

### ***Rationale and Comments***

#### **[1] General comment**

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

#### **5. Recommendation Five: Ensuring the Adequacy of Training**

### ***Recommendations***

#### **5-1.0 Expanding the scope of training**

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

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

(b) A Communications/Safety team should be established to jointly develop the process for continued education throughout the Diocese related to the above-mentioned subjects. This team could consist of the following individuals:

- (1) Ombudsman
- (2) Victim's Advocate
- (3) Safe Environment Programs Coordinator
- (4) Communications Director

### **5-2.0 Safe Environment Programs Coordinator**

- (a) The Safe Environment Programs Coordinator should oversee compliance and to conduct spot checks related to compliance.
- (b) It may be necessary to make the Safe Environment Coordinator position a full time job or, if funding is unavailable, to assign these duties to the Ombudsman.
- (c) If funding exists for a separate Safe Environment Coordinator, the position's duties could include monitoring compliance with the Charter and Diocesan Safety Policies by the Ombudsman, IRB, Vicar for Clergy, Victim Advocate and other Diocesan officials.

### **5-3.0 Training for priests and clergy**

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

### **5-4.0 Making materials available**

- (a) Safety training materials could be made available through the Diocesan website and other avenues of mass communication, including but not limited to:
  - (1) Literature related to warning signs and child safety
  - (2) Information on victim outreach and support groups
  - (3) Child safety policies
  - (4) Abuse reporting procedures

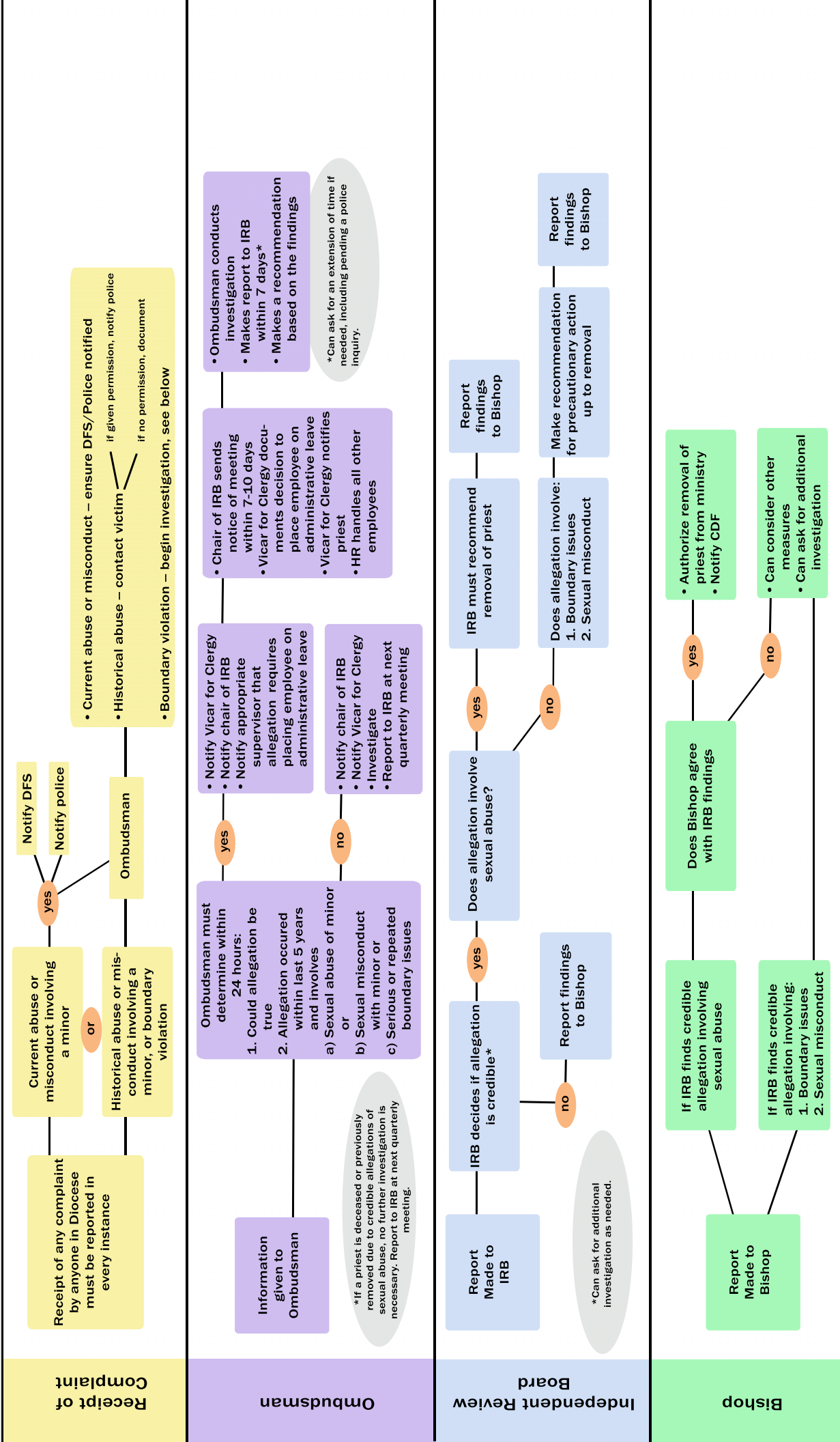
- (b) A quick-reference card could be developed for distribution to students, employees and volunteers with information to report allegations of child abuse including contact information for local law enforcement, the Children's Division and the Ombudsman.

### ***Rationale and Comment***

#### **[1] General comment**

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

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



**The Conduct of the Investigation  
and Preparation of the Report**

**Graves Bartle Marcus & Garrett, LLC**

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

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

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

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

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

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