

**FORGIVE ME FATHER, FOR I HAVE SINNED:
The Victims, The Abusers, The Church and The Law**

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"If we claim to be without sin, we deceive ourselves and the truth is not in us. If we confess our sins, he is faithful and just and will forgive us our sins and purify us from all unrighteousness. If we claim we have not sinned, we make him out to be a liar and his word has no place in our lives"

1 John 1:8-10¹

INTRODUCTION

In a world where children are growing up so very fast, there are few places that can offer the children of today a sanctuary from that world. Traditionally, the Church has been one such sanctuary. After all, the Church is the beacon of morality of the society in which it dwells. The Church is in the practice of molding the morality of its children through bible study, communion classes, confirmation classes, altar boy-ships, and so on. Therefore, from an observant parent's perspective, it was not expected that the Church served anything but the best interest of the child.

Anne Jyono was only five years old when a priest that her family knew and loved began to rape her in her very own home. The abuse occurred until junior high school. The priest was Father Oliver O'Grady of St. Anne's Church in Lodi, California. He would ask permission to tuck her into bed at night. She would wake up and he would be on top of her. He'd say, "I'm not hurting you.' But, he was [hurting her]."² When Father O'Grady would drive Anne to visit a friend who lived far away, he would make her "perform oral sex on him... the whole way."³ All would agree that such a violation of a child is the epitome of what is **not** in the best interest of the child.

The best interest of the child is a phrase of art erected to signify the importance of the child in the legal world. "The child is singled out by law, as by

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¹ The Bible, 1 *John* 1:8-10.

² Richard Jerome et al., *The Sins of the Father*, PEOPLE MAGAZINE, November 27, 2006, at p. 185.

³ *Id.* at 186.

custom, for special attention.”⁴ When children are involved, it is said that we must consider what is in the best interest of the child. Joseph Goldstein, Anna Freud, and Albert Solnit explain that “Children... are presumed to be incomplete beings who are not fully competent to determine and safeguard their interests.”⁵ Family law and family courts use this phrase as their mantra, as they deal with children in the context of the law. Although the state does not like to interfere with the family unit, state intervention is sometimes needed. “The traditional goal of such interventions is to serve ‘the best interests of the child.’”⁶ The best interest of the child is what is to be sought at all costs. And, “the law must make the child’s needs paramount.”⁷

Our society is also concerned with the best interest of the child. Adults are charged with protecting the children of their communities. Parents, teachers, and the clergy are expected to be beacons of safety – they are to serve as the protectors, not the abusers. Unfortunately, that is not always the case. In fact, it is this obligation to protect that provides the opportunity for abuse to occur.

Child abusers come in all shapes and sizes, in all regions of the country and from all professions. Over the last few years, one particular profession has received a great deal of publicity over their involvement in the sexual abuse of children – the priesthood. “Forgive me father for I have sinned” has taken on another connotation entirely beyond that of the typical scope of confession.

The media delved into the reporting of abusive priests.⁸ In 2004, the Church, in response, through the United Conference of Catholic Bishops’ National Review Board, asked the John Jay College of Criminal Justice in New York City to investigate the phenomenon to discover the cause and extent of

⁴ JOSEPH GOLDSTEIN, ANNA FREUD, & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD: VOLUME I*, 3 (The Free Press ed., 1979) [hereinafter *BEYOND THE BEST INTERESTS*].

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 7.

⁸ See, e.g., the Boston Globe’s *Spotlight Investigation: Abuse in the Catholic Church*, at <http://www.boston.com/globe/spotlight/abuse/> (last visited Dec. 18, 2006). This website provides the most comprehensive coverage by a media outlet of the sexual abuse epidemic in the Church (for the city of Boston). See also NPR: *The Catholic Church and Sex Abuse*, at <http://www.npr.org/news/specials/priests/> (last visited Dec. 18, 2006); PBS Online News Hour: *Crisis in the Catholic Church*, at http://www.pbs.org/newshour/bb/religion/church_in_crisis.html (last visited Dec. 18, 2006); and JS Online: Milwaukee Journal Sentinel: *Abuse in the Catholic Church*, at <http://www2.jsonline.com/news/state/churchabuse/> (last visited Dec. 18, 2006).

sexual abuse present in the church. Many of the statistical results of that study are cited in this paper.⁹

This paper explores many facets of the phenomenon of child sexual abuse in the Catholic Church. Part I describes the victims of the church, who they are and what they allegedly endured. Part II explores the abusers of the church, providing the allegations against these priests in number and type. Part III elaborates upon the role of the law in terms of criminal penalties and theories of liability as well as the actions taken (or not taken) by the Church. Part IV addresses the question of the cost of the abuse to the Church, in particular the financial and spiritual cost.

I. THE VICTIMS OF THE CHURCH

GENDER

According to the Rain, Abuse & Incest National Network (RAINN) website,¹⁰ 9 out of every 10 rape victims are female.¹¹ On the other hand, 1 out of every 10 rape victims is male.¹² Clearly, women are more likely to be the victim of a rape than men. However, when it comes to the sexual assault of children, the gender gap is not so extreme. For example, according to the 1995 Child Maltreatment Study of the US Department of Health and Human Services, Administration for Children and Families, out of the 126,000 children who were “victims of either substantiated or indicated sexual abuse,” 75% were girls.¹³

⁹ I was a graduate student at John Jay College of Criminal Justice at the time the United Conference of Catholic Bishops’ National Review Board approached John Jay to investigate the extent of the abuse. My professor, Karen Terry (Professor Terry was the principal investigator on the John Jay Study), offered me a position as a research assistant on the project. I signed on eagerly.

As a research assistant, I helped to create a database of all of the dioceses, eparchies, and religious institutes, complete with mailing information. I also helped to package up the surveys to prepare them for mailing to the dioceses, eparchies, and religious institutions. Once the surveys were returned, I helped to log them in to a response tracking database. Then, I took part in entering the information contained in the surveys into a statistical database. I estimate that I entered 1,000 surveys of the 10,000+ surveys that were returned to us. Prior to publication of the study, I helped to run permutations on the data as well as to proofread portions of the report.

¹⁰ See RAINN: The Victims of Sexual Assault, at <http://www.rainn.org/statistics/victims-of-sexual-assault.html?PHPSESSID=7fec5e9e00582b7e725f92c4c9699927> (last visited Mar. 13, 2006).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

In an interesting twist, the John Jay College Study¹⁴ showed a predominately male victim/male offender pattern. Although female children were victimized, the surveys utilized by the John Jay College research team resulted in a very clear gender preference on the part of the abusive priests. Approximately one-fifth of the victims reflected within the study were female; in contrast, approximately four-fifths of the victims reflected within the study were males. See Table 1 below for a reflection of these numbers.

¹⁴ KAREN TERRY, ET AL. THE NATURE AND SCOPE OF THE PROBLEM OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES: A RESEARCH STUDY CONDUCTED BY THE JOHN JAY COLLEGE OF CRIMINAL JUSTICE (2004) [hereinafter THE JOHN JAY COLLEGE STUDY].

The methodology of the study was comprised of the construction of surveys that were then mailed out to every diocese, eparchy, and religious institute in the United States that comprised the total population of U.S. based Catholic priests. Three separate surveys were constructed and mailed out: the Diocesan Profile, the Cleric Survey, and the Victim Survey.

The Diocesan Profile focused on the “institution as a whole.” *Id.* Questions were asked regarding demographic, non-identifying information, as well as questions that spoke to the “scope of the problem within that unit” such as the total number of allegations made and the total number of individuals that made allegations. *Id.*

The Cleric Survey focused on individual priests. This survey was to be completed based upon “existing files and records” of those priests that had been the focus of allegations. *Id.* Questions focused upon the history of the priest (whether the priest had been transferred, whether the priest had been a victim of sexual abuse, etc.). Additional questions focused upon information on the children that had lodged the allegations (gender, age, number). Lastly, there were questions that focused upon the actions taken by the church in response to the allegations (transfer, administrative leave, referred for treatment, etc.).

The third survey, the Victim Survey, focused upon individual incidents of alleged abuse. Each incident warranted its own survey. Therefore, if a particular priest had three allegations of abuse, three Victim Surveys were to be filled out and packaged together as information on that particular, anonymous priest. Those allegations that were determined to be false, that were withdrawn, or where the priest was exonerated were not to be submitted in the study. The survey was to be completed “based on the information about the victim in the alleged abuser’s file.” *Id.* Information was requested regarding the victim (gender, age, method of allegation, etc.), the incident itself (type of incident), and the financial impact of the incident (fees paid for treatment, legal fees, victim compensation, etc.).

The reliability of the survey instruments is excellent. Prior to the mailing of the surveys, there was extensive pilot testing of the wording of the surveys. Feedback was given from the National Review Board, the Office of Child and Youth Protection, and a number of priests in terms of clarity and content of the instruments. In addition there was a “formal pre-test” conducted. *Id.* The study received the full support of the United States Conference of Catholic Bishops, and this also worked to ensure as much cooperation by the dioceses, eparchies, and religious institutes as possible. In addition, the fact that the surveys were filled out by someone other than the offender, based on the church’s files, helped to make the responses more reliable as well.

Table 1.

GENDER OF ALLEGED VICTIM¹⁵

Gender	Count	% of Total
Male	8,499	80.9%
Female	2,004	19.1%
Transsexual	2	.0%
Total	10,505	100.0%

In terms of gender, it is not always so that sex offenders offend against their same sex.¹⁶ Table 2, below, shows that the offenders investigated in the John Jay College Study were approximately two-thirds male only focused, approximately one-quarter female only focused, and a small percentage mix of male-female focus in terms of who they chose as their victims. As the offenders were priests, and priests are generally male, this study shows that a two-thirds majority of male offenders offended only against male children.

Table 2.

GENDER OF ALLEGED VICTIMS, BY NUMBER OF ALLEGED ABUSERS¹⁷

Gender	Count	Percent of All
Male and Female	157	3.6%
Female Only	991	22.6%
Male Only	2,805	64%
Gender Unknown	429	9.8%
Total	4,230	100%

¹⁵ Reproduced from THE JOHN JAY COLLEGE STUDY, available at <http://www.nccbuscc.org/nrb/johnjaystudy/incident3.pdf> (Nov. 12, 2006) (98.5% of surveys reported the gender of the alleged victim).

¹⁶ Professor K. Terry, Personal Communication, Spring 2003.

¹⁷ Reproduced from THE JOHN JAY COLLEGE STUDY, available at <http://www.nccbuscc.org/nrb/johnjaystudy/cleric5.pdf> (last visited Nov. 12, 2006) (In 429 surveys, the gender of the alleged victim was not identified.).

AGE

The age of the victims is extremely important in understanding the extent of the sexual abuse and the inaction of the Church in protecting its youngest members. Children are “seen as dependent and in need of direct, intimate, and continuous care by the adults who are personally committed to assume such responsibility.”¹⁸ As such, the inaction of the Church to protect these children and the extent of the abuse that they suffered at the hands of those priests entrusted with their moral wellbeing is of the utmost importance; such crimes were committed by those adults who were charged with the responsibility to care for these “dependent” children. And, the abuse was not centered on the “older” children, but also on the “youngest” church members.

The John Jay College Study reflected an array of victims over a range of ages from age 1 to age 17. Pedophiles are those offenders that are interested in victims who have not yet reached puberty. So, those child victims at or below the age of twelve were the victims of pedophilic priests. Hebophiles are those offenders who would only be interested in a victim that had reached puberty. As such, those child victims over the age of twelve were the victims of hebophilic priests. The John Jay College Study shows that the victims reflected within their study surveys were approximately half and half in terms of whether they were the victims of a hebophile priest (52.7%) or a pedophile priest (47.3%). See Table 3 below for an age breakdown of age victimology.

Table 3.

VICTIM’S AGE AT FIRST INSTANCE OF ABUSE¹⁹

Age in Years	Count	% of Total
1	4	.0%
2	11	.1%
3	22	.2%

¹⁸ BEYOND THE BEST INTERESTS, *supra* note 4, at 3.

¹⁹ Reproduced from THE JOHN JAY COLLEGE STUDY, *available at* <http://www.nccbuscc.org/nrb/johnjaystudy/incident3.pdf> (last visited Nov. 12, 2006) (Eighty-four percent of surveys included the age of the alleged victim at the time the abuse occurred or at the time the abuse began. It is important to understand that in retrospective studies, particularly where there is a delay in the reporting of the events, the possibility that alleged victims did not remember the specific dates correctly must be considered).

4	41	.5%
5	82	1.0%
6	158	1.8%
7	220	2.5%
8	369	4.1%
9	362	4.0%
10	752	8.4%
11	895	10.0%
12	1,323	14.7%
13	1,141	12.8%
14	1,188	13.2%
15	1,042	11.6%
16	769	8.6%
17	577	6.5%
Total	8956	100%

II. THE ABUSERS OF THE CHURCH

The John Jay College Study discovered that slightly more than half of the accused priests/deacons had only one allegation of sexual abuse against them. What is even more interesting is that the percentage of priests/deacons with allegations of abuse against them numbering ten or more is only 3.5%.

When the media delved into the phenomenon of sexually abusive priests, they focused on the few priests that had the large number of allegations, mischaracterizing the rampant nature of the extent of the sexual abuse in the Catholic Church.²⁰ Granted, the priests/deacons with one allegation of abuse (55.7%), two to three allegations of abuse (26.9%), or even four to nine allegations of abuse (13.9%) are examples of the rampant nature of the abusive nature within the clergy. However, by focusing on the 3.5% of the clergy with allegations of ten or more, the media mischaracterized the nature of the abuse in an effort to lend sensationalism to an event that was already sensational enough. See Table 4, below, for a breakdown of the allegations.

²⁰ See, e.g., Boston Globe, *Spotlight Investigation: Abuse in the Catholic Church: Predator Priests*, at <http://www.boston.com/globe/spotlight/abuse/predators/> (last visited Dec. 18, 2006); Nancy Phillips & David O'Reilly, *An Immoral Cover-up*, THE PHILADELPHIA INQUIRER, available at <http://www.philly.com/mld/inquirer/news/nation/12707654.htm> (last visited Dec. 18, 2006); and Lori Burling, *Louisville Priest Named in Suits is Indicted: Retired Cleric is Facing Sexual Abuse Charges*, LEXINGTON HERALD-LEADER, June 27, 2002, at B1.

Table 4.

ALLEGATIONS AGAINST PRIEST / DEACONS, GROUPED BY NUMBER OF ALLEGATIONS²¹

Number of Allegations	Count	Percent
1	2,411	55.7%
2-3	1,160	26.9%
4-9	600	13.9%
10+	149	3.5%
Total	4,311	100.0%

The mischaracterization of the nature of the abuse, oddly enough, may have actually served to bring the epidemic to the attention of the social, legal, and political world in a way that mobilized all groups to address the issue of sexual abuse in the Church. By creating such a media frenzy, the Church could no longer hide behind its robes. The pressure that the media exposure created, I believe, may have been one of the major driving forces behind the Church's willingness and desire to have outsiders (i.e. the John Jay College Study) investigate the situation. Furthermore, the media exposure could have possibly helped to motivate other victims of clergy abuse to come forward and report their own abuse.

Another element of the sex abuse scandal of the Catholic Church that has received a great deal of press in the media is the phenomenon of the church transferring abusive priests to other diocese thereby allowing them to continue to offend in a new area unchecked. This phenomenon of transferring priests is an important element to understand. Such transferring of priests by the Church is a clear example of the lack of satisfactory responses that the Church gave at times when left to their own devices to deal with the abusive priests.

As the John Jay College researchers discovered, the practice of transferring abusive priests was not as unchecked as initially reported in the news. While the transferring of priests to other dioceses is shameful, it was not one of the *main* causes that contributed to the rampant nature of the abuse as initially

²¹ Reproduced from THE JOHN JAY COLLEGE STUDY, available at <http://www.nccbuscc.org/nrb/johnjaystudy/cleric5.pdf> (Nov. 12, 2006).

implied by the media (although it was *a* cause). In fact, only 143 priests/deacons were transferred to a new diocese in which they began to once again offend. These 143 transfers, as the John Jay College researchers term them, make up only 992 of the 11,404 allegations (with an average of 4 allegations per priest), which totals 8.7% of the total allegations. Table 5 offers you a comparison of priests with multiple allegations (Transfers v. 10+ Group v. All Priests).

Table 5.

PRIESTS WITH MULTIPLE ALLEGATIONS²²

	Transfers (N = 143)	10+ Group (N = 149)	All Priests (N = 4,392)
Total Allegations	992	2,960	11,404
	8.7%	26%	100%
Median for Allegations, per Priest	4	14	1
	1,078	3,248	4,840
Allegations and Potential Allegations	9.5%	28%	100%

III. THE ROLE OF THE LAW

"Therefore no one will be declared righteous in His sight by observing the law; rather, through the law we become conscious of sin."

Romans 3:20²³

THE PRIESTS

The law has placed some of the offending priests in prison or jail. Some priests have received house arrest/electronic monitoring, probation, fines, or community services. Some have received a mixture of such penalties. Thus, in terms of punishment, the criminal law has dealt with the abusive priests as they would deal with any other pedophile or hebophile, subjecting them to all the same legal penalties. Table 6 offers a breakdown of the criminal penalties imposed on the offending priests.

²² Reproduced in part from THE JOHN JAY COLLEGE STUDY, available at <http://www.nccbuscc.org/nrb/johnjaystudy/cleric6.pdf> (Nov. 12, 2006) (The "transfers" are those priests that had allegations in 2 or more dioceses. The "10+ Group" is comprised of those offenders that have 10+ victims and are considered by the researchers to be "serial abusers.").

²³ The Bible, *Romans* 3:20.

Table 6.

CRIMINAL PENALTIES²⁴

Penalty	Number of Priests	Percent
Prison ²⁵	100	73%
Jail	61	44%
House Arrest or Electronic Monitoring	7	5%
Probation	122	88%
Fine	25	18%
Community Service	18	13%
Other	28	20.5%

By subjecting the abusive priests to the same penalties as any other sexual offender, the law is sending a message that the sexual abuse of children will not be permitted no matter who the perpetrator is. The fact that the offender is a priest (as is the focus of this paper), a teacher, or a parent, shouldn't matter. The children need to be protected from all sexual offenses by all sexual offenders, period. That is what is in their "best interest."

THE CATHOLIC CHURCH

But what of the culpability of the Catholic Church itself? The Church as an institution has not yet been convicted under any criminal law statute. So, how is one to hold them responsible for the sexual abuse suffered by the children at the hand of their priests? Is there a contract fiduciary obligation? What about the doctrine of respondeat superior? Would a claim of negligent supervision suffice?

In terms of the possible contractual fiduciary obligation, could such an obligation arise and bind the Church? Unfortunately, there is no legal relationship of principal-agent in the absence of granted authority.²⁶ Thus, when priests

²⁴ Reproduced from THE JOHN JAY COLLEGE STUDY, *available at* <http://www.nccbuscc.org/nrb/johnjaystudy/cleric7.pdf> (last visited Nov. 12, 2006) (This is a Multiple Response Table. The categories are not mutually exclusive, since an individual may have been sentenced to several different penalties by the court. Three men were sentenced to spend the rest of their lives in prison, and two others were required to register as sex offenders.).

²⁵ Prison results when a priest is sentenced to more than 1 year incarceration whereas jail results when the priest is sentenced to less than 1 year of incarceration.

²⁶ See *Wood v. Benedictine Soc. Of Alabama, Inc.*, 530 So. 2d 801 (Ala. 1988) (The ecclesiastical relationship of itself does not set up a contract or legal relationship on which to base liability...); *Reifsnnyder v. Dougherty*, 301 Pa. 328, 152 A. 98 (1930) [the ecclesiastical relationship of bishop

sexually abused the children of the Church, they were not violating any legal contractual fiduciary obligation. There is no authority to overstep the bounds of the clergy. However, “a pastor’s unauthorized act can be ratified or affirmed by the church,”²⁷ ²⁸ and “an incorporated church will be bound on the ground of estoppel if with knowledge of the minister’s unauthorized acts the trustees accepted and used for, church purposes the benefits resulting therefrom.”²⁹

Could the doctrine of respondeat superior be enough to reach the Church? Unfortunately, churches and religious societies are generally not liable for acts of sexual misconduct of their clergy unless those acts are within the scope of employment.³⁰ Some courts have construed the scope of employment very narrowly, holding that the conduct must be in accordance with the principles of the church or in some way in furtherance of the purpose of the religious organization³¹ which typically results in a finding of no liability. However, other courts have construed the scope in more broad terms holding that conduct that arises within the time and space limits of the employment, with at least some motivation by the cleric based on a desire to serve the employer,³² can result in a finding of liability.³³

and priest will not create the legal relationship of principal and agent...]; and, *C.A. Dodge Co. v. Western Avenue Tabernacle Baptist Church*, 247 Mass. 330, 142 N.E. 64 (1924) [has no power to bind the church by acts outside the authority granted].

²⁷ *Brooks v. January*, 116 Mich. App. 15, 321 N.W.2d 823 (1982).

²⁸ Despite the fact that a Church can ratify the unauthorized acts of a priest, in the sexual abuse context, a court is yet to find the Church liable under such a theory. Noteworthy is the case of *DeBose By and Through DeBose v. Bear Valley Church of Christ*, 928 P.2d 1315 (Colo. Dec. 23, 1996). Initially the jury found the church liable for the sexual abuse of the minor on a number of theories, one of which was a theory of ratification. On appeal, the court reversed and remanded the initial decision. On certiorari, the court reversed the decision of the appellate court, finding liability. However, the court did not mention the theory of ratification in its reversal.

²⁹ *Martin v. St. Aloysius Church*, 38 R.I. 339, 95 A. 768 (1915).

³⁰ See generally *Doe v. Hartz*, 52 F. Supp. 2d 1027 (N.D. Iowa 1999); *DeBose By & Through DeBose v. Bear Valley Church of Christ*, 890 P.2d 214 (Colo. Ct. App. 1994), cert granted, (#95SC42)(June 19, 1995) and judgment rev'd on other grounds, 928 P.2d 1315 (Colo. 1996); *Parks v. Kownacki*, 305 Ill. App. 3d 449, 238 Ill. Dec. 547, 711 N.E.2d 1208 (5th Dist. 1999), appeal allowed, 185 Ill. 2d 632, 242 Ill. Dec. 140, 720 N.E.2d 1095 (1999) and judgment rev'd on other grounds, 193 Ill. 2d 164, 249 Ill. Dec. 897, 737 N.E.2d 287 (2000); *Mrozka v. Archdiocese of St. Paul and Minneapolis*, 482 N.W.2d 806 (Minn. Ct. App. 1992); *Fearing v. Bucher*, 328 Or. 367, 977 P.2d 1163 (1999).

³¹ See generally *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997); *N.H. v. Presbyterian Church (U.S.A.)*, 1999 OK 88, 998 P.2d 592 (Okla. 1999); *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wash. 2d 699, 985 P.2d 262 (1999), as amended, (Sept. 8, 1999).

³² See *supra*, note 30.

³³ Personally, I don't believe that either interpretation is correct. Neither really allows for the Church to be found liable as often as it should. In the first instance, the Church would never deem

At the very least, could a cause of action for negligent supervision³⁴ provide some relief against the Church? In order to invoke the shadow of negligence, it is important that the abusive proclivities of the offending priests should be known or are known by the Church. In fact, where a religious society knew or should have known facts which would make a pastor's tortious sexual acts reasonably foreseeable, it can be liable for its own negligence in allowing the abuse to occur.³⁵ Liability can arise either through negligent hiring or supervision, and punitive damages can be awarded under certain circumstances.³⁶ Alas, in order to win on such a claim, a plaintiff must "plead specific facts about which the religious society knew or should have known"³⁷ and must "show an undue risk of harm that the minister in question would commit sexual abuse if he or she were employed by church."³⁸ However, with proof of the offending priests who were transferred due to their sexually abusive behavior, a plaintiff could make a successful claim for negligent supervision.

THE ACTIONS TAKEN (OR NOT TAKEN) BY THE CHURCH

The Roman Catholic Church is guided by canon law. Canon law is the legal system of the Church. According to Thomas P. Doyle, the "present canon law system and its predecessor, the 1917 Code, both have contained the legal

such conduct to be at one with the principles of the Church or in furtherance of its purpose. In the second instance, it might be a rare occasion where the cleric who abuses a child would be motivated to do so based upon a desire to serve the Church. Both interpretations could allow Church officials who are aware of the abuse to ignore it with impunity.

³⁴ Negligent supervision differs from respondeat superior in that respondeat superior requires the negligent act of the employee to be within the scope of employment, thus creating liability within the employer for any abuse that occurs within that scope; whereas negligent supervision speaks to an employer's negligent act in terms of ineffectively supervising his employee who he knows to possess a proclivity for sexual abuse.

³⁵ See *Kennedy v. Roman Catholic Diocese of Burlington, Vermont, Inc.*, 921 F. Supp. 231 (D. Vt. 1996); *Doe v. Norwich Roman Catholic Diocesan Corp.*, 309 F. Supp. 2d 247 (D. Conn. 2004); *Doe v. Archdiocese of Milwaukee*, 2005 WI 123, 700 N.W.2d 180 (Wis. 2005).

³⁶ See generally *Jane Doe I v. Malicki*, 771 So. 2d 545 (Fla. Dist. Ct. App. 3d Dist. 2000), approved and remanded, 814 So. 2d 347, 101 A.L.R. 5th 655 (Fla. 2002) [negligent hiring and supervision]; *Doe v. Archdiocese of Milwaukee*, 2005 WI 123, 700 N.W.2d 180 (Wis. 2005) [negligent supervision]; *Isely v. Capuchin Province*, 880 F. Supp. 1138, 99 Ed. Law. Rep. 797 (E.D. Mich. 1995) [punitive damages awarded].

³⁷ *Byrd v. Faber*, 57 Ohio St. 3d 56, 565 N.E.2d 584, 5 A.L.R. 5th 1115 (1991).

³⁸ *Roman Catholic Bishop v. Superior Court*, 42 Cal. App. 4th 1556, 50 Cal. Rptr. 2d 399 (4th Dist. 1996).

means to effectively confront and deal with clerical sexual abuse.”³⁹ The canon law prohibits sexual relations of the clergy, especially sexual relations with minors. Furthermore, the canon and *Code* also “provides a clear and detailed procedure for investigating allegations of sexual wrongdoing”⁴⁰ as well as a “provision for the ‘reparation of damages’ incurred as the result of a clerical crime.”⁴¹

Doyle explains the Church’s failure to respond to the scandal in accordance with canon law and the Code as the result of “conflicts inherent in certain aspects of Church structure, set forth in canon law.”⁴² Essentially, canon law failed because of an inherent loophole: who polices the police? Who follows behind the Church bureaucracy and leading bishops to ensure that they are upholding the Church law? “As with any legal system, it must be given life by those in charge of the community.”⁴³ In fact, says Doyle, “[T]he failure of canon law to prevent the widespread and horrendous damage wrought by sexually dysfunctional clerics is not due to the law itself but to those charged with implementing it, namely the Vatican bureaucracy and the individual diocesan bishops.”⁴⁴

It appears that, at least to some extent, Doyle is correct in his assessment of the failings of canon law. Those in power apparently chose to ignore the canon law procedural safeguards in favor of a quiet path of secretive, ineffective self-help to cover up its problems. From giving offending priests administrative leave to sending the offending priest for treatment to suspending the offending priests, the Church tried everything shy of involving the authorities. Thus, it is not the structure of the Church that failed the Church, but their canon law system and its abuse by those in power. By ignoring the canon law procedure, those in power provided inadequate responses to the epidemic, thus allowing for the perpetuation of more victims by the same priests or added offenses by one priest against one continual victim. Table 7 provides a picture of the different actions taken by the Church.

³⁹ Thomas P. Doyle, *Canon Law and the Clergy Sex Abuse Crisis: The Failure from Above*, in SIN AGAINST THE INNOCENTS: SEXUAL ABUSE BY PRIESTS AND THE ROLE OF THE CATHOLIC CHURCH 26 (Thomas G. Plante ed., 2004).

⁴⁰ *Id.* at 26.

⁴¹ *Id.* at 27.

⁴² *Id.* at 28.

⁴³ *Id.* at 28.

⁴⁴ *Id.* at 28.

Table 7.

PRIEST SUBJECT OF SUBSTANTIATED ALLEGATIONS: 1,872 SURVEYS⁴⁵

Actions Taken	Number	Percentage
Priest Reprimanded and Returned	172	9.2
Priest Referred for Evaluation	918	49
Priest Given Administrative Leave	699	37.3
Priest Sent for Spiritual Retreat	143	7.6
Priest Sent for Treatment	998	53.3
Priest Given Medical Leave	162	8.7
Priest Suspended	852	45.5
Priest Returned to Order, or Superior Notified	88	4.7
Priest Dead or Not Active at Time of Allegation	206	11
Priest Resigned or Retired	545	29.1
Priest Sought Laicization	113	6
Priest Removed from Clergy	115	6.1
No Action Taken	49	2.6
Other Action Taken	444	23.7

IV. THE COST OF ABUSE TO THE CHURCH

THE COST OF ABUSE TO THE CHURCH: FINANCIAL COST

It is common knowledge (thanks to the media) that the Archdiocese of Boston famously paid a settlement figure of \$85 million, but the financial cost to the Church is even higher than that amazing figure.⁴⁶ The John Jay College researchers discovered that, in total, the Catholic Church as a body has paid upwards of \$572 million (in addition to the \$85 million). However, approximately \$211 million dollars of that figure was paid by insurance. Table 8 provides a breakdown of the financial aftermath of the abuse.

⁴⁵ Reproduced from THE JOHN JAY COLLEGE STUDY, *available at* <http://www.nccbuscc.org/nrb/johnjaystudy/response3.pdf> (last visited Nov. 12, 2006).

⁴⁶ See *infra* Table 8.

Table 8.

**TOTAL COSTS PAID BY DIOCESES AND RELIGIOUS COMMUNITIES, BY
 TYPE OF EXPENDITURE⁴⁷**

Type of Cost	Diocese and Eparchy Costs	Religious Order and Province Costs	Sum Total Costs for Years 1950 to 2002
Alleged Victim Compensation Costs	\$420,112,633.03*	\$55,562,202.70	\$475,674,835.73*
Compensation Costs Covered by Insurance	(\$182,800,358.58)	(\$22,765,455.82)	(\$205,565,814.40)
Alleged Victim Treatment Costs	\$19,828,656.56	\$5,148,031.36	\$24,976,687.92
Alleged Victim Treatment Covered by Insurance	(\$5,019,729.33)	(\$524,994.36)	(\$5,544,723.69)
Priest Treatment Costs	\$27,607,676.21	\$5,785,963.49	\$33,393,639.70
Priest Treatment Costs Covered by Insurance	(\$6,230,276.31)	(\$1,182,575.14)	(\$7,412,851.45)
Attorney Costs for Legal Representation	\$32,033,226.55	\$6,428,704.05	\$38,461,930.60
Total Cost**	\$499,582,192.35*	\$72,924,901.60	\$572,507,094.00*

⁴⁷ Reproduced from THE JOHN JAY COLLEGE STUDY, *available at* <http://www.nccbuscc.org/nrb/johnjaystudy/Costs.pdf> (last visited Nov. 12, 2006)
 (*These figures do not include the highly publicized settlement figure of \$85 million in the Archdiocese of Boston. No Diocesan Profile contained a data point with this specific total compensation amount.
 **The total cost represents rows 1, 3, 5, and 7 because insurance coverage is already included in these figures. The insurance figures are placed in parentheses to indicate that they are not additive, as they are part of the total compensation and treatment.)

According to the Boston Globe, beginning in 2004 the Archdiocese of Boston led by Archbishop Sean P. O'Malley, in addition to closing many parishes, is attempting to raise money by selling property and fundraising within the religious community.⁴⁸ A further financial cost to the Church came in 2004 in the shape of a countersuit against the Archdiocese of Boston by an insurance company that the archdiocese accused of not making settlement payments to which the archdiocese was a party. The insurer, Lumbermens Mutual Casualty Company (a part of the Kemper Insurance Cos. of Illinois), stood their ground against non-payment arguing "there is no coverage for damages which were the proximate result of the intentional criminal conduct of priests who committed acts of sexual abuse against minors."⁴⁹ ⁵⁰

THE COST OF ABUSE TO THE CHURCH: SPIRITUAL COST

What about the spiritual cost of this onslaught of unspiritual acts perpetrated by those charged with molding the religious morality of the children of their community? How will society view the Church now? How will the Church make amends to the community that has supported them? When the best interest of the child is overlooked in order to protect an institution such as the Catholic Church, it is hard to gauge what the spiritual cost will be.

In the 1950 "Golden Age of churchgoing"⁵¹ there was "no denomination [that] could outdo the Catholics in levels of observance"⁵² – they attended mass, they prayed to God, they obeyed the mandates of the church, and they paid to keep the church going. David Gibson, in his book *The Coming Catholic Church: How the Faithful are Shaping a New American Catholicism*, describes a Church that was steadily losing influence and popularity from as early as the 1960s. The

⁴⁸ THE BOSTON GLOBE: Spotlight Investigation: Abuse in the Catholic Church, *available at* <http://www.boston.com/globe/spotlight/abuse/> (last visited Nov. 11, 2006).

⁴⁹ Shelley Murphy, *Insurer Files Countersuit Against Archdiocese*, THE BOSTON GLOBE, *available at* http://www.boston.com/globe/spotlight/abuse/stories5/042904_suit.htm (Apr. 29, 2004) (last visited Nov. 11, 2006).

⁵⁰ The case was ultimately settled by mediation in March 2005. Under the terms of the settlement, the Archdiocese dropped its case against Lumbermens. *See* Statement by the Archdiocese of Boston (Mar. 7, 2005), *available at* <http://www.rcab.org/News/releases/2005/statement050307.html> (last visited Dec. 20, 2006).

⁵¹ DAVID GIBSON, *THE COMING CATHOLIC CHURCH: HOW THE FAITHFUL ARE SHAPING A NEW AMERICAN CATHOLICISM* 63 (2003).

⁵² *Id.* at 63.

sex abuse scandal, when it came to light in the late 1990s and early 2000s, hit a Church that was still growing in numbers (at approximately 65 million strong).⁵³

Gibson notes in his book that the mass exodus from the Church that one would have expected to result from the eruption of the sex abuse scandal did not occur. Gibson poses the question, “So why do Catholics stay?” In the response to that question, Gibson determines that it is a number of things that keep Catholics chained to Catholicism and the Catholic Church – that the “reasons are varied and complex, ranging from the religious to the psychological to the merely habitual.”⁵⁴

A mass exodus would have made sense. When a betrayal of this magnitude occurs in a family for instance, the abused (and those that love them) eventually distance themselves from the abuser. As the Church is a familial institution that is supposed to espouse and portray the ideals of its members, such a huge betrayal should have had a detrimental effect on the Church. However, Catholics stayed with the Church. Gibson’s opinion on the issue makes perfect sense. The devoutly religious although disturbed by such actions would stay with the Church and pray for a “light at the end of the tunnel.” Those that feel that, psychologically, the Church is a place where they need to be will remain. The habitual Church goers would continue to attend the Church because that is what they are “trained” to do; where else would they go?

Paul Lakeland, in his essay titled *Understanding the Crisis in the Church*, theorizes that the sex abuse scandal was the result of “direct but epiphenomenal consequence of this bureaucratic blindness”⁵⁵ – a blindness that came about as the Church was mounting a “defensive reaction to modernity.”⁵⁶ The modern *laissez-faire* outlook on sex and the apparent sacrifice of morality pushed the Church into this defensive stance. In response, the Church “bureaucratize[d] and centralize[d] itself,”⁵⁷ ignoring the procedural safeguards of the canon law, in order to create a “professional class, self-perpetuating and self-policing”⁵⁸ in the name of defending the faith. Lakeland posits that the only result was the church’s

⁵³ Although growing in numbers, the Church membership was still a mere shadow of what it was in its Golden Age.

⁵⁴ GIBSON, *supra* note 51, at 86.

⁵⁵ Paul Lakeland, *Understanding the Crisis in the Church*, in *CHURCH ETHICS AND ITS ORGANIZATIONAL CONTEXT: LEARNING FROM THE SEX ABUSE SCANDAL IN THE CATHOLIC CHURCH 14* (Jean M. Bartunek et al. eds, 2006).

⁵⁶ *Id.* at 14.

⁵⁷ *Id.* at 14.

⁵⁸ *Id.* at 14.

misguided defense of the institution itself. Doyle would interject here that “[C]anon law has its relevance in the correct and honest application by the Church’s leadership. It becomes trivialized when bishops ignore it or apply it dishonestly for self-serving purposes.”⁵⁹ So, what could a possible next step be in the spiritual healing process? Lakeland suggests the possibility of a forward movement of spiritual healing brought about by the Spirit-inspired initiative of “the increasingly loud voice of faithful, well-educated lay Catholics demanding a role in the church.”⁶⁰

CONCLUSION

Consider the following confession: Forgive me Father for I have sinned. I have sinned against the Church and its patrons. Particularly, I have sinned against the children who were entrusted to me to mold in Your likeness. I have had sexual relations with the children.⁶¹

The Church claims that you will be forgiven if you confess your sins to the Lord, to Him. But, are there some sins from which even the Church cannot recover? The Church hears communion every Sunday, hearing the sins of their congregation and imposing religious penalties – say 10 ‘Hail Mary’s and you will be forgiven. In essence, the Church attempted to do the same with their misguided flock of offending priests. The Church tried a number of paths to self-police their abusive flock. Rather than “say 10 Hail Mary’s” the abusive priests were given treatment, evaluations, transfers, and so on (and probably some Hail Mary’s as well); then, the Church turned around and (for the most part) forgave them their sins.⁶² If the Church had followed canon law protocol, the epidemic may not have continued for so long unchecked by the law. True the problem of sexually abusive priests is a complicated one; nevertheless, by abiding by canon law protocol, the law could have intervened sooner rather than later in attempting to halt the epidemic.

There were some in the Church, however, who felt that such actions should not be ignored. In fact, one man named Father Fitzgerald, who was charged with treating some of the wayward priests, sent a communication to the Archbishop of Santa Fe urging:

⁵⁹ Doyle, *supra* note 39, at 28.

⁶⁰ Lakeland, *supra* note 55, at 14.

⁶¹ This is not a real confession. This is merely an example to make a point.

⁶² See Table 7, above, for a full breakdown of the paths taken by the Church in their effort to self-police.

If I were a bishop I would tremble when I failed to report them to Rome for involuntary laicization. Experience has taught us these men are too dangerous to the children of the parish and the neighborhood for us to be justified in receiving them here... They should ipso facto be reduced to lay men when they act thus.⁶³

Still, the Church did not turn them over to the authorities.

Perhaps this is the biggest betrayal of them all in this situation. Despite the fact that the Church is charged with the morality of its patrons, they let the immorality of their priests rule all. The flock was not protected from these wolves in priests' clothing. The canon law and the non-canon law alike were ignored, sacrificed in the name of protection of the institution of the Roman Catholic Church. Tom Beaudoin, a Catholic theology professor at Boston College, has called the sex abuse crisis "Our Catholic Watergate."⁶⁴ As the original Watergate did, the Catholic Watergate can prove to be a hard battle to overcome with faith intact.

Can the Church repair what they broke? The Church can never repair the havoc wreaked on the young victims of the offending priests. They have paid for the treatment of the victims and for their pain and suffering, but nothing can erase their victimization. But, can the Church repair the havoc they caused on their congregations, on their followers?

It is this younger generation that will make or break the Church, literally, and the Catholic Church as an institution has done much to put off the already suspicious younger generation. As Beaudoin has said, "We know now that our Church can cover up its spiritual deficits as well as World-Com or Enron can cover up their economic losses."⁶⁵ What's more is that although the younger generation may identify themselves as Catholics, their faith is actually "a 'self-constructed' identity drawing more from the 'blended faith' available in the American marketplace than from the ancient Catholic tradition."⁶⁶

⁶³ Thomas P. Doyle et al., *SEX, PRIESTS, AND SECRET CODES: THE CATHOLIC CHURCH'S 2000-YEAR PAPER TRAIL OF SEXUAL ABUSE* 54 (2006).

⁶⁴ GIBSON, *supra* note 51, at 77.

⁶⁵ *Id.* at 77.

⁶⁶ *Id.* at 79.

John T. McGreevy is quoted as saying that, “For people over 40 the defining moment of the Catholic Church was Vatican II. For people under 40 it is now the sex abuse crisis.”⁶⁷ The question remains: What will that definition be? Perhaps the philosophy of Anne Jyono will conquer all. Anne says: “I’ll be damned if I’m going to let Oliver O’Grady steal my Catholicism... What happened was a rape of the soul, but it’s your soul that keeps you going, lights your life. People wonder how I can still have faith. How can I not?”⁶⁸

⁶⁷ *Id.* at 77.

⁶⁸ Jerome et al., *supra* note 2, at 188.