



STATE OF NEW HAMPSHIRE
NH DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
CRIMINAL JUSTICE BUREAU
33 CAPITOL STREET, CONCORD, NH 03301
TELEPHONE: 603-271-3671 / FAX: 603-271-2110

FAX COVER SHEET

FROM: N. William Decker

TO: Brad Cook

PHONE NUMBER: 641-2343

OF PAGES (including cover): 21

DATE: 5/14/02 TIME: 8:30 AM

SPECIAL REMARKS: _____

ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

11190

LIP T. McLAUGHLIN
ATTORNEY GENERAL



STEPHEN J. JUDGE
DEPUTY ATTORNEY GENERAL

May 14, 2002

John Safford, Esquire, Clerk
Hillsborough County Superior Court
300 Chestnut Street
Manchester, NH 03101

RE: In Re: Grand Jury Subpoena *Duces Tecum* Served On April 8, 2002

Dear Clerk Safford:

Enclosed please find the State's Motion to Compel regarding the above-referenced matter. Please call if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "N. William Delker".

N. William Delker
Senior Assistant Attorney General
Criminal Justice Bureau
(603) 271-3671

NWD/mmp
Enclosure
cc: Bradford Cook, Esquire
Michael Dunn, Esquire

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
Northern District

MAY TERM, 2002

UNDER SEAL

In re: Grand Jury Subpoena *Duces Tecum* Served On April 8, 2002

MOTION TO COMPEL

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and, moves to compel the Keeper of the Records for the Diocese of Manchester (the "Diocese"), who has been subpoenaed to appear before the Hillsborough County Grand Jury, to produce all documents covered by the attached subpoena duces tecum. In support of its Motion, the State avers:

1. On April 8, 2002, a grand jury subpoena duces tecum was issued on behalf of the Grand Jury for Hillsborough County, Northern District, for the Keeper of Records of the Diocese to produce all records relating to criminal sexual abuse by clergy. The subpoena duces tecum is part of a broad investigation into allegations of child sexual assault lodged against dozens of New Hampshire clergy members. The investigation also is exploring whether the Diocese or any of its members engaged in any criminal conduct by failing to protect children from sexual abuse by priests or by covering up such information. A copy of the subpoena is attached hereto as Exhibit A. The subpoena called for the Diocese to produce the records by April 19, 2002. On April 12, 2002, the Diocese delivered some of the records covered by the subpoena duces tecum to undersigned counsel. Most of the records

that were produced were redacted. The Diocese notified the State that it was withholding or redacting material in the following categories:

- the names of the victims or other names which would clearly identify victims;
- confidential civil settlement documents;
- medical reports in the possession of the Diocese relating to treatment obtained by the priests covered by the subpoena; and
- intra-church communications and recommendations regarding priests accused of sexual abuse.¹

2. The Diocese is not entitled to withhold documents or evidence from the grand jury. It has long been recognized that the grand jury has a right "to every man's evidence."

United States v. Calandra, 414 U.S. 338, 345 (1974). As the New Hampshire Supreme Court has recognized:

Through the years the law has demonstrated a capacity to develop various institutions and techniques designed to frustrate human skulduggery. Progress is halting and frequently only partially successful. Gains in some areas are met by defeat in other areas. But the grand jury is one democratic institution which has proved its worth not only in ferreting out crime but also in absolving those enveloped in a cloud of rumors and suspicion. The grand jury may investigate a course of conduct or subject matter to which the Court or State's counsel have directed their attention without the necessity of a formal indictment against a specific individual in advance of the investigation and without geographical limitations. It is an engine of discovery which may protect the innocent as well as disclose the identity of the wrongdoer.

Powell v. Pappagianis, 108 N.H. 523, 525 (1968) (citations omitted). In other words, with the exception of constitutional, statutory, or common law privileges, a witness subpoenaed to

¹ A letter from Bradford Cook dated April 12, 2002, to undersigned counsel is attached hereto as Exhibit B. This letter lists the categories of material withheld or redacted by the Diocese and the stated reasons that the material was not produced in response to the subpoena.

appear before the grand jury has no ability to refuse to appear or produce evidence.

Branzburg v. Hayes, 408 U.S. 665, 688 (1972).

I. NAMES OF VICTIMS OR WITNESSES

3. The first category of information withheld or redacted from the documents that were produced were the names of victims or other witnesses that could help identify the victims of child sexual abuse by clergy members. The reason provided by the Diocese for the withholding of this category of information was that "many of these individuals clearly do not want to be identified, many are the subject of confidentiality agreements, and we believe all had the expectation of privacy when contacting the Diocese." (Exhibit B). As the United States Supreme Court has recognized: "[a] grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed." Calandra, 414 U.S. at 344 (quotation omitted). As one court has recognized: "The grand jury has the right to obtain and consider all evidence relevant to its deliberations because the nature of the crime and the identity of the accused must be ascertained based upon this evidence at the conclusion of the grand jury's inquiry." In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988). It is impossible to imagine how the grand jury could determine whether a crime has been committed if the name of the victim is withheld from it. Withholding this sort of information would frustrate a complete investigation because of the victim of criminal conduct could not be questioned. For this reason, withholding the names of victims or witnesses to the criminal conduct under investigation by the grand jury is completely without basis as this is the most essential evidence that the grand jury needs to continue its inquiry.

4. The Diocese has proposed that it contact the victims in an effort to obtain their permission to disclose the information to the State. As a threshold matter, the victims and/or witnesses have no standing to object to the disclosure of documentary evidence in the possession of the Diocese. See, e.g., United States v. Crea, 853 F. Supp. 72, 73 (E.D.N.Y. 1994) (a client had no standing to challenge subpoena duces tecum served on his accountant even though the records related to the client). Moreover, the Diocese should not be encouraged to contact victims or witnesses, particularly where a part of the grand jury's investigation includes an inquiry about whether the Diocese has any criminal culpability for failing to report the sexual abuse allegations in a timely manner or covering up the crimes after they were reported to the Diocese.

II. CONFIDENTIAL CIVIL SETTLEMENT DOCUMENTS

5. The second category of records that the Diocese has withheld are documents related to civil settlements that the Diocese reached with individual victims of child sexual abuse. A number of federal courts have held that the grand jury subpoena trumps any civil protective order. The leading case on point is In re Grand Jury Subpoena, 836 F.2d 1468 (4th Cir. 1988). In that case, the Fourth Circuit Court of Appeals rejected an effort of a third party to quash a grand jury subpoena for civil deposition transcripts. Id. at 1470. The party seeking to quash the subpoena argued that the deposition transcripts could not be subpoenaed by the grand jury because the deposition was conducted pursuant to a protective order that prohibited the disclosure of the depositions outside the context of the civil litigation. Id. The Fourth Circuit began its analysis with a recognition of the "sweeping power of the grand jury to compel the production of evidence." Id. at 1471. The court also recognized that "[b]ecause the grand jury enjoys important constitutional status, the grand jury is not subject

to the direction of the court with respect to these essential functions.” Id. After an exhaustive analysis, the Fourth Circuit concluded: “[i]n our view, a reasonable balancing of the respective interests of the civil courts and grand jury investigations favors enforcement of a grand jury subpoena despite the existence of an otherwise valid protective order.” Id. at 1477. This bright-line rule favoring the enforcement of grand jury subpoenas despite the existence of a civil protective order has been adopted by other courts as well. See, e.g., In re Grand Jury Subpoena Served on Meserve, Mumper & Hughes, 62 F.3d 1222 (9th Cir. 1995); In re Grand Jury Proceedings (Williams), 995 F.2d 1013 (11th Cir. 1993); cf. In re Grand Jury Subpoena, 138 F.3d 442, 445 (1st Cir. 1998) (adopting a modified per se rule favoring the grand jury subpoena unless the party opposing the subpoena can establish compelling reasons to quash the subpoena).

6. The circumstances of the present a far more compelling case for disclosure of the records to the grand jury than the situation presented to the Fourth Circuit and other federal cases cited above. In the federal cases discussed above, a federal court had entered an enforceable judicial order protecting the documents, depositions, or other information from disclosure in order to protect the right against self-incrimination of a witness in the civil litigation. Despite these circumstances, the federal courts concluded that the public’s interest in providing the grand jury with complete evidence trumped both the witness’ constitutional right against self-incrimination and a valid court order. Based on information and belief, the civil settlement documents withheld by the Diocese in this case are not protected by a court order. Instead, the civil settlements at issue in this case are considered confidential only by agreement of the parties. Here, there is no judicially enforceable court order providing for such confidentiality. An agreement of the parties to the civil settlement to withhold

information from the grand jury cannot trump the grand jury's quest to determine whether criminal conduct occurred. If this Court were to recognize the power of parties to withhold evidence from a grand jury by agreement, it would have broad ramifications for the ability of the grand jury to ferret out criminal wrongdoing. Co-conspirators could agree to withhold evidence of their criminal enterprise. Likewise, businesses engaged in potentially fraudulent transactions could force their customers to sign confidentiality agreements, thereby stymieing the investigation of criminal conduct in such situations would be stymied. For these reasons, the enforcement of a grand jury subpoena must be treated as paramount to a private agreement to suppress evidence of a crime.

7. Moreover, in the federal cases cited above, the reason for the entry of the civil protective order was far more compelling than the present case. In those cases, the civil protective order was initially entered in order to facilitate the testimony of a witness who would otherwise have invoked his constitutional right against self-incrimination. Here no similar interest exists. The Diocese has indicated to undersigned counsel that it is willing to waive its claim to confidentiality of the civil settlements but that it does not have authority to waive the confidentiality by the victims who received compensation from the Diocese for potential criminal conduct committed by priests employed by the Diocese. The only conceivable interest of the victim in maintaining confidentiality is a desire to remain anonymous. This interest does not trump the power of the grand jury to obtain everyman's evidence. Indeed, "[a]s the public has a right to everyone's evidence, the citizen has a concomitant duty to appear and to testify before a grand jury when subpoenaed to do so; it is 'a basic obligation that every citizen owes his Government.'" Williams, 995 F.2d at 1016 (quoting Calandra, 414 U.S. at 345). The epidemic of sexual abuse by the clergy is a

problem of state-wide, and even national, proportions that has substantial criminal implications. For these reasons, private agreements between the Diocese and the victims cannot shield evidence of serious criminal conduct from the grand jury.

III. MEDICAL RECORDS REGARDING TREATMENT BY THE PRIESTS

8. The third category of documents withheld by the Diocese is medical records for the priests suspected of abuse. The Diocese asserts that disclosure of these records would require the permission of the priests in question. Even if the Diocese were in a position to assert any privilege on behalf of the priests in question, any physician-patient privilege has been waived by disclosure of the medical reports to the Diocese. See State v. LaRoche, 122 N.H. 231, 233 (1982).

9. The doctor-patient privilege is not absolute and, as with other privileges, must be strictly construed. See Nelson v. Lewis, 130 N.H. 106, 109 (1987). The medical privilege is a creation of statutory law and did not exist at common law. See State v. Elwell, 132 N.H. 599, 603 (1989). RSA 329:26 establishes the privilege. It specifically provides that "confidential" communications are protected. If the medical information is disclosed to a third party who is not the patient's doctor, the privilege is waived. LaRoche, 122 N.H. at 233.

10. A review of the files produced by the Diocese to date establishes that the reports were disclosed to the Diocese not to facilitate any doctor-patient treatment, but to monitor the progress of the priest to determine if the priest was eligible for reassignment or posed a continuing danger to children. In this regard, Kamper v. Gray, 182 F.R.D. 597 (E.D. Mo. 1998), is instructive. Kamper involved a civil law suit in which two police officers were involved in a shooting of the plaintiffs. Id. at 598. One of the officers underwent a

psychological evaluation in connection with his hiring and a second evaluation after the shooting. Both evaluations were disclosed to the police department. Id. In connection with the law suit, the plaintiffs subpoenaed the records connected with officer's evaluation. Id. The officer objected to the subpoena on the ground that the records were protected by the psychotherapist/patient privilege. Id. The federal court held that the records were not protected. The court reasoned:

[T]he psychotherapist/patient privilege is invoked to protect confidential communications from disclosure. When the communications between a psychotherapist and the party seeking to invoke the privilege were never deemed confidential, the privilege never vests.

In the present case Gray's employer required him to visit Colarelli, Meyer, and Associates for psychological evaluations both before he was hired and after the shooting incident that is the subject of the present case. It is understood that the results of these evaluations would be submitted to Gray's employer and, in fact, they were in the form of the two reports that are part of Gray's employment file. . . . Since he was aware that his evaluations would be reported to his employer, Gray had no reasonable expectation of confidentiality regarding his communications with Colarelli, Meyer, and Associates. The psychotherapist/patient privilege cannot be invoked in Gray's situation in the absence of intended confidential communications.

Id. at 599; see also Scott v. Edinburg, 101 F. Supp. 2d 1017, 1020-21 (N.D. Ill. 2000)

(treatment records provided to employer were not confidential and therefore not protected by the privilege); Phelps v. Coy, 194 F.R.D. 606, 608 (S.D. Ohio 2000) (where plaintiff was only seeking treatment reports that were provided to the patient's employer there was no basis for assertion of the privilege because those communications were not confidential); Barrett v. Vojtas, 182 F.R.D. 177, 181 (W.D. Pa. 1998) ("[W]hen it is expected that the therapist will produce a report or an evaluation from the ordered sessions for review by third parties, who may be elected officials, there can be no expectation of confidentiality, and

therefore no privilege.”); Siegfried v. City of Easton, 146 F.R.D. 98, 101 (E.D. Pa. 1992) (“If a patient makes a communication expecting it to be disclosed to a third party who is not involved in the patient’s treatment, the psychologist-patient privilege does not apply.”).

11. As in Kamper and the other cases cited above, the treatment records of the priests were disclosed to the Diocese and, as such, are not confidential. As in the federal cases cited above, confidentiality is the keystone to the existence of the privilege under New Hampshire law. In fact, RSA 329:26, which establishes the privilege, is entitled “Confidential Communications.” (Emphasis added). At this juncture, the State has not subpoenaed any records directly from the treatment providers. Because the subpoenaed documents are limited to those that have been disclosed to a third-party, there is no basis to assert the privilege. See Phelps, 194 F.R.D. at 608.

IV. INTRA-CHURCH COMMUNICATIONS

12. The final category of records withheld or redacted by the Diocese involves intra-church communications and recommendations. The Diocese has taken the position that this information is protected by the First Amendment to the United States Constitution. (Exhibit B). It is well settled that the First Amendment does not provide “exemptions from a generally applicable criminal law.” Employment Div. v. Smith, 494 U.S. 872, 884 (1990); see also In re Petition of Smith, 139 N.H. 299, 308 (1994) (citing Employment Div. v. Smith with approval). The United States Supreme Court has recognized that “[t]he government’s ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, cannot depend on measuring the effects of a governmental action on a religious objector’s spiritual development.” Smith, 494 U.S. at 889-90 (quotation omitted).

13. These principles have been applied to the requirement that a witness comply with a grand jury subpoena. In In the Matter of Grand Jury Subpoena: Cass Chinske, 785 F. Supp. 130, 134 (D. Mont. 1991), the federal court held that requiring a witness to testify before the grand jury in contravention of his religious beliefs was not the object of the grand jury subpoena but was “merely the incidental effect of a generally applicable and otherwise valid’ governmental action.” Id. (quoting Smith, 494 U.S. at 885). Therefore, the First Amendment did not relieve the witness of the obligation to comply with the subpoena. Id.

14. In the wake of the Supreme Court’s decision in Smith, Congress enacted the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb et seq., (“RFRA”). See City of Boerne v. Flores, 521 U.S. 507, 512 (1997). This act requires that anytime governmental action substantially burdens a religious practice the government must demonstrate a compelling government interest for that action and establish that the action was the least restrictive means available to accomplish the goal. Id. at 515-16. The United States Supreme Court has held that this statute is unconstitutional as it applies to action by state or local governments. Id. at 535-36. Consequently, the test enunciated by the Supreme Court in Smith continues to apply to state action: all citizens are required to comply with generally applicable criminal laws so long as those laws are not motivated by a desire to burden the free exercise of religion. Nonetheless, it is significant to note that even those federal cases that have applied the exacting test established by RFRA to challenges to federal grand jury subpoenas have concluded that complying with a grand jury subpoena is a compelling governmental interest that is the least restrictive means of investigating crimes. In In re Three Children, 24 F. Supp. 2d 389 (D.N.J. 1998), for example, the court observed:

the government's interest in investigating and successfully prosecuting crimes, which invariably includes taking the grand jury testimony of witnesses, far outweighs the incidental burden on the professed free exercise of religion in this matter. . . . That the government should investigate suspected criminal wrongdoing is essential and implements its paramount responsibility for the general safety and welfare of all its citizens.

Id. at 392; see also In re The Grand Jury Empaneling of the Special Grand Jury, 171 F.2d 826, 831-33 (3d Cir. 1999) (citing and discussing cases); In the Matter of Full Gospel Tabernacle, Inc., 536 N.Y.S.2d 201, 205 (N.Y. App. Div. 1988) (applying pre-Smith compelling interest/least restrictive means test to grand jury subpoena duces tecum). Thus, even under the most onerous test recognized under the Constitution, witnesses are required to comply with grand jury subpoenas in order to facilitate the investigation of criminal offenses.

15. In the present case, the grand jury subpoena duces tecum has been issued for the production of documents in the context of an investigation of child sexual abuse. Child sexual abuse is an antithesis to the doctrines of the Catholic faith. It is difficult to imagine how withholding evidence relating to priests accused of abuse is a tenant of the religious faith. The current subpoena is narrowly tailored to cover only those documents relating to the allegations of sexual abuse against clergy members and the action or response of the Diocese in relation to the priests accused of abuse. The criminal conduct under investigation, including child sexual assault, and potential criminal conduct on behalf of the Diocese for their failure to report the allegations or endangering the welfare of children are "generally applicable prohibitions of socially harmful conduct" that are not protected by the First Amendment. See Smith, 494 U.S. 889-90; cf. Malicki v. Doe, No. SC01-179, 2002 Fla. LEXIS 434, *26-27 (Fla. Mar. 14, 2002) (recognizing, in the context of a civil tort action, that the involvement of courts in cases of sexual abuse by clergy or the failure of the diocese

to control a priest who engages in such abuse does not implicate the First Amendment). Full disclosure of the subpoenaed records would enable a complete investigation of the some of the most pernicious criminal activity known to society. Moreover, it is a part of the grand jury's role in our democratic system to exonerate the Diocese or individual clergy members if no criminal conduct occurred. See Powell, 108 N.H. at 525. The grand jury cannot properly perform its investigative function without complete access to all available evidence.

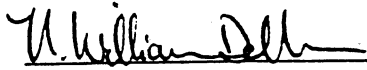
WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Compel the Diocese of Manchester to produce all documents described in the subpoena duces tecum attached hereto as Exhibit A;
- (B) Seal this motion and any accompanying order; and
- (C) Grant such other relief as justice may require.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Philip T. McLaughlin
Attorney General

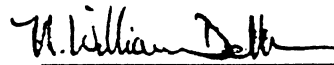


N. William Delker
Senior Assistant Attorney General
Chief, Criminal Justice Bureau
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3671

CERTIFICATE OF NOTICE

May 14, 2002

Bradford Cook, Esq. and Michael Dunn, Esq. attorneys for the Diocese of Manchester have been given notice of the State's Motion to Compel and have been provided with copies of the State's Motion on this date.



N. William Delker

EXHIBIT A

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
Northern District

APRIL TERM, 2002

SUBPOENA DUCES TECUM

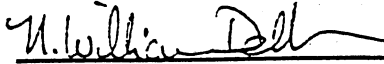
To: Keeper of Records
Diocese of Manchester
c/o Bradford Cook, Esq.
Sheehan, Phinney, Bass + Green, P.A.
1000 Elm Street
Manchester, NH 03701

You are required to appear before the Hillsborough County Grand Jury, Northern District, sitting at Hillsborough County Superior Courthouse, Manchester, New Hampshire, on April 19, 2002, at 9:00 a.m., and everyday thereafter until your testimony is completed, to testify as to what you know concerning an investigation of sexual assaults and other crimes against minors by certain clergy.

You are further required to produce for the Grand Jury at that time all of the following original records identified in Attachment A, which is attached hereto and incorporated by reference herein.

HEREOF FAIL NOT, as you will answer your default under penalties prescribed by law.

Dated at Concord, N.H., the 8th day of April A.D. 2002.



Justice of the Peace/Notary Public
N. William Delker
May 2004

ATTACHMENT A

1. any and all documents, records, statements, correspondence reports, notes, diaries, letters, photographs, drawings, audiotapes, videotapes, or other physical or documentary evidence reflecting, containing, or constituting any allegation of sexual misconduct, sexual assaults, or criminal conduct involving a minor and the individuals identified in **Attachment B**.
2. the name and current or last known address and telephone number of any representative, agency, employee, or volunteer associated with the Diocese of Manchester (the "Diocese") to whom sexual misconduct, sexual assaults, or criminal conduct involving a minor and the individuals identified in **Attachment B** was reported.
3. current or last known address and telephone number of the individuals identified in **Attachment B**.
4. name, date of birth, and current or last known address and telephone number of any victim of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed by the individuals identified in **Attachment B**.
5. any reports, statements, documents, or other records regarding or reflecting the response of the agents, employees, or representatives of the Diocese to the allegations of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
6. any reports, documents, correspondence, or other records regarding or reflecting medical, psychiatric, psychological, counseling or therapy treatment for sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
7. civil settlements and/or agreements reached with the victims of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
8. any and all correspondence, reports, or documents reflecting notification to law enforcement, police departments, and/or prosecutor's offices of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.

ATTACHMENT B

Paul L. Aube
Albert L. Boulanger
Albion F. Bulger
Gerald F. Chalifour
Ronald Corriveau
Joseph A. Cote
Robert J. Densmore
Mark Fleming
Paul Groleau
Alfred Janetta
Raymond H. Laferriere
Conrad V. LaForest
Joseph T. Maguire
John Nolin
Eugene Pelletier
Philip Petit
John R. Poirier
Stephen Scruton
Francis J. Talbot
Romeo J. Valliere
John Voglio

EXHIBIT B

SHEEHAN
PHINNEY
BASS +
GREEN

PROFESSIONAL
ASSOCIATION

Writer's Direct Dial
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Fax (603) 641-2343
bcook @ sheehan.com

11209



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TOLL FREE:
1-800-225-SPBG

WORLD WIDE WEB SITE:
http://www.sheehan.com

April 12, 2002

N. William Delker, Esq.
Assistant Attorney General
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301

Re: Roman Catholic Bishop of Manchester

Dear Mr. Delker,

In response to the Subpoena Duces Tecum addressed to the Keeper of Records of the Diocese of Manchester, and the terms of your letter dated April 8, 2002, I am herewith delivering to you files of the Roman Catholic Bishop of Manchester concerning complaints of child sexual abuse by individuals named in the subpoena. In explanation thereof, I offer the following:

1. Attached to this letter as Exhibit A is a list of the currently known addresses for those individuals for whom we have addresses. Also, phone numbers we have are listed.
2. The materials delivered to you are photocopies of the files which have been copied by this office from the original materials.
3. The names of victims and other names which would clearly identify victims have been removed. As you discussed with W. Michael Dunn of this office and me, you will see from the contents of the materials that many of these individuals clearly do not want to be identified, many are the subject of confidentiality agreements, and we believe all had the expectation of privacy when contacting the Diocese. Should your review make identifying such persons of further interest to you, we shall endeavor to get their permission to identify them.
4. No medical reports on the individuals are included since we believe the permission of the patient would be required before disclosing such confidential information. In the event you still seek such information after your review of the materials being delivered, we shall endeavor to get the permission of the individual to disclose them to you.
5. Intra-Church communications and recommendations which we believe to be protected by the First Amendment have been redacted.
6. Civil settlement documents we believe to be confidential are not included.

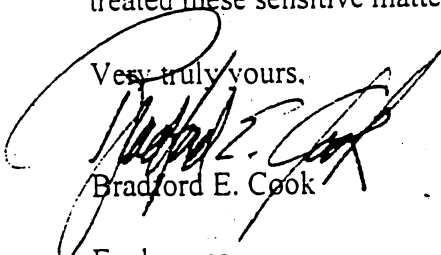
7. As we agreed, information on Philip Petit is included, although he was not on the faxed subpoena list, although it is my understanding his name will appear on the subpoena which I shall accept on behalf of the Diocese.
8. The Diocese has no such files for Ronald Corriveau, Paul Groleau, or Alfred Janetta.
9. The Diocese has no knowledge of a John Voglio and obviously has no such file for him.

As you, Mike Dunn and I also discussed, further information you may seek from these files which we have not produced for the reasons set forth above will be the subject of further discussions between us and if we are unable to comply because we cannot get consent to produce materials or cannot agree to turn over such materials, we shall jointly seek a judicial determination of whether we are required to produce such materials.

In providing these materials, as in providing summaries of the files previously, it is not the intent of the Diocese to waive any of its rights or those of any of the individuals who are the subject of the files.

On behalf of the Diocese and its officials, I thank you and Attorney General McLaughlin for the professional and courteous manner in which you have treated these sensitive matters.

Very truly yours,



Bradford E. Cook

Enclosures

ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

11211

PHILIP T. MCLAUGHLIN
ATTORNEY GENERAL



STEPHEN J. JUDGE
DEPUTY ATTORNEY GENERAL

April 8, 2002

Bradford Cook, Esq.
Sheehan, Phinney, Bass + Green, P.A.
1000 Elm Street
Manchester, NH 03701

RE: Diocese of Manchester

Dear Attorney Cook:

Attached please find a grand jury subpoena duces tecum. At our meeting on Friday, you indicated that you would accept service of the subpoena on behalf of the Diocese of Manchester. As you are aware, the issuance of grand jury subpoenas, any documents produced in response to the subpoena, and any testimony given to a grand jury are not subject to the public disclosure. However, information and documents gathered through the grand jury process may be used in connection with any criminal investigation and may be disclosed in court if there is ultimately a criminal prosecution.

Do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "N. William Delker".

N. William Delker
Senior Assistant Attorney General
Chief of the Criminal Justice Bureau
(603) 271-3671

HILLSBOROUGH, SS.
Northern District

APRIL TERM, 2002

SUBPOENA DUCES TECUM

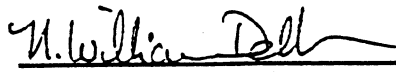
To: Keeper of Records
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c/o Bradford Cook, Esq.
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You are required to appear before the Hillsborough County Grand Jury, Northern District, sitting at Hillsborough County Superior Courthouse, Manchester, New Hampshire, on April 19, 2002, at 9:00 a.m., and everyday thereafter until your testimony is completed, to testify as to what you know concerning an investigation of sexual assaults and other crimes against minors by certain clergy.

You are further required to produce for the Grand Jury at that time all of the following original records identified in Attachment A, which is attached hereto and incorporated by reference herein.

HEREOF FAIL NOT, as you will answer your default under penalties prescribed by law.

Dated at Concord, N.H., the 8th day of April A.D. 2002.



Justice of the Peace/Notary Public
N. William Delker
May 2004

ATTACHMENT A

1. any and all documents, records, statements, correspondence reports, notes, diaries, letters, photographs, drawings, audiotapes, videotapes, or other physical or documentary evidence reflecting, containing, or constituting any allegation of sexual misconduct, sexual assaults, or criminal conduct involving a minor and the individuals identified in **Attachment B**.
2. the name and current or last known address and telephone number of any representative, agency, employee, or volunteer associated with the Diocese of Manchester (the "Diocese") to whom sexual misconduct, sexual assaults, or criminal conduct involving a minor and the individuals identified in **Attachment B** was reported.
3. current or last known address and telephone number of the individuals identified in **Attachment B**.
4. name, date of birth, and current or last known address and telephone number of any victim of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed by the individuals identified in **Attachment B**.
5. any reports, statements, documents, or other records regarding or reflecting the response of the agents, employees, or representatives of the Diocese to the allegations of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
6. any reports, documents, correspondence, or other records regarding or reflecting medical, psychiatric, psychological, counseling or therapy treatment for sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
7. civil settlements and/or agreements reached with the victims of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.
8. any and all correspondence, reports, or documents reflecting notification to law enforcement, police departments, and/or prosecutor's offices of sexual misconduct, sexual assaults, or criminal conduct involving a minor where the misconduct was committed the individuals identified in **Attachment B**.

Paul L. Aube

Albert L. Boulanger

Albion F. Bulger

Gerald F. Chalifour

Ronald Corriveau

Joseph A. Cote

Robert J. Densmore

Mark Fleming

Paul Groleau

Alfred Janetta

Raymond H. Laferriere

Conrad V. LaForest

Joseph T. Maguire

John Nolin

Eugene Pelletier

Philip Petit

John R. Poirier

Stephen Scruton

Francis J. Talbot

Romeo J. Valliere

John Voglio

STATE OF NEW HAMPSHIRE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

11215

PHILIP T. MCLAUGHLIN
ATTORNEY GENERAL



STEPHEN J. JUDGE
DEPUTY ATTORNEY GENERAL

August 5, 2002

David Vicinanza, Esq.
Nixon Peabody, LLP
889 Elm Street
Manchester, New Hampshire 03101

Re: Diocese of Manchester

Dear David:

As we discussed last week, pursuant to the outstanding grand jury subpoena please request that the Diocese check the Risk Management and Youth Services offices for any documents relating to the following priests:

- Paul Aube
- Gerald Chalifour
- Joseph Maguire
- Albert Boulanger
- Roger Fortier
- Robert Densmore

Please provide copies of any documents to me at your earlier convenience.

Sincerely,

A handwritten signature in cursive script that reads "N. William Delker".

N. William Delker
Senior Assistant Attorney General
Criminal Justice Bureau
(603) 271-3671

MEMORANDUM

TO: File

FROM: James D. Rosenberg, Assistant Attorney General ^{JDR}

DATE: July 12, 2002

RE: DIOCESE OF MANCHESTER

Today, Ann Rice and I spoke with Peter Hutchins, counsel for several plaintiffs in civil lawsuits again at the Diocese. We talked to Attorney Hutchins about our plans to contact potential victims of priest sexual misconduct as part of our investigation into criminal wrongdoing by the Diocese. To that end, we requested from Attorney Hutchins the names and contact information of those victims that he represents. Attorney Hutchins indicated to us that he would provide us with the names of plaintiffs that have already been made public, but that he would send a letter to the clients he represents that have remained anonymous. He promised to request authorization from his anonymous clients to provide their contact information to us. The names of his named clients are:

[REDACTED]

Our current database of victims does not include [REDACTED]'s name.

Attorney Hutchins hoped to get his letter requesting authorization to provide the names of anonymous clients to us out to those clients today.

JDR/mmp
190926

ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

11217

PHILIP T. MCLAUGHLIN
ATTORNEY GENERAL



STEPHEN J. JUDGE
DEPUTY ATTORNEY GENERAL

July 12, 2002

VIA FACSIMILE & FIRST CLASS MAIL

David Vicinanza, Esquire
Nixon Peabody, LLP
889 Elm Street
Manchester, NH 03101

Re: Communications with priests

Dear Dave:

Thank you for speaking with Ann Rice and me today regarding the manner in which our investigators make contact with active priests during our investigation of the Diocese. Although we fully believe that we have the legal authority to make direct contact with active priests, Father Arsenault's concerns regarding the practical problems that may arise if our investigators proceed in this manner are well taken. In light of those concerns, and based on your representations regarding the protocol you would follow in contacting priests, we are willing, at this point, to work through you to facilitate meetings with active priests.

According to my understanding of our discussions, that protocol is as follows:

1. Upon notification from this office that our investigators desire to speak with a specific priest, you will contact that priest promptly to arrange a meeting within 24-48 hours, if possible.
2. You will inform the priest that: the Attorney General's Office is currently conducting an investigation into the way in which the Diocese has responded to allegations of child sexual abuse against children by priests; the Diocese wants to cooperate fully in the investigation; the priest is encouraged to do so as well; the meeting is voluntary; and the Attorney General has broad authority to compel priests to cooperate in our investigation in a more formal setting, under oath, if necessary.
3. If a priest asks about the substance of the interview, you will inform them that you do not know what will be asked; the priest is not a target; and the investigators believe that he may have information that could be relevant to their investigation.

4. Father Arsenault may make the initial contact with the priest, to introduce you, but you will be the person responsible for conveying the information concerning the proposed interview.

If this does not comport with your understanding of the process, please contact me or Ann immediately.

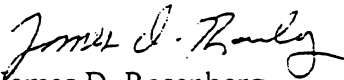
Our goal at this stage in the investigation is to collect information as quickly and effectively as possible. We are willing to meet with priests at locations that are convenient and comfortable for them, including at local rectories and priest's homes.

As discussed, this arrangement applies only to priests currently engaged in active ministry for the Diocese. We intend on making direct contact, as necessary, with suspended priests, such as the priests publicly identified by the Diocese that have been accused of sexual abuse against minors. To the extent that suspended priests have retained counsel, we will abide by any applicable ethical obligations when communicating with persons represented by counsel. You indicated today on the phone that you would provide us with a list of suspended priests and the names of their attorneys.

As you know, we are concerned that by arranging each and every meeting with active priests through Diocesan counsel, we will unnecessarily slow down our investigative effort and hinder our ability to have open, honest conversations with active priests. If at any point these concerns grow into reality, including if it appears that a priest has been discouraged from engaging in a forthright dialogue, we will reassess the arrangement described above and pursue all legal means necessary to ensure that we secure information relevant to our investigation.

Dave, thank you for your frank discussions over the past week with regard to this and other issues that face us as this investigation proceeds. Do not hesitate to contact me at the number below if you have any questions or concerns.

Very truly yours,


James D. Rosenberg
Assistant Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301
(603) 271-3671

JDR

cc: Philip T. McLaughlin, Attorney General
Ann M. Rice, Associate Attorney General
N. William Deiker, Senior Assistant Attorney General