

WHAT WOULD JESUS DO?:
A GOSPEL-BASED APPROACH TO DEFENDING THE CATHOLIC
CHURCH AGAINST ALLEGATIONS OF ABUSE

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I. INTRODUCTION

Instances of abuse perpetrated by adults in the hierarchy of the Roman Catholic Church (“Church”) in the United States on minors have come to light in increasing numbers over the last twenty years.¹ The abusers have been not only priests but also lay teachers and other supervisory adults in Catholic schools and sports organizations.² The victims have been both boys and girls. In several instances, the same abuser has molested many children, over many years, in more than one parish.³

In one of the most egregious examples of this tragedy,⁴ the Archdiocese of Indianapolis transferred the Rev. Harry E. Monroe from one parish to another from 1975 to 1984, despite having received credible reports at least as

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¹ The Catholic Church clearly is not the only religious entity in which child molestation and other forms of abuse have occurred. This article, however, will focus only on issues relating to the Catholic Church in the United States.

² As one example in Indiana, a religion teacher was alleged to have committed sexual abuse in *Tucker v. Roman Catholic Diocese of Lafayette-in-Indiana*, 837 N.E.2d 596 (Ind. App. 2005).

³ Briefly, the legal/corporate organization of the Church centers on the diocese (from the Latin for “jurisdiction”), which is comprised of many parishes, or local churches. Parishes, generally, are supervised by a pastor, who is an ordained priest, and who is assisted by lay leaders such as the director of religious education and the members of the parish board. The chief executive of the diocese is a bishop. A large diocese is called an archdiocese, headed by an archbishop. As one example, the archdiocese of Indianapolis covers most of Indiana from Indianapolis south to the Ohio River. The pope has ultimate authority over religious doctrine within the Church, but the ultimate managerial, legal, and financial authority within a diocese, even down to the parish level, is the bishop.

⁴ This author believes the classical meaning of *tragedy* is especially applicable to the abuse scandals of the Church: that is, “a drama in which a noble protagonist is brought to ruin essentially as a consequence of an extreme quality that is both his greatness and his downfall.” AMERICAN HERITAGE DICTIONARY, Second College Edition, Houghton Mifflin Co. (1985)

early as 1976 that he sexually molested young boys in those parishes.⁵ The Monroe case will be discussed in greater detail in the course of this article.

This tragedy has had wide-ranging effects on the Church and its members. First, the costs of defending abuse lawsuits, and of paying settlements and judgments to abuse victims, have been financially staggering to the various dioceses. Second, although this author is unaware of any studies confirming a correlation of this, one may assume that the scandals are at least partly responsible for declining numbers of active Catholics and clergymen.⁶ Third, there is likely a correlation between the scandals and declining financial contributions to the Church by the laity (that is, rank-and-file Catholics).⁷

Many dioceses⁸ have defended themselves in abuse suits much as if they were a tobacco company or an auto manufacturer, using “technical” defenses such as the statute of limitations that do not refute the substance of the allegations. From a legal standpoint, each diocese is entitled to do so. The question is whether the special nature of a Catholic diocese should cause its leadership to take a completely different approach to defending itself against allegations that a member of its hierarchy abused a child in its trust, and especially allegations that the diocese failed to take reasonable precautions to protect such children, or even aided the abuser in continuing to perpetrate his crimes.

The essence of what a Catholic diocese professes to be is completely different from what a tobacco company or an automobile manufacturer professes. Its essence is to be the Body of Christ on Earth, not a corporation whose fundamental purpose is to be profitable for its shareholders. When the Church defends itself in litigation in a manner that disregards its essence, it undercuts the legitimacy of what it professes to be, and even calls into question whether it has a reason to exist.

The thesis of this article is that a Catholic diocese cannot defend itself like any other civil defendant while maintaining its sole reason for being, which is its Gospel-based moral authority as the Body of Christ on Earth. Its defense in civil litigation must comply with the dictates of the Gospels

⁵ John Doe NM v. Archdiocese of Indianapolis, St. Catherine Parish n/k/a Good Shepherd Parish, Fr. Harry Monroe, and Does 1-100, inclusive, Marion Superior Court, Cause No. 49D01-0510-CT-041930.

⁶ From 1965 to 2004, the yearly average percent of U.S. adult Catholics who say they attended Mass in the last seven days declined from 67% to 45%. From 1965 to 2007, the number of parishes without a resident parish priest increased from 549 to 3238. CARA, Frequently Requested Catholic Church Statistics, cara.georgetown.edu/bulletin/index.

⁷ Catholic Charities USA 2006 Annual Report, pp. 18-19.

⁸ For the reasons stated above, the organizational defendant in abuse suits has typically been the diocese. One exception is *O'Bryan v. Holy See*, Civil Action No. 3:04CV-338-H, in which the District Court for the Western District of Kentucky on January 10, 2007, allowed the abuse victims to proceed against the Vatican on claims of failure to report and failure to warn negligence claims; breach of fiduciary duty, outrage and emotional distress, violations of the customary law of human rights; and claims under the doctrine of respondeat superior, notwithstanding the Vatican's invocation of the Foreign Sovereign Immunity Act, 28 U.S.C. § 1604.

and its own teachings. The purpose of this article is to examine how the Church can respond to allegations of abuse while remaining true to its core values, and at the same time reduce the financial impact of these claims.

The methodology for this analysis will be limited to the two texts on which the Church itself is based: the Gospels of Matthew, Mark, Luke, and John; and the Catechism of the Catholic Church. The objective is to test the defense of the Church on its own terms, not on terms that might be imposed on it by others.⁹

In short, in formulating a defense regarding allegations of abuse, “What would Jesus do?”

II. WHAT DOES THE ROMAN CATHOLIC CHURCH PROFESS TO BE?

What the Church professes to be is distilled into the Catechism of the Catholic Church (“Catechism”).¹⁰ This text will be our starting point to define the Church on its own terms. The latest edition of the Catechism, published in 1995 during the papacy of John Paul II, received its imprimatur (approval of its doctrinal purity) from Joseph Cardinal Ratzinger, who has since been elevated as Pope Benedict XVI. Pope John Paul II approved the Catechism on June 24, 1992, stating that it “is a statement of the Church’s faith, and of catholic doctrine, attested to or illumined by Sacred Scripture, the Apostolic Tradition, and the Church’s Magisterium.”¹¹

A. THE BODY OF CHRIST ON EARTH

The Church professes to be the Body of Christ on Earth. “It was the Son’s task to accomplish the Father’s plan for salvation in the fullness of time. Its accomplishment was the reason for his being sent. The Lord Jesus inaugurated the Church by preaching the Good News, that is, the coming of the Reign of God, promised over the ages in the scriptures. To fulfill the Father’s will, Christ ushered in the Kingdom of heaven on earth. The Church ‘is the Reign of Christ already present in mystery.’”¹²

B. HIERARCHICAL MORAL AUTHORITY OF THE CHURCH

The hierarchy of the Church derives from a divine plan. “The Lord Jesus endowed his community with a structure that will remain until the Kingdom is fully achieved. Before all else there is the choice of the Twelve with Peter as their head. Representing the twelve tribes of Israel, they are the foundation stones of the new Jerusalem. The Twelve and the other disci-

⁹ The focus of this article is on what the Church should do. For a discussion of the ethical and moral obligations specifically of defense counsel for the Church, see Daniel John Hettich and Erica Lee Dinger, *They Answer to a Higher Standard: The Ethical Obligations of Church Attorneys in Sexual Abuse Cases*, GEO. J. LEGAL ETHICS (Summer 2003).

¹⁰ CATECHISM OF THE CATHOLIC CHURCH, Doubleday, 1995.

¹¹ *Id.* at 5.

¹² *Id.* art. 763.

ples share in Christ's mission and his power, but also in his lot. By all his actions, Christ prepares and builds his Church."¹³

Indeed, Jesus told Simon Peter, who would become the first bishop of Rome (that is, the first pope), "you are Peter, and on this rock I will build my church, and the gates of Hades will not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven."¹⁴ In one of Jesus' last statements before his ascension into heaven, he instructed Peter to "feed my sheep."¹⁵

The Church establishes itself as the moral authority of, and the means to salvation for, its members and all humanity. "It is in the Church, in communion with all the baptized, that the Christian fulfills his vocation. From the Church he receives the Word of God containing the teachings of 'the law of Christ.' From the Church he receives the grace of the sacraments that sustains him on the 'way.' From the Church he learns the *example of holiness* and recognizes its model and source in the all-holy Virgin Mary; he discerns it in the authentic witness of all those who live it; he discovers it in the spiritual tradition and long history of the saints who have gone before him and whom the liturgy celebrates in the rhythms of the sanctoral cycle."¹⁶

"The Church, the 'pillar and bulwark of truth,' has received this solemn command of Christ from the apostles to announce the saving truth.' 'To the Church belongs the right always and everywhere to announce moral principles, including those pertaining to the social order, and to make judgments on any human affairs to the extent that they are required by the fundamental rights of the human person or the salvation of souls."¹⁷

"The Roman Pontiff and the bishops are 'authentic teachers, that is, teachers endowed with the authority of Christ, who preach the faith to the people entrusted to them, the faith to be believed and put into practice."¹⁸ "The supreme degree of participation in the authority of Christ is ensured by the charism of *infallibility*. This infallibility extends as far as does the deposit of divine Revelation; it also extends to all those elements of doctrine, including morals, without which the saving truths of the faith cannot be preserved, explained, or observed."¹⁹

¹³ *Id.* art. 765.

¹⁴ *Matthew* 16:17-19. All scriptural citations are to the Holy Bible, New Revised Standard Version: Catholic Edition (Silver Burdett Ginn, 1993).

¹⁵ *John* 21:17.

¹⁶ CATECHISM, art. 2030 (italics in original).

¹⁷ *Id.* art. 2032.

¹⁸ *Id.* art. 2034.

¹⁹ *Id.* art. 2035 (italics in original).

C. THE MISSIONS OF THE CHURCH

The law of the people of God (that is, the Church), is “to love as Christ loved us.”²⁰ “Its mission is to be salt of the earth and light of the world.”²¹

The three parts of this mission are that the Church is priestly, prophetic, and royal.²² The new people of God are “a kingdom of priests to God, his Father.”²³ As the representative of Christ on Earth, the Church is holy: “United with Christ, the Church is sanctified by him; through him and with him she becomes sanctifying. ‘All the activities of the Church are directed, as toward their end, to the sanctification of men in Christ and the glorification of God.’”²⁴

The prophetic mission of the Church “belongs to the whole People, lay and clergy, when it ‘unfailingly adheres to its faith . . . once for all delivered to the saints,’ and when it deepens its understanding and becomes Christ’s witness in the midst of this world.”²⁵

The royal mission is one of service to others, as Jesus demonstrated in the Gospels. “Christ, King and Lord of the universe, made himself the servant of all, for he came ‘not to be served but to serve, and to give his life as a ransom for many.’ For the Christian, ‘to reign is to serve him,’ particularly when serving ‘the poor and the suffering, in whom the Church recognizes the image of her poor and suffering founder. The People of God fulfills its royal dignity by a life in keeping with its vocation to serve with Christ.’”²⁶

D. THE CHURCH’S ONLY REASON FOR BEING IS TO REPRESENT THE MORAL AUTHORITY OF GOD, NOT ITS GOOD WORKS

The Church is perhaps the greatest philanthropic organization in the world, considering the many hospitals, schools, and other charitable efforts of the Church and its lay members (for example, the worldwide lay charitable organization for the poor, the Society of St. Vincent de Paul). Especially by taking the preceding paragraph out of context, one might argue that there is sufficient justification of the Church solely in its charitable works, separate and apart from its moral authority. One might further argue that regardless of other moral failings of the Church hierarchy, it gains moral authority by virtue of its charitable activities.

However, this reverses the cause-effect relationship found in scripture and the teachings of the Church. As stated above, “All the activities of the Church are directed, as toward their end, to the sanctification of men in

²⁰ *Id.* art. 782.

²¹ *Id.*

²² *Id.* art. 783.

²³ *Id.* art. 784.

²⁴ *Id.* art. 824.

²⁵ *Id.* art. 785.

²⁶ *Id.* art. 786.

Christ and the glorification of God.” The Church’s charity, and the charity of its members, stem from their spirituality and moral authority, not the other way around.

The Church teaches that charity, generosity, and other good works that do not come from Christian love are meaningless. As Paul told the Corinthians in a passage familiar to just about anyone who has attended a Nuptial Mass, “If I give away all my possessions, and if I hand over my body so that I may boast, but do not have love, I gain nothing.”²⁷

And as James testified, “What good is it, my brothers and sisters, if you say you have faith but do not have works? Can faith save you? If a brother or sister is naked and lacks daily food, and one of you says to them, ‘Go in peace; keep warm and eat your fill,’ and yet you do not supply their bodily needs, what is the good of that? So faith by itself, if it has no works, is dead.”²⁸

Good works, therefore, are necessary demonstrations of Christian love. But the first essential quality of the Church is representing and propagating the virtues of Jesus Christ and salvation through Christ, which is the starting point from which the good works proceed. Without its moral authority, the Church is nothing more than a United Way that also conducts the Mass and distributes the sacraments.

III. RECENT HISTORY OF ALLEGATIONS AGAINST DIOCESES AND MEMBERS OF THEIR HIERARCHIES

Although this point should be so obvious that it requires no comment, the Church recognizes that the sexual abuse of minors is a sin and is destructive. “Connected to incest is any sexual abuse perpetrated by adults on children or adolescents entrusted to their care. The offense is compounded by the scandalous harm done to the physical and moral integrity of the young, who will remain scarred by it all their lives; and the violation of responsibility for their upbringing.”²⁹

Nevertheless, many allegations have surfaced in recent years of this “scandalous harm” by priests and lay leaders in the Church hierarchy against children and adolescents. In 1985, Rev. Gilbert Gauthe in Louisiana pled guilty to eleven counts of molestation of boys. Among many other allegations that ensued, in 1992-93, Rev. James Porter in Massachusetts was accused of abusing children in five states in the 1960s and 1970s, and later pled guilty to forty-one counts of abuse.

In 1998, the Dallas diocese paid more than \$31 million to victims of Rev. Rudolph Kos. In 1999, Rev. James Geoghan in Massachusetts was indicted on child rape charges. In 2002, he received a ten-year sentence for indecent

²⁷ I *Corinthians* 13:3.

²⁸ *James* 2:14-17.

²⁹ CATECHISM, art. 2389.

assault on a ten-year-old boy and the archdiocese of Boston settled with some of his victims for \$10 million (retracting a prior settlement of \$30 million, which the archdiocese said would have bankrupted it). Also in 2002, Rev. Paul Shanley in California was charged with three counts of child rape, and in 2005 he was convicted of four charges of rape and indecent assault.³⁰

On October 25, 2005, “John Doe NM” filed a complaint against the archdiocese of Indianapolis, St. Catherine Parish n/k/a Good Shepherd Parish, and Fr. Harry Monroe, in Marion Superior Court in Indianapolis, Indiana.³¹ John Doe NM alleged that he was a minor attending St. Catherine Church while Fr. Monroe was assigned to St. Catherine Parish in Indianapolis between 1976 and 1978. From 1976 to 1977, Fr. Monroe sexually abused John Doe NM at a time the archdiocese allegedly already knew Fr. Monroe had a history of committing child molestation.

In his deposition in the *John Doe NM* case, Fr. Monroe admitted to sexually abusing five boys in parishes in which he served, and that he may have abused many more he did not remember, including John Doe NM. Fr. Monroe further testified that he had been arrested for indecent exposure in 1972, but a priest associated with the archdiocese was able to intervene and arrange his release. The charges were later dropped. In 1976, the archdiocese’s priest personnel director wrote a letter documenting Fr. Monroe’s abnormal interest in sixth-grade boys in his parish. The House of Affirmation in Whitinsville, Massachusetts, evaluated Fr. Monroe as a sexual abuser on September 17, 1976.³²

Two weeks later, the archdiocese transferred Fr. Monroe to St. Catherine’s without providing any warning to the members of the parish regarding his history or his evaluations.³³

When John Doe NM informed his older brother of what Fr. Monroe had been doing, the older brother confronted Fr. Monroe. Shortly thereafter, Fr. Monroe was transferred from St. Catherine’s to St. Patrick’s in Terre Haute, Indiana. His activities continued at St. Patrick’s, so the archdiocese sent Fr. Monroe back to the House of Affirmation for a year to treat his sexual abuse problem, then transferred him to parishes in Tell City, Cannelton, and Troy, Indiana, where he admittedly continued to molest boys in those parishes.³⁴

³⁰ BBC News, newsvote.bbc.co.uk/go/pr/fr/-/2/hi/Americas/3872499.stm, published 9/7/07. For a much longer list of allegations, settlements, and awards, see bishop-accountability.org/settlements.

³¹ Cause No. 49D01-0510-CT-041930.

³² Deposition of Harry Monroe, cited in Brief in Opposition to Defendant Archdiocese of Indianapolis’ Motion for Summary Judgment, filed on November 28, 2007.

³³ *Id.*

³⁴ *Id.*

IV. THE DIOCESES' LITIGATION STRATEGIES

Conceding liability or apologizing to victims is not a typical response by dioceses. As one priest who ministers to abuse victims has testified, "I then honestly apologize to them for what a fellow priest has done to them and for what the clerical establishment has done to them. Without exception, I have been told by victims and/or their families that this was *the first time anyone from the Church had ever apologized to them*. Some have recalled meetings with various Church officials including bishops but they have remarked that none ever apologized."³⁵

The typical response of the dioceses to abuse allegations has been to defend on grounds such as statute of limitations even when the diocese does not dispute that the abuse occurred. In addition, dioceses have offered little or nothing to the victim-plaintiffs other than counseling—often counseling by the very diocese that enabled the perpetrator to cause the harm to the victim in the first place.³⁶

According to the archdiocese's motion for summary judgment in *Monroe*, John Doe NM was nine or ten years old when Fr. Monroe abused him. The plaintiff filed his suit when he was forty years old. In its motion filed on August 24, 2007, the archdiocese argued that his claim was barred by the statute of limitations,³⁷ which required the suit to have been filed by the plaintiff's twentieth birthday.

The archdiocese of Indianapolis argued that the delay in filing by John Doe NM prejudiced the Church because key witnesses had moved or passed away, thereby impairing the Church's ability to defend itself. The archdiocese also argued that because the defendant is an organization funded by charitable contributions, "the contributors have a right to expect that their donated funds will be used for the stated eleemosynary [*sic*] purposes of the organization, e.g. a church, and not paying for barred claims."³⁸

V. THE RESULTS OF THESE STRATEGIES

The statute-of-limitations argument in *John Doe NM v. Archdiocese of Indianapolis* was unsuccessful. Marion Superior Court denied the motion for summary judgment in December 2007. On April 11, 2008, the Indiana Court of Appeals declined to hear the archdiocese's interlocutory appeal.

It is estimated that the financial cost of clergy sexual abuse through 2006 exceeds \$1.8 billion, including settlements in the Spokane diocese of \$48

³⁵ Testimony of Thomas Doyle, J.C.D., C.A.D.C., April 4, 2007, votf.org/Survivor_Support/frdoyle (emphasis in original).

³⁶ See, e.g., Charter for the Protection of Children & Young People, United States Conference of Catholic Bishops, art. 1 (June 14, 2002) (also known as the "Dallas Charter").

³⁷ IND. CODE § 34-11-6-1.

³⁸ Memorandum of Law in Support of Defendant's Motion For Summary Judgment, p. 7.

million and in the Los Angeles archdiocese of \$60 million.³⁹ One organization estimates the actual total settlements and awards (not including treatment costs and legal fees) exceed \$3 billion.⁴⁰

Dioceses that have sought bankruptcy protection as a result of the financial cost of clergy sexual abuse have included Portland, Oregon; Spokane, Washington; Tucson, Arizona;⁴¹ and San Diego, California.⁴²

VI. ANALYSIS OF THE GOSPELS: WHAT JESUS TAUGHT AND DID

A. JESUS' CONFLICTS WITH THE EXISTING RELIGIOUS AUTHORITIES OF HIS TIME

One of the most pronounced adversarial relationships in the Gospels was between Jesus (and John the Baptist) and the then-existing civil and religious authorities in Judea, particularly the scribes and Pharisees.⁴³ Essentially, Jesus supported the Mosaic law upon which the Jewish leadership based its claims to civil and moral authority, but condemned their abuse of that authority.

The Jewish leadership felt threatened by Jesus from his birth. When the three wise men told King Herod they were seeking the new-born king, Herod and his advisors determined as best they could the age of the boy and proceeded to murder all the boys in the kingdom of that age. Joseph, however, had already escaped to Egypt with Mary and Jesus by the time the slaughter began.⁴⁴

In the prelude to Jesus' ministry, John the Baptist condemned the Pharisees, whom he compared to trees that fail to bear good fruit, and will therefore be cut down and thrown into the fire.⁴⁵

Jesus himself minced no words condemning the scribes and Pharisees. The Sermon on the Mount includes the warning, "unless your righteousness exceeds that of the scribes and the Pharisees, you will never enter the kingdom of heaven."⁴⁶

Echoing John the Baptist, Jesus goes on to say in the Sermon, "Beware of false prophets, who come to you in sheep's clothing but inwardly are ravenous wolves. You will know them by their fruits. Are grapes gathered from

³⁹ Voice of the Faithful, 2006 Annual Report.

⁴⁰ bishop-accountability.org/settlements, which includes a chart of the settlements and awards, identifying the location, perpetrators, and amounts of settlement/award, since 1984.

⁴¹ Arthur Rotstein, "Tucson Diocese emerges from Chapter 11 protection," *azcentral.com*, Sept. 21, 2005.

⁴² Ron Donoho, "God, Incorporated," *sandiegomagazine.com* (July, 2007).

⁴³ A Pharisee is defined as "a member of an ancient Jewish sect that emphasized strict interpretation and observance of the Mosaic law in both its oral and written form." *AMERICAN HERITAGE DICTIONARY*, Second College Edition, Houghton Mifflin Co. (1985).

⁴⁴ *Matthew* 2:3-4, 16.

⁴⁵ *Id.* at 3:7-10.

⁴⁶ *Id.* at 5:20.

thorns, or figs from thistles? In the same way, every good tree bears good fruit, but the bad tree bears bad fruit. A good tree cannot bear bad fruit, nor can a bad tree bear good fruit. Every tree that does not bear good fruit is cut down and thrown into the fire. Thus you will know them by their fruits.”⁴⁷

Jesus’ criticism of the power structure was not limited to the Jewish leadership: “You know that the rulers of the Gentiles lord it over them, and their great ones are tyrants over them.”⁴⁸

What was it about the scribes and Pharisees of Jesus’ day that he found so objectionable? It was their arrogance, their hypocrisy, and their failure to seek justice and mercy. “The scribes and Pharisees sit in Moses’ seat; therefore, do whatever they teach you and follow it; but do not do as they do, for they do not practice what they teach. They tie up heavy burdens, hard to bear, and lay them on the shoulders of others; but they themselves are unwilling to lift a finger to move them Woe to you, scribes and Pharisees, hypocrites! For you tithe mint, dill, and cumin, and have neglected the weightier matters of the law: justice and mercy and faith. It is these you should have practiced without neglecting the others.”⁴⁹

Ultimately, at least in the short term and in a very limited sense, the religious establishment prevailed. “Nevertheless, many, even of the authorities, believed in him. But because of the Pharisees they did not confess it, for fear they would be put out of the synagogue; for they loved human glory.”⁵⁰ Then, of course, the religious establishment contrived to have the Roman authorities put Jesus to death, although this is taught in Christian doctrine to have been necessary for Jesus’ glorification and the redemption of humanity.⁵¹

The lesson, therefore, is that anyone who follows the example of the scribes and Pharisees sets himself up as opposed to and contrary to the teachings and example of Jesus.

B. CONDEMNATION OF GREED

Jesus repeatedly emphasized to his disciples that they must choose spiritual values over material values. “Do not store up for yourself treasures on earth, where moth and rust consume and where thieves break in and steal; but store up for yourselves treasures in heaven, where neither moth nor rust consumes and where thieves do not break in and steal. For where your treasure is, there your heart will be also.”⁵²

⁴⁷ *Id.* at 7:15-20.

⁴⁸ *Id.* at 20:25.

⁴⁹ *Id.* at 23:2-4, 23.

⁵⁰ *John* 12:42-43.

⁵¹ *Id.* at 11:47-53; 18:28-32.

⁵² *Matthew* 6:19-21.

Jesus made clear this was an either/or decision: “No one can serve two masters; for a slave will either hate one and love the other, or be devoted to the one and despise the other. You cannot serve God and wealth.”⁵³

Jesus therefore ordered his disciples to live in poverty: “As you go, proclaim the good news, ‘the kingdom of heaven has come near.’ Cure the sick, raise the dead, cleanse the lepers, cast out demons. You received without payment; give without payment. Take no gold, or silver, or copper in your belts, no bag for your journey, or two tunics, or sandals, or a staff; for laborers deserve their food.”⁵⁴

C. CONDEMNATION OF THOSE WHO WOULD LEAD ASTRAY THE INNOCENT

As much as Jesus condemned the scribes and Pharisees in general, and set himself apart from the materialistic and the greedy, perhaps his harshest condemnation, and most dire prediction, was of those who would lead astray the innocent. “If any of you put a stumbling block before one of these little ones who believe in me, it would be better for you if a great millstone were fastened around your neck and you were drowned in the depth of the sea. Woe to the world because of stumbling blocks! Occasions for stumbling are bound to come, but woe to the one by whom the stumbling block comes!”⁵⁵

D. JESUS’ INSTRUCTIONS AND EXAMPLE TO HIS FOLLOWERS: HUMILITY OF THOSE WHO WOULD SERVE

So what qualities did Jesus expect of his followers, particularly the leaders of his church? First, Jesus emphasized many times in the Gospels that those who would lead his church must serve in humility. This begins with realizing that everyone has his own failings, which may be as great or greater than the failings one may find in others. Thus Jesus gave the warning about pointing out the speck in another person’s eye.⁵⁶

With a humble spirit, the leaders of the church were expected to exercise leadership through service to all their brothers and sisters. In one of the paradoxes of Jesus’ teachings, many times he emphasized that the last would be first and the first would be last.⁵⁷

Jesus gave the example of humble service by washing the feet of his disciples. “Jesus, knowing that the Father had given all things into his hands, and that he had come from God and was going to God, got up from the table, took off his outer robe, and tied a towel around himself. Then he poured

⁵³ *Id.* at 6:24.

⁵⁴ *Id.* at 10:5-10.

⁵⁵ *Id.* at 18:6-7; substantially the same text is found in Mark 9:42 and Luke 17:1-2.

⁵⁶ *Matthew* 7:1-5; *Luke* 6:39-42.

⁵⁷ *Matthew* 20:24-28; *Mark* 9:33-37, 10:43-45; *Luke* 9:47-48; *John* 13:12-17.

water into a basin and began to wash the disciples' feet and to wipe them with the towel that was tied around him."⁵⁸

Jesus explained, "So if I, your Lord and Teacher, have washed your feet, you also ought to wash one another's feet. For I have set you an example, that you also should do as I have done to you. Very truly, I tell you, servants are not greater than their master, nor are messengers greater than the one who sent them."⁵⁹

VII. WHAT WOULD JESUS DO?: A GOSPEL-BASED LITIGATION STRATEGY FOR THE CHURCH

A. RECOMMENDATIONS

The first consideration must be whether the allegation of abuse appears to be valid. Nothing in this article should be construed as advocating that anyone should admit fault (either one's own fault, the fault of the organization, or of another person within the organization) and apologize until there has been at least some investigation to determine whether the allegations are credible.

Almost invariably, the abuse will have occurred in private, and to a large extent the evidence will be a swearing match between the abuser and the victim. Nevertheless, a thorough investigation can demonstrate that the preponderance of the evidence indicates the accused did commit the abuse, ranging from the pattern of independent reports by multiple victims (particularly if the descriptions of the abuse are remarkably similar), to psychological evaluation of both the accuser and the accused, to in some instances the admissions of the abuser.

In the event that the diocese's investigation (or investigation by others producing credible information) determines that the priest or lay leader against whom the allegations are made probably did commit the alleged acts, the diocese must humbly accept responsibility for the consequences.

Some guidance on how Jesus would expect a bishop to beg the forgiveness of the victim may be found in the parable of the prodigal son. When the prodigal son returned, impoverished, to his father's home after squandering half the father's estate in dissolute living, the son said to the father, "I have sinned against heaven and before you; I am no longer worthy to be called your son; treat me like one of your hired hands."⁶⁰

Notably, the prodigal son in Jesus' teaching did not prevaricate. He did not stand on pride, and he did not try to explain or excuse his conduct. In absolute humility, he admitted the error of his ways and asked for whatever mercy the father was willing to give. He did not tell the father what to

⁵⁸ *John* 13:3-5.

⁵⁹ *Id.* at 13:14-16.

⁶⁰ *Luke* 15:11-24.

think or impose on the father his opinions of how the father should respond to him.

Following this model, the bishop must personally approach the abuse victim with an attitude of complete humility, realizing that reconciliation between the victim and the Church that victimized him can only begin with acceptance of fault. That acceptance of fault is incompatible with any sense of pride by either the bishop or the diocese. This is not the time for the churchman in his finest vestments at Easter Mass. It is a time for plain clothes, plain speaking, and imitation of a Jesus who removed his robe and washed the feet of his disciples. There is “a time for every matter under heaven,”⁶¹ and this is the time for a humility that is glory in disguise.

The bishop should meet privately with the victim. It should be a meeting directly with the bishop, not his representative. On his knees, the bishop should acknowledge the abuse inflicted on the victim, and whatever errors or omissions by which the diocesan hierarchy may have allowed the abuse to happen. The bishop should then beg the forgiveness of the victim on behalf of the bishop himself (and his predecessor, if the abuse occurred before this bishop’s tenure), the abuser, anyone else in the diocesan hierarchy who enabled the abuser, and the diocese as a whole.

At no time in this meeting should the bishop presume to preach in any fashion to the victim. In his role in this meeting, the bishop is a penitent and the representative of other penitents, not an authority figure (read: Pharisee) who is entitled to tell the victim what the victim should think or how the victim should respond to the bishop’s apology. Anything on the bishop’s part even remotely resembling pride or arrogance would be completely counterproductive to the purpose of the meeting.

The bishop should also show respect for the victim and however the victim chooses to respond, which may be in either a positive or a negative fashion. There would probably be as many responses to this meeting as there are abuse victims. The bishop must respect the fact that after enduring the sexual abuse and the betrayal of trust that went with it, the victim is entitled to respond however he deems appropriate to the bishop’s apology.

B. AN EXAMPLE: APOLOGIES IN MEDICAL MALPRACTICE CLAIMS

The foregoing recommendations, especially for defense attorneys, may seem impracticable and utopian. However, there is a movement in other spheres of tort defense against the “deny and defend” stance and toward early apologies to defuse the claimant’s intent to pursue high-stakes litigation.

One such area is in medical malpractice litigation. The University of Michigan Health System, as one example, has been experimenting with early full disclosure of medical mistakes. It found that existing claims and

⁶¹ *Ecclesiastes* 3:1-8.

lawsuits dropped to 83 in August 2007 from 262 in August 2001. The hospital's legal defense costs and the money it must set aside to pay claims have each been cut by two-thirds.⁶²

Another example is the University of Illinois Medical Center. In the thirty-seven cases where the hospital acknowledged a preventable error and apologized, only one patient has filed suit. Only six settlements have exceeded the hospital's medical and related expenses.⁶³

As the *New York Times* writer explained, "By promptly disclosing medical errors and offering earnest apologies and fair compensation, [medical centers] hope to restore integrity to dealings with patients, make it easier to learn from mistakes and dilute anger that often fuels lawsuits."⁶⁴

C. THE EVIDENTIARY EFFECT OF AN APOLOGY

On consideration for the defense attorney in considering any possible communication between his client and the claimant is whether the communication will be admissible in court, and if so, what the effect of that evidence would be.

This question may have different answers in various jurisdictions. In Indiana, the issue would be governed primarily by Indiana Code sections 34-43.5-1-1, *et seq.*, "Communications of Sympathy." In any tort action, a party may exclude from evidence "a statement, a gesture, an act, conduct, or a writing that expresses sympathy, an apology, or a general sense of benevolence."⁶⁵

However, the statute then provides that "a court may admit a statement of fault into evidence, including a statement of fault that is part of a communication of sympathy, if otherwise admissible under the Indiana Rules of Evidence."⁶⁶

In other words, if the bishop (or other diocesan representative) tells the victim, "I am sorry you are suffering," that is inadmissible into evidence. If the bishop tells the victim, "I am sorry that the diocese knowingly sent a child molester to be your pastor, and that the pastor molested you," that would presumably be a "statement of fault," and therefore admissible into evidence. Therefore, unless the bishop limits his communications to a calculated, lukewarm, and vague expression of sympathy, rather than a heartfelt expression of regret for the transgressions of the priest and the Church hierarchy, the bishop's communications will probably be admissible at trial in an Indiana state court.

⁶² Kevin Sack, "Doctors Say 'I'm Sorry' Before 'See You in Court,'" *nytimes.com*, 5/18/08.

⁶³ *Id.*

⁶⁴ *Id.* See also Editorial, "Doctors Who Say They're Sorry," *nytimes.com*, 5/22/08.

⁶⁵ IND. CODE §§ 34-43.5-1-3 and 34-43.5-1-4.

⁶⁶ IND. CODE § 34-43.5-1-5.

D. PROJECTED EFFECTS IN LITIGATION

This author is unaware of any studies that have been done regarding the difference in outcome when the defendant in an emotionally charged but valid claim acknowledges fault and seeks forgiveness and reconciliation. This author relies instead primarily on more than twenty years of experience in civil litigation.

The result of the bishop personally acknowledging the fault of himself and/or his predecessor and others in the diocese and asking forgiveness from the victim on behalf of the diocese and the Church would likely be one of three outcomes. First, in some instances, the victim would take no further action. The apology and acknowledgment of the victim's suffering would suffice, or the victim would be so battered by the trauma of the abuse that he would not have the emotional strength to pursue litigation.

Second, some victims would still seek compensation, but the amount upon which the victim and the diocese could settle would be significantly less than what a jury might ultimately award because the bishop's apology has defused at least part of the victim's anger toward the Church. While the victim would still seek some reasonable amount, the victim's view of the Church in negative terms would be alleviated to some extent and the victim's desire to inflict financial punishment on the Church would be diminished. The focus of the victim's compensation demand could shift from what amount would inflict punishment on the diocese to what amount could fairly compensate the victim for harm actually done, including for example the cost of appropriate mental health care.

Third, the apology could have no effect on the victim (or the victim's attorney, who could be especially significant in this equation if the victim relies exclusively or almost exclusively on his attorney's judgment) and the victim and his attorney will aggressively pursue litigation to get the maximum financial result possible. No doubt this outcome (and the financial exposure of the diocese) is at least partly on the minds of diocese leadership and their defense attorneys when putting up a stiff defense. And no doubt, there will be a certain portion of the victims who will fall in this third category regardless of the extent and sincerity of the bishop's apology.

Moreover, as discussed in the preceding section regarding "communications of sympathy," the victims in the third category probably will be able to use the bishop's apology at trial as an admission of fault, which may increase the risk of a plaintiff's verdict. However, the evidence of the bishop's humble apology to the victim would probably serve as an overall plus for the defense, not a negative. Especially for jurors who may view the Church hierarchy as aloof, arrogant, or otherwise in a negative light, it may well soften their views (much like the effect sought from the victim in the first and second outcomes, above). As any litigator will attest, in most cases, the side that the jury likes more will probably win the trial. In many cases, therefore, creating a favorable impression about the diocese with the jury

will increase the likelihood of a much lower plaintiff's verdict, or in some trials, a defense verdict resulting from the jury viewing disputed liability issues more favorably toward the defense (for example, whether the diocese knew the priest was a child molester when it transferred him to the plaintiff's parish).

If the result is that there are little or no defense costs or settlement payments to victims in the first category, and significantly reduced defense costs and settlement payments to victims in the second category, wouldn't these financial gains more than offset the potentially increased exposures and higher defense costs in the third category? Especially considering that the current scorched-earth defenses of the dioceses has still resulted in extremely expensive results for them?

E. PROJECTED EFFECTS IN OTHER ASPECTS OF THE DIOCESE, INCLUDING FUNDRAISING

Even more important is how this proposal may positively affect the ongoing spiritual and financial health of the Church. Beyond the reconciliation with the abuse victims and minimizing the defense costs and costs of settlements and awards is the crucial issue of how these scandals affect rank-and-file Catholics and their relationship with the Church hierarchy.

It is extremely demoralizing to many in the laity not only that members of the hierarchy have committed abuses or have enabled the abuses, but also that the Church vigorously defends against even legitimate and credible claims of abuse, especially when that defense is a drain on the laity's contributions to the Church, taking away from other projects and causing cutbacks in funding for parishes and schools.⁶⁷ It can call into question their belief that the Church is indeed the Body of Christ on Earth, and can in some instances cause a breach in their relationship with the Church.⁶⁸

Beyond any financial calculation, either in terms of the cost of the claims themselves or the reduction of contributions by the laity, the Church must consider what actions nurture the faith of its members, and what actions diminish the faith of its members. The Church by its own doctrine is "directed . . . to the sanctification of men in Christ and the glorification of God."⁶⁹ The Church is therefore obligated to demonstrate that it is a "good tree bearing good fruit," by responding as Jesus would to those it has harmed or has allowed to be harmed.

⁶⁷ And hence the rise of lay organizations such as the Voice of the Faithful. *See* votf.org.

⁶⁸ As the pope acknowledged, the consequences of the clergy abuse scandal "and of its being sometimes very badly handled by bishops makes both the personal faith of some Catholics and the public life of the church herself more problematic." Victor L. Simpson, "Pope: Clergy sex abuse sometimes badly handled by church," *timesonline.com/articles/2008/04/24* (Apr. 24, 2008).

⁶⁹ CATECHISM, art. 824.

VIII. CONCLUSION

The current strategies the Church employs in defending itself against allegations of abuse suggest that a conscious decision has been made by many dioceses to sacrifice the spiritual well-being of a few victims of abuse in favor of the perceived financial benefit of the Church hierarchy, much like the scribes and Pharisees. By emotionally and morally shutting out the victims and attempting to deny the existence of the victims' suffering through defenses such as the statute of limitations, the Church never comes to terms with whether the representatives of the Church did in fact inflict harm on the victims and turns its back on the moral authority it professes.

Considering that the typical victim had been a practicing Catholic at the time of the abuse (and thus within the reach of the abusing priest or lay leader), this constitutes "put[ting] a stumbling block before one of these little ones who believe in [Jesus Christ]," because the abuse causes estrangement between the victims and the Church that had sent the abuser into the victim's life and gave the abuser power over the victim, facilitating the abuse. Since the Church professes to represent Jesus, this would in many cases cause the victim to turn away from the message of Jesus. It was for this offense that Jesus reserved the greatest punishment.⁷⁰

As discussed in this article, the Church's current approach is not only adverse to what the Church professes to be, it also may well be more expensive to the Church in the long run than a more conciliatory and humble approach.

The Church does not have to take the path that it has been following. It can embrace its moral and spiritual birthright, which comes directly from Jesus Christ. It can embrace the suffering of the very Catholics who as children and adolescents had trusted the members of the hierarchy who betrayed them. It can accept responsibility for the failings of the abusers and those who protected and enabled the abusers, and in this way fulfill its mission to serve and to spiritually heal the least of Christ's brothers and sisters on Earth. It can follow the example of Jesus, who humbly washed the feet of his disciples.

Or, it can continue to focus on preserving its wealth at the expense of those it has hurt or allowed to be hurt. It would thereby continue on its present course of litigation strategy, and imitate Esau, who sold his birthright for a mess of pottage.⁷¹

⁷⁰ *Matthew* 18:6-7.

⁷¹ *Genesis* 25:29-34.

