

RE: Reverend Gordon J. MacRae
Diocese of Manchester, New Hampshire

Report on the Status of the Case

Overview:

Reverend Gordon MacRae was convicted of multiple counts of the crime of sexual assault in a 1994 New Hampshire criminal trial. His accusers alleged, without evidence, that the crimes occurred at unspecified times between 1977 and 1983, and brought simultaneous lawsuits against the Diocese of Manchester. The lawsuits were settled out-of-court, without investigation, and without Father MacRae's cooperation. His accusers in the primary case - four adult brothers - obtained approximately \$630,000.00 in settlements. As the likelihood of unquestioned settlements increased, Father MacRae was accused by others, including some persons he has never even met.

From the day he was accused, throughout his trial, and throughout 14 years of imprisonment up to the present day, Father MacRae has maintained his innocence of all charges. On three occasions before his trial, Father MacRae was offered "plea deals" by state prosecutors. If he had been willing to enter a plea of guilty, he would have been sentenced to a prison term of one to three years with all remaining charges dropped. Because he rejected the plea offers, he was sentenced to prison for up to 67 years.

Immediately following his criminal trial, Father MacRae's defense counsel resigned due to the lack of funds to properly investigate and defend the case. Without adequate counsel, and while in a jail facility awaiting sentencing, he was presented with another "plea deal" offer to forgo additional trials while facing no additional prison time. His attorneys, while exiting the case, advised him that he had no choice.

As addressed below, no one involved in the re-investigation of this

case assigns any validity to the post-trial plea.

The focus of the following report is the varied and conflicting responses of Diocesan authority to this case.

History

1994 - 1999:

During the 18 months between Father Gordon MacRae being accused and his 1994 trial, communications with his diocesan authorities became strained. The Diocese of Manchester, then under the leadership of the late Bishop Leo O'Neil, refused to participate in or support Father MacRae's defense or any pre-trial investigation of the claims against him. In apparent response to Father MacRae's, his canonist's, and his legal counsel's repeated requests that his Diocese assist with his defense, the Diocese of Manchester issued a pre-trial press release that effectively declared Father MacRae to be guilty before jury selection in his trial. Father MacRae and his advocate and counsel protested the decision of diocesan officials to effectively deny Father MacRae due process, a presumption of innocence, and a fair trial. We found diocesan authorities unwilling to consider contrary evidence, and even the possibility that Father MacRae may be innocent of these charges. Further, in the months before his trial, Father MacRae's health insurance coverage was inexplicably cancelled leaving Father MacRae, who was diagnosed with epilepsy in 1990, with \$10,000 in unpaid medical bills in addition to an unfunded criminal defense.

Father MacRae's and his advocates' protests about the Diocese's handling of this case resulted in an unexplained claim by a diocesan representative that the bishop and diocese were "threatened" by Father MacRae's advocate and lawyer. The nature of the threat has never been explained, nor did any such threat ever take place. Nonetheless, the claimed threat was used as a reason for denying pre-trial assistance to Father MacRae. Finally, two weeks prior to trial in 1994, Father MacRae's bishop privately and reluctantly assented to assist the case by providing defense counsel with a small percentage of the actual cost of Father

MacRae's defense.

The assistance simply came too late to afford Father MacRae an adequate criminal defense by investigating the claims and claimants before a trial commenced. In essence, the diocese's decision to withhold funds until the last possible moment virtually assured that the case would not be investigated or properly defended.

Complicating this matter was the fact that another priest of the Diocese, the Reverend Stephen Scruton, had simultaneously been accused by Father MacRae's accusers. He refused all attempts by defense counsel to question him, and finally left the state to avoid a subpoena to be deposed. A result of his disappearance was that Father MacRae's jury never learned that his accusers also accused Father Scruton. To date, Father Scruton has declined to discuss this case. In 2008, he was located by a new investigator. As described in the accompanying investigative report, Father Scruton initially agreed to be interviewed, and then refused after consultation with unnamed persons.

Following his 1994 trial, Father Gordon MacRae was imprisoned in the New Hampshire State Penitentiary sentenced to effectively a life term. Shortly after his arrival at the prison, someone posted news clippings quoting the pre-trial diocesan statement declaring that Father MacRae victimized the Church as well as his accusers. As can result from such public revelations, in prison, Father MacRae was attacked and beaten by an unidentified mob of prisoners. For the next five years, Father MacRae was not contacted by anyone connected to his diocese. He was in prison 15 miles from his diocesan chancery office. It was later claimed that Father MacRae declined to be visited through unnamed "third parties."

For much of that time, Father MacRae had no access to the Sacraments. He also did not have legal assistance to appeal his conviction, and his Diocese refused to assist him with appellate counsel.

A representative of Bishop Leo O'Neil wrote to Father MacRae's counsel in 1996:

"The Diocese will not be providing counsel to Mr. MacRae in connection with his criminal proceeding and hence will not pay any attorney to represent him at the upcoming sentence review hearing. I suggest that Gordon, to the extent he is without funds, contact the Public defender's office."

It should be noted here that the current administration of the Diocese of Manchester conceded to the inherent unfairness of withholding diocesan assistance for Father MacRae's appeal and sentence review. In a confidential 2001 memo, Rev. Edward Arsenault, delegate for Bishop John McCormack wrote to the Bishop: "In hindsight, Gordon's dependence upon the public defender for what would essentially be his last reasonable appeal of his sentence was unfair." This memo, and others addressed below, was among documents published by the Diocese during a 2003 settlement with the New Hampshire Attorney General's Office. To date, however, the Diocese has not participated in funding a criminal, civil, or canonical defense for Father MacRae.

1999 -2003

Late in 1998, Most Reverend John McCormack, Auxiliary Bishop of Boston, was appointed Bishop of Manchester. In early 1999, a Fox News researcher questioned Father MacRae about two pre-trial polygraph examinations he had taken and passed while his accusers declined polygraph examinations. Though inadmissible in court, FOX News proposed a new polygraph examination and interviews with Father MacRae concluding that he was in prison unjustly. Prison officials refused to permit Fox News to further contact Father MacRae.

Also in early 1999, Father MacRae contacted the Congregation for Clergy seeking assistance in obtaining canonical advocacy to defend against any unilateral effort to dismiss him from the clerical state without an opportunity to investigate and defend

against his charges and conviction.

At that time, Bishop McCormack began to visit with Father MacRae in prison, and began to inquire with the Chancellor, Rev. Edward Arsenault, and Attorney Brad Cook about the diocese's history with Father MacRae's case.

In October 2000, Leo Demers, a producer for the investigative news program PBS Frontline long interested in Father MacRae's case, initiated a meeting with Bishop McCormack. According to an affidavit of Mr. Demers previously submitted in 2008, Bishop McCormack told him of his belief that Father MacRae is innocent of the claims against him, but cautioned him that "none of this can ever leave this room."

In December 2000, Attorney Eileen Nevins, a lawyer who had attended Father MacRae's trial and believes him to be falsely accused and unjustly convicted, informed Bishop McCormack of the developing interest of Dorothy Rabinowitz of The Wall Street Journal. According to her affidavit, also submitted in 2008, both Bishop McCormack and Bishop Francis Christian expressed their shared belief that Father MacRae is innocent of the claims against him, and informed her of their intent to fund an appellate review of the case.

In 2001, Father Edward Arsenault, Bishop McCormack's delegate, raised the following points in two confidential memos to Bishop McCormack (memos that were among documents later published by the State):

"There is a legitimate need to respond in charity to Gordon. My suggestion is that we address the inequity in Gordon's lack of base remuneration over the last 8 - 10 years (a calculable number)...This would alleviate...the burden from you for extraordinary measures and would be more consistent with Church law."

"We ought to admit to Gordon that we have no reason to doubt that the Grovers may have embellished their testimony to suit their own purposes and that we have never supported Detective McLaughlin's tactics."

"Gordon does raise issues that leads [Attorney] Brad Cook to observe that the judge's imperfections may rise to the

substance of legal imperfections."

"We ought to eliminate Dorothy Rabinowitz and Attorney Rosenthal from this matter. All the issues associated with the involvement of the media and their legal associates are self evident. They serve far different purposes than Gordon's or ours."

"At best, there was a lack of good communication from 1994-1999. The diocese thought that it had extended offers of support, but Gordon clearly didn't receive them."

"Gordon has always been insistent on selecting his own advocates, despite diocesan efforts to assist him in this regard. This has only contributed to an adversarial dimension to his relationship with his diocese."

"The decision not to support Gordon's request for legal counsel for appeal in 1996 was based upon his unwillingness to cooperate in any reasonable discussion to that point regarding his guilt or innocence. In hindsight, his dependence upon the public defender for what would essentially be his last reasonable appeal of his sentence was unfair."

These latter points are of particular concern, though Father MacRae and his advocates were unaware of their existence until recently. There was never an unwillingness on Father MacRae's part to cooperate in a discussion "regarding his guilt or innocence." The matter of his choosing his own advocates is perplexing. From the moment he was accused until the present day, Father MacRae's diocese has refused to assist him with finding, retaining, or funding defense counsel or a canonical advocate.

In September 11, 2001, the World Trade Center towers in Manhattan were destroyed by terrorist attacks. Among the collateral damage from their collapse was the destruction of the offices of The Wall Street Journal, and among those losses was the complete loss of the entire file sent by Father Gordon MacRae.

This initial interest in his case evaporated for another three years, and along with it, the interest of Father MacRae's diocese and bishop also evaporated.

Before it did, however, diocesan representatives wrote some remarkable information to Bishop McCormack in additional confidential memos released by the Diocese, and obtained only recently by Father MacRae's advocate. In a February 2002 memo to Bishop McCormack, Father Arsenault wrote the following:

"We need to review the transcript of Thomas Grover's testimony from the civil suits against the Diocese to comment on GJM's stalwart claim of total innocence." [Note that Father MacRae's earlier request for that very transcript was denied by the Diocese with a statement that the testimony was never transcribed and is no longer available.]

"We need to review the [Defense Attorney] Ron Koch survey to form an opinion on GJM's claim of its value as a proxy for "his side of the story." [Note that it was immediately following this memo that Father Arsenault asked MacRae for his defense files with a promise that he retained new counsel for Father MacRae, and then allowed those files to be taken and published, or suppressed, by the State].

"We ought to encourage GJM to accept the gift and hire [Attorney] Rosenthal with an encouragement to insure that the research is confidential and his alone. We need to state clearly that the hiring of Rosenthal by GJM does not preclude diocesan support. If Rosenthal doesn't pan out, I have access to other national attorneys who could help."

An attorney for the Diocese also prepared a memo for Bishop McCormack which, we learned recently, was also published in 2003. In that memo, Attorney Bradford Cook made clear statements that the Diocese had all along doubted the veracity of Father MacRae's accusers and harbored doubts about the fairness of his trial. The Diocesan Attorney's memo included the following statements:

"Throughout this process it was obvious that all of the Grovers were expansive in their testimony and it was aimed at getting a certain result, and frankly none of the attorneys involved in the criminal or civil cases trusted their testimony to be completely accurate. Whether it was all trumped up or totally manufactured is impossible to know....That it was embellished was clear."

"Detective McLaughlin has been the instigator of many cases in the Keene area and seems to be a crusader on sexual abuse cases, engaging in questionable activities which border on entrapment on occasion."

"MacRae's assertions are true in the fact that corroborating evidence outside of the Grover family was not forthcoming."

"There were procedural problems in how the judge handled the case."

"MacRae is right that the public defender did not do a good job with his state appeal."

"As to the involvement of Father Scruton or anyone else at St. Bernard's, clearly there were several members of the clergy located at that church who had problems and it is impossible to discount that one or more of them may have been involved with one or more of the Grovers."

"Certainly the timing of the Grover cases and other highly publicized cases in the country, including Porter, was not helpful to the environment in which MacRae was tried."

"It is apparent that the public defender did not do a good job for MacRae regardless of the outcome."

In the early months of 2002, Bishop McCormack and Father Arsenault promised in writing to fund a legal review and appellate defense for Father MacRae. Within months, however, the overture again diminished, this time because Bishop John McCormack, formerly an Auxiliary Bishop of Boston, was implicated in the emerging high profile scandal involving Boston priests that became national news. Earlier in 2002, however, Father Edward Arsenault, Bishop McCormack's delegate, told Father MacRae that the Diocese wanted to retain counsel to review his case. Father Arsenault asked Father MacRae to send to his office the pre-trial defense files of Attorney Koch, who by this time was deceased. Through a local lawyer, Father MacRae sent his files to the diocese as Father Arsenault requested. When six months passed without contact, Father MacRae inquired with Father Arsenault about the status of the promised legal review. The response left him demoralized. Not only had the Diocese reneged on its promise to retain legal counsel, but Father Arsenault appeared to have fraudulently obtained the defense files for some other purpose that has never been explained to Father MacRae.

In 2003, the Diocese and State announced an agreement to publish files obtained from the Diocese. The agreement

stipulated a ten-day period for the Diocese to arrange with each accused priest an opportunity to review files and challenge anything that is deemed privileged or confidential. In January of 2003, Father MacRae wrote to Father Arsenault asking that the Diocese honor this ten-day period in his regard so that he could try to protect the legal files that were apparently obtained by false pretense. The request was neither acknowledged nor honored. Upon information and belief, Father MacRae was the only subject of the released files not afforded the agreed-upon prior review. The result was that a number of privileged documents were published without his consent.

In 2007, four years after the files were published, Bishop McCormack responded:

"The decision that state authorities made to release confidential information from our diocesan records is unfortunate. Efforts were made to influence their decision that they not do so but we did not succeed."

In 2008, New Hampshire Attorney General Kelly Ayotte explained this differently:

"The files examined by the State were produced by the Diocese as a result of a Grand Jury subpoena. Under New Hampshire law, all documents resulting from a Grand Jury investigation are confidential. The Diocese had to agree, and did agree, before those [priests'] files could be released to the public."

Bishop McCormack and Father Edward Arsenault have thus far been unresponsive to requests for an explanation of what happened to the legal files, of why Father MacRae was denied an opportunity to review files, or of the discrepancy between the Bishop's and Attorney General's descriptions.

Later in 2003, Bishop McCormack wrote to inform Father MacRae in prison that his file and other documentation would be sent to the Congregation for the Doctrine of the Faith along with the

Bishop's votum. Bishop McCormack sent the Essential Norms to Father MacRae and assured him that he would arrange a meeting to discuss his case prior to sending it to Rome. The promised meeting never took place. On April 28, 2004, Father MacRae received a letter from his Bishop informing him that his case was sent to Rome without discussion.

2004 to Present

In 2004 and 2005, Dorothy Rabinowitz, a writer for the internationally influential newspaper, The Wall Street Journal conducted an independent review of the crimes alleged by accusers of Father Gordon MacRae. Ms. Rabinowitz and The Wall Street Journal had previously been awarded a Pulitzer Prize for her investigations and published analyses of other sensationalized claims of sexual abuse that were fraudulent. Dorothy Rabinowitz's analysis was published in a two-part series in the Journal on April 27 and 28, 2005.

The Journal series moved several lawyers to investigate the case, and to initiate an appellate effort for Father MacRae. In late 2007, the new attorneys retained two former FBI agents to investigate, a process that continues at this writing. A preliminary report has been submitted under separate cover and accompanies this report. The Diocese of Manchester has not contributed to the current investigation and appeal effort.

Late in 2007, Bishop McCormack wrote that he has become aware that Father MacRae has new legal counsel. Bishop McCormack wrote that he has retained an attorney to represent him, though no one understands why Bishop McCormack needs an attorney in Father MacRae's appeal. The Bishop also advised Father MacRae that an unnamed expert has prepared a brief for the CDF with an analysis of the case against Father MacRae and a prognosis for any further legal relief.

Bishop McCormack has refused to divulge the content and conclusions of the new document or the identity of its author. This analysis and prognosis completely bypassed the experts who

have studied and investigated this case for the last two years. In his first response, Bishop McCormack wrote that divulging his report would waive attorney-client privilege. When it was pointed out that attorney-client privilege is already waived if the Bishop submitted a report to the CDF, he wrote a second letter. In that letter, he stated that he cannot divulge his report because the CDF asked for secrecy.

Whatever opinions Bishop McCormack and Father Arsenault have presented to the Congregation for the Doctrine of the Faith regarding Father Gordon MacRae, his canonical status, or the claims against him, the Diocesan authorities clearly doubted the truth of those claims and the legitimacy of the criminal convictions prior to the national clergy scandal emerging from Boston in 2002 resulting in the Charter and Essential Norms.

Father MacRae's Post-Trial Guilty Plea

In the preliminary investigative report submitted to the Congregation with this document, two former FBI investigators have concluded that Father Gordon MacRae was "set up" by persons who falsely accused him to obtain money from the Diocese of Manchester. To date, these investigators have uncovered substantial evidence of fraud and not one person with a legitimate complaint about Father MacRae.

In the course of re-examining this case, much attention has been given to the post-trial guilty plea described early in this report. Some officials in the Diocese of Manchester have cited the post-trial guilty plea as evidence of Father MacRae's guilt when all other information in the case has been refuted. Perhaps the most articulate expert opinion on the MacRae case, and the legitimacy of the post-conviction plea, has been rendered by former U.S. Ambassador to the Holy See, Mary Ann Glendon.

Writing as a Constitutional and comparative legal scholar, Ambassador Glendon wrote:

"Along with a number of other lawyers who have looked at the facts, I have come to share the opinion of Wall Street Journal writer Dorothy Rabinowitz that Fr. MacRae was very likely the victim of a criminal extortion scheme."

"Basically, the features that protect an innocent defendant in the Romano-Germanic systems are 1) the active involvement of the court in pretrial investigation, 2) the absence of the plea bargaining system with the pressures it creates for innocent persons to plead guilty rather than submit to the vagaries of trial...The absence of these features in the U.S. criminal justice system suggests caution about accepting a criminal conviction there as automatic cause for laicization, especially in cases like Fr. MacRae's where proceedings currently underway may result in the priest's ultimate vindication."

Ambassador Glendon's description of the plea-bargaining system in U.S. criminal courts sums up exactly what occurred in the case of Father MacRae. In a subsequent report to the CDF dated June 20, 2005, Ambassador Glendon wrote:

"It is virtually certain that the practices of contingent fee lawyers, in combination with the distinctively American plea-bargaining system, have resulted in the criminal conviction of some priests who are innocent of the charges against them. Recently, one of these cases was the subject of a two-part series in The Wall Street Journal by Pulitzer-Prize winning journalist Dorothy Rabinowitz."

The post-trial guilty plea cited as "evidence" of his guilt is actually a direct result of the failure of Father MacRae's diocese to assist in the protection of his civil and canonical rights.

Dorothy Rabinowitz described this accurately in "A Priest's Story" published on April 27 and 28, 2005:

"The jury that the accused thought must acquit him, came in with a verdict of guilty within 90 minutes. Left entirely without funds and facing three other trials yet to come, Fr. MacRae agreed to a post-conviction plea deal on all remaining charges - one to two years to be served concurrently with the sentence yet to be handed down in the Grover case.

Scarcely a sentence at all. His defense lawyers, departing for other business, urged him to take the deal, which Fr. MacRae described, then and now, as a 'negotiated lie.'"

During Father MacRae's sentencing hearing in 1994, two persons took the stand to assert their knowledge that Father MacRae's post-trial plea was in fact "a negotiated lie." This angered the judge in the case who was not open to hearing this. Father MacRae's canonical Advocate was one of those persons. As Dorothy

Rabinowitz wrote in The Wall Street Journal in 2005,

"The judge had harsh words for Fr. Deibel, the only priest to come forward to speak in defense of Fr. MacRae."

Judge Arthur Brennan, in attempting to justify a maximum sentence of sixty-seven years in prison - unprecedented for a defendant with no prior felony convictions - certainly did not cite the post-trial plea deal - the "negotiated lie" - that had played out in his court just weeks earlier. As Dorothy Rabinowitz described:

"Above all he was incensed at Gordon MacRae's lack of remorse, [his] aggressive denials of wrongdoing."

Throughout 2007, a Boston-based civil rights organization, The National Center for Reason and Justice (www.NCRJ.org), examined the criminal trial and convictions of Father Gordon MacRae. On November 18, 2007, the NCRJ Board of Directors meeting in New York unanimously approved promotion of Father MacRae's defense. The NCRJ Board, composed of lawyers, scholars and investigative journalists, assigned no validity whatsoever to the post-trial guilty plea. Their assessment of this and similar cases brought without evidence concluded:

"Recent exonerations of convicted people via DNA evidence [there have been hundreds in the U.S. alone] demonstrates that many innocent people have been unjustly imprisoned without the financial means to defend themselves against the state, the media and other powerful institutions. Most of these innocent people have been convicted because of faulty testimony, coerced accusations and confessions, and the acceptance of 'junk science' by the courts. Especially vulnerable have been those accused of sex offenses against children and adolescents. Too often, hysteria reigns and the accused are tried and convicted by the media."

The NCRJ now sponsors a website specifically addressing the case of Father MacRae. In prison, he has never even seen this site, but it has drawn the attention of many. It is located at:

www.GordonMacRae.com, and www.GordonMacRae.net.

The Fall 2008 Quarterly Journal of the False Memory Syndrome Foundation (FMSF) also endorsed the defense of Father MacRae and published an article analyzing his trial. Accompanying that article is a companion article entitled "Why Would Someone Confess to a Crime He Did Not Commit?" The article focused

specifically on highly coercive plea deals. Citing various scientific studies, the article concluded that 25% of the exonerations resulting from DNA evidence - which proved beyond doubt that the accused were wrongly convicted - have involved people who confessed to a crime they did not commit because of coerced plea deals and other means.

Paul R. McHugh, M.D., the University Distinguished Service Professor of Psychiatry at Johns Hopkins University School of Medicine, is a member of the FMSF Scientific and Professional Advisory Board, and a member of the U.S. Bishops' National Review Board. Writing of the case of Father Gordon MacRae, Dr. McHugh characterized it as "a sick and sad misdirection of American justice."

Conclusion

In a letter dated June 24, 2004, the Very Reverend Peter Lechner, S.P., Ph.D., Minister General of the Servants of the Paraclete Order and a licensed clinical psychologist, addressed the case of Father MacRae. In 1989, Father MacRae spent a year in treatment in the Servants' residential program for priests in New Mexico after a diagnosis of epilepsy that was difficult to treat and control. Following a year in treatment, Father MacRae, with the approval of a prior bishop, became a valued staff member for the Servants' programs for troubled priests.

Father Lechner and the Servants' community have remained in close contact with Father MacRae throughout his imprisonment, and, in stark contrast to the demeanor of his Diocese, have traveled great distances to visit him in prison. In his letter Father Lechner wrote:

"Gordon consistently denied and continues to deny the accusations for which he was eventually convicted. It is rare that consistent and plausible denial is able to be maintained during a year's course of treatment, especially in treatment programs developed in the past 15 to 20 years [documentation cited by footnote]. To this day, Fr. Gordon maintains he is innocent of the issues he was convicted of."

In support of that statement, Father Lechner and the Servants of the Paraclete have - even after fourteen years in prison - recently extended to Father MacRae an invitation to rejoin their ministry to priests in the event his appeal efforts are successful and he is freed.

April 9, 2010