

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – LAW DIVISION**

JOHN DOE 117 and JOHN DOE 118,

Plaintiffs,

v.

THE CHICAGO PROVINCE OF THE  
SOCIETY OF JESUS a/k/a THE JESUITS  
and FATHER DONALD J. MCGUIRE, S.J.  
Defendants.

JOHN DOE 129

Plaintiff,

v.

THE CHICAGO PROVINCE OF THE  
SOCIETY OF JESUS a/k/a THE JESUITS  
and FATHER DONALD J. MCGUIRE, S.J.  
Defendants.

No. 07 L 11952,  
consolidated for discovery with  
09 L 02120

MAR 28 PM 3:23  
LAW DIVISION

**PLAINTIFFS' MOTION TO ADD PRAYER FOR RELIEF  
SEEKING PUNITIVE DAMAGES**

NOW COMES the Plaintiffs, John Does 117, 118, and 129, by and through their attorneys, Kerns, Frost and Pearlman, LLC and, pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-604.1 move this Court to grant leave to allow the Plaintiffs to add a prayer for relief seeking punitive damages against Defendants, The Chicago Province of the Society of Jesus (the "Jesuits"). In support of this motion, Plaintiffs state as follows:

**INTRODUCTION**

These cases epitomize everything that went wrong with regard to the sexual abuse of minors by priests and how the leadership of the institutions in which they worked (in this case the Chicago Jesuits) allowed such abuse to occur. They arise out of the sexual abuse of six

minor boys by Donald McGuire (“McGuire”), a Chicago Jesuit priest for over forty years who now is incarcerated in a Federal prison because of what he did to these men when they were young boys.<sup>1</sup> As shown below, the evidence establishes that the Chicago Jesuits were aware of McGuire’s “problems” with young boys since his ordination in the early 1960’s, yet did nothing to stop his abuse of children, including these three Plaintiffs, despite many specific warnings regarding McGuire and his pedophilic tendencies.

McGuire is, no doubt, a sick individual who engaged in a pattern of criminal, deviant behavior that left a trail of devastated victims (these young men and their families). What is more troubling, however, is that the leadership of the Chicago Jesuits, who presumably are not sick, permitted McGuire to commit these atrocities time and time again. The evidence establishes beyond any doubt that the Jesuits had multiple opportunities to stop McGuire, but instead turned a blind eye to his criminal actions. The more the Jesuits learned about McGuire’s problems, the harder they worked to cover them up.

As shown below, the documents in this case and the deposition testimony of those Chicago Jesuits in charge at the relevant times establish a reckless disregard for the safety of others in the face of repeated reports of sexual misconduct. Equally troubling, the Jesuits did everything in their power to continue covering up what they knew after McGuire was finally caught in 2003, to the point of refusing to cooperate with and, in fact, misleading police investigators and a district attorney from Wisconsin.

As shown below, the Jesuits’ lack of any meaningful oversight of McGuire, a man they knew had significant personality and sexual problems, along with their complete indifference toward these Plaintiffs (and any other child who may have come into McGuire’s path), surpasses

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<sup>1</sup>Since 2007, six victims have filed five separate suits against McGuire and the Jesuits in Cook County Circuit Court. The cases have been consolidated for discovery. Three of the victims have settled with the Jesuits. This Motion is brought on behalf of the three victims with claims still pending.

the worst cases that have emerged from the devastating child sex abuse scandal that has rocked the church and consumed the public in the last several years.

Accordingly, and for the reasons discussed below, these Plaintiffs should be allowed to amend their complaints to add a claim for punitive damages.

## ARGUMENT

### **I. Standard for Punitive Damages**

Under Illinois law,

a plaintiff may, pursuant to a pretrial motion and after a hearing before the court, amend the complaint to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the complaint if the plaintiff establishes at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.

735 ILCS 5/2-604.1 (2005).

“It has long been established in this State that punitive or exemplary damages may be awarded when torts are committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others.” *Barton v. Chicago and North Western Transp. Co.*, 325 Ill.App.3d 1005, 757 N.E.2d 533, 554 (Ill. App. Ct. 2001) (quotations omitted). “Willful and wanton misconduct” means a course of action which shows an utter indifference to or conscious disregard for the safety of others. *Poole v. City of Rolling Meadows*, 167 Ill.2d 41, 656 N.E.2d 768, 771 (Ill. 1995) (citations omitted). This includes a reckless disregard for the safety of others, such as a failure after knowledge of impending danger, to exercise ordinary care to prevent it, or failure to discover the danger through recklessness or carelessness when it could have been discovered by ordinary care. *American National Bank & Trust Co. v. City of Chicago*,

192 Ill.2d 274, 285, 735 N.E.2d 551, 557 (Ill. 2000); *Lynch v. Board of Education*, 82 Ill.2d 415, 429, 412 N.E.2d 447, 457 (Ill. 1980).

On a motion to amend to add a claim for punitive damages, all evidence is viewed in the light most favorable to the plaintiff. *Stojkovich v. Monadnock Bldg.*, 281 Ill.App.3d 733, 666 N.E.2d 704 (Ill. App. Ct. 1996).

In *Hartman v. Pittsburgh Corning Corp.*, 261 Ill.App.3d 706, 634 N.E.2d 1133, 1143 (Ill. App. Ct. 1994), the court affirmed a jury's award of punitive damages, based on evidence that:

defendant had knowledge of the harmful effects of asbestos, destroyed documents containing such information, and continued to manufacture and sell the product without affixing any warnings about its dangers, [meaning that] defendant's actions clearly rise to the level of deliberate infliction of a 'highly unreasonable risk of harm upon others in conscious disregard of it.'

*Id.* (citations omitted). As detailed below, and although arising in a different type of case, the Jesuits' behavior is analogous to the defendant's actions in *Hartman* because the Jesuits were given numerous specific warnings about McGuire, thereby creating a dangerous condition.

Here, Plaintiffs can and will establish a reasonable likelihood to prove facts to support an award of punitive damages against the Jesuits. See 735 ILCS 5/2-604.1. There is significant evidence that the jury will determine that Defendant's conduct was willful, grossly negligent, exhibited a wanton disregard of the Plaintiffs' rights, demonstrated an utter indifference to the Plaintiffs' safety, and/or exhibited a reckless disregard for the safety of the Doe Plaintiffs. Plaintiffs will show that *before* they were abused, the Jesuits knew about multiple other incidents of sexual abuse of children by McGuire; that the Jesuits failed to report McGuire's abuses (perhaps in violation of Illinois law) to civil authorities; that the Jesuits failed to inform other critical persons, including parents, about McGuire's pedophilic tendencies; that the Jesuits failed

to timely remove McGuire from access to children; that the Jesuits exhibited an overall callous disregard for the welfare of the Doe Plaintiffs; and that the Jesuits did all of this to protect themselves from scandal.

## **II. Factual Background**

### **A. The Chicago Jesuits**

The Jesuits today form the largest single order of priests and brothers in the Catholic Church. The Chicago Province is led by a Provincial who is appointed by the leader of the Jesuits in Rome -- the Superior General -- to serve a six year term. The Provincial has ultimate responsibility for the Province and its actions. (Flaherty Dep., pp. 18-22, attached hereto as Ex. 1). The Provincial is assisted by a Socius who is selected by the Provincial and approved by the Superior General. The Socius is essentially the deputy Provincial tasked with overseeing the day-to-day operation of the Province.

Jesuits are expected to and, in fact, required to live and participate in their communities. For many years, Donald McGuire lived in the Canisius House community in Evanston, Illinois along with several other Jesuits. Two of the three victims that are still parties to this litigation were sexually abused at that residence, among other places.

### **B. McGuire's History as a Jesuit**

Donald McGuire joined the Society of Jesus in 1949, was ordained as a Jesuit priest in 1961, and remained a Jesuit priest for nearly fifty years. Remarkably, even after McGuire was criminally convicted in Wisconsin in February 2006 of sexually abusing two minor boys in the late 1960's, the Jesuits waited almost 18 months to begin the process of removing McGuire from the Jesuit society. It is no coincidence that the Jesuits only took this action after the United States Attorney for the Northern District of Illinois began issuing subpoenas and investigating

charges against McGuire for his sexual abuse of victim John Doe 116. That investigation led to McGuire's October 2008 conviction of sexually abusing John Doe 116.

After ordination, the Jesuits sent McGuire to Europe for several years. The few documents produced regarding McGuire's time in Europe indicate that he was engaged in very suspicious behavior with minor boys. One report from Munich stated:

It is said Father spent some weeks in Munich where he practically kept aloof from Ours, took up very narrow contacts with a family, whose "friend" and "son" he became; all under the title of learning German.

(Feb. 5, 1962 Fr. Small Letter to Provincial Connery, attached hereto as Ex. 2).<sup>2</sup>

A series of letters between the Chicago Provincial and Austrian Jesuits with whom McGuire lived shows that the Austrians were greatly concerned about McGuire's behavior, including his "relations with several boys." (Dec. 2, 1964 Fr. Coreth (Austrian Rector) Letter to Provincial Fr. Connery, attached hereto as Ex. 3). In fact, the Austrian Jesuits provided the Chicago Jesuits with specific information that should have raised enormous concerns about McGuire's behavior:

In this connection is another difficulty that made already some serious sorrows. He has (or had) much relations with several boys, particularly some boys who work in our kitchen and who used to go to his room. He especially cared for one of these boy [sic] (a boy of 15 or 16 years) who was quite frequently with him, so much that some rumors and suspicions arose, also among laymen, for instance our cook who could observe these things. I have, as well as I could, examined these things and I am convinced that there didn't happen anything bad, on the contrary, that Fr. McGuire used to care for this boy in a priestly and apostolic intention. But certainly he did to [sic] much (what was not his duty) in a most imprudent way.

The most imprudent was that he took this boy with him when he went last summer for several weeks to Ireland. I hadn't known anything that Fr. McGuire wanted to go there; nor had he asked our Fr. Provincial for this permission. He only told Fr. Minister that he was going there. But he not even told [sic] Fr. Minister (who is the immediate superior of the boys employed in the house) that

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<sup>2</sup> Several years later McGuire brought the German boy described in this letter to America so that he could attend Loyola Academy and live with McGuire. McGuire sexually abused this boy.

this boy is going with him. And the boy, from his part, concealed it carefully, telling lies to Fr. Minister. There is no wonder that some bad suspicions came out. But only now, a short time ago, I learned that this boy was (already about the month of September) called to the Police and asked there about that travel, if there happened anything bad and so on. It seems (as far as I know) that the boy answered the questions so innocently that the Police dropped the suspicions and did not further prosecute them. So it seems for the moment that the thing has no further consequences. But I am not sure at all.

*Id.* (emphasis added).

The information relayed in this letter is sufficient to put any responsible entity on notice that there were serious issues relating to McGuire, issues that needed immediate attention. Even if no action was warranted at that time, the Jesuits should have appreciated the significance of the incidents reported in the 1964 document when sexual abuse allegations started to surface against McGuire in the Chicago area in the late 1960's and thereafter. As shown below, the Jesuits either failed to review McGuire's file, or chose to ignore the information contained in it.

### **C. McGuire Assigned to Loyola Academy**

Despite two separate warnings from two different Superiors in Germany and Austria regarding McGuire's irregular relationships with teen-aged boys, upon his return to Chicago, the Jesuits assigned McGuire to teach and live at Loyola Academy, a prestigious boys' prep school. While at Loyola Academy, McGuire sexually molested several Loyola Academy high school students. Most of the abuse occurred on the premises of Loyola while McGuire lived in the Jesuit community there with dozens of other Jesuits. Many of the students that McGuire abused at Loyola literally lived in McGuire's room with him. Given that Loyola is not a boarding school where students live, it is difficult to imagine how none of the Jesuits in the community realized that McGuire had these students there day and night. Or perhaps they did, but choose to ignore it. (The Jesuit community at Loyola Academy numbered about 55 Jesuit teachers and scholastics that lived there at the time). (Daly Dep., p. 74, attached hereto as Ex. 4).

We do not know exactly how many Loyola Academy students McGuire molested. However, in February 2006, he was criminally convicted in Wisconsin of sexually abusing two Loyola Academy students -- Vic Bender and ██████████ -- during the 1960's.<sup>3</sup> We also know that two additional witnesses in the Wisconsin trial were victims of McGuire at Loyola Academy -- ██████████ (the boy brought over from Germany) and MS. Although we do not know all of the details about ██████████'s relationship with McGuire, we do know that at the relevant time, the Jesuits either suspected or knew that he lived in McGuire's room, but did nothing about it. (See Reinke's Jan. 21, 1970 Comments on McGuire, attached hereto as Ex. 5; see also, Oct. 20, 2003 Gschwend Memo, attached hereto as Ex. 6).

The abuse reported by Vic and ██████████ establish a sickening pattern that would go on for over 40 years. McGuire found two vulnerable boys, both with unstable family situations. He became their scholastic and spiritual advisor when they entered Loyola Academy. Because the boys lived far away from the Academy, McGuire convinced their families that it would be best to let their sons stay with one of McGuire's family members that lived closer. In fact, neither ██████████ nor Vic lived with McGuire's family members; rather, they both basically moved into McGuire's room for two years each (Vic Bender from 1966 to 1968, and ██████████ from 1968 to 1970).

McGuire abused Vic almost daily from 1966 to 1968. The abuse was sexual, physical and mental. After Vic's sophomore year, McGuire turned his attention to a new freshman, ██████████. Like Vic, he abused ██████████ daily for close to two years. In November 1969, ██████████, who was 15 at

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<sup>3</sup>The Illinois criminal statute of limitations had expired when Vic Bender and ██████████ reported their abuse in 2003. (Mr. Bender chose to file suit and identify himself in public with his real name, so his name is not redacted in these papers). However, McGuire had also abused each of these victims at a Wisconsin cabin. Because McGuire is a non-resident, the Wisconsin statute of limitations was tolled with regard to these acts. As discussed below, the Jesuits provided no help to the Wisconsin prosecutor who brought charges against McGuire; in fact, the Jesuits' representatives lied to the Wisconsin authorities regarding the existence of documents they possessed regarding McGuire's deviant behavior.



the time, “ran away” from Loyola Academy and approached his parish priest, Fr. Charles Schlax. He nervously informed Fr. Schlax that McGuire was abusing him. Fr. Schlax immediately called Loyola Academy and spoke with Fr. John Reinke, the President of Loyola Academy and the ranking Superior of Loyola Academy’s Jesuit community. Fr. Schlax repeated to Fr. Reinke what ██████████ had told him. According to Fr. Schlax, Fr. Reinke did not seem surprised and indicated that “we thought something was wrong.” (Schlax Dep., p. 20, attached hereto as Ex. 7).

Fr. Schlax followed up his phone call with a letter to Fr. Reinke. (See November 29, 1969 Schlax Letter to Reinke, attached hereto as Ex. 8). In the letter, Fr. Schlax states:

After speaking with you [yesterday] I came away with the impression that you were not surprised at the information I relayed to you . . . . According to ██████████, he has been spending quite a bit of time at Loyola outside of regular school time. Most, if not all . . . in the company of Fr. McGuire. What surprised and disturbed me was the disclosure that ██████████ had been staying at Loyola over night - often being away from his home for a week or more at a time. This in itself, no matter how innocent the relationship between ██████████ and Fr. McGuire might be, is sufficient cause, in my mind, to warrant a complete investigation. ██████████ used “pervert” to describe Fr. McGuire . . . . I do believe that the seriousness of the possible bad situation is quite evident and needs to be cleared up - one way or the other - as soon as possible . . . . Whatever the outcome, action is imperative, lest others suffer.

*Id.* (emphasis added).

Even ignoring the other evidence cited above, this letter by itself establishes that the Jesuits knew or should have known that McGuire was a pedophile by no later than the end of 1969. Surprisingly, the Jesuits have never produced a copy of this letter; rather, the Plaintiffs produced it to them in this litigation. Every Chicago Province Jesuit that has testified in this case claims that he never saw the letter prior to Plaintiffs’ production and no one could explain its absence from the files.

Shortly after sending this letter, Fr. Schlax traveled to Loyola for a meeting with [REDACTED], [REDACTED]'s father, Fr. Reinke, and other Jesuit officials from Loyola Academy. Fr. Schlax testified that the Loyola officials "knew something was out of kilter" and that they already knew what he was telling them about McGuire. (Ex. 7, pp. 25, 44).

Loyola Academy's response to this situation was immediate, but totally self-serving and secretive. It terminated McGuire's teaching duties in the middle of the academic year and removed him from the Jesuit community at Loyola Academy. (See Jan. 8, 1970 Fr. Reinke Letter to McGuire, attached hereto as Ex. 9).

On January 16, 1970, Fr. Reinke wrote the Provincial's office and asserted that McGuire's presence at Loyola Academy "has become positively destructive and corrosive." (Jan. 16, 1970 Fr. Reinke letter to Fr. Diehl, attached hereto as Ex. 10). In addressing McGuire's unusual mid-term departure, Fr. Reinke states:

I am anxious, as far as it can be accomplished, to have his departure seem perfectly normal and even a better thing, as far as any public awareness of its cause is necessary. That's why I have kept it in terms of a sabbatical, and in terms of completing the very valuable work he contemplates on Oedipus, and the obviously valuable pursuit of his degree.

*Id.* (emphasis added). The harsh tone of and innuendo contained in Fr. Reinke's letters is obvious. Clearly, this is a very urgent matter that Fr. Reinke wants resolved quickly but secretively.<sup>4</sup>

The next week, Fr. Reinke provided the Provincial's office with a more detailed account of some of his issues with McGuire. (See Ex. 5). Among his comments, Reinke notes:

Contrary to an explicit policy of the school, [McGuire] lets out keys to select students. Has a couple of strange people who are constantly around him, who

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<sup>4</sup> As will be established at trial, references such as "family problems," "personal problems," "lack of prudence," and "sabbaticals" in the correspondence of priests are often code words used to identify sexual misconduct.

are practically his slaves. Source of great deal of admiration. (██████████, ██████████ . . . who is the boy he brought over from Germany with him.)

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One other thing, he has often allowed his friends to remain over night in the offices (Room 222). In fact, ██████████, as I understand it, practically lived there for a long stretch.

*Id.* On the same day, Fr. Thomas Diehl, the Chicago Vice Provincial, sent McGuire a letter confirming that he was fully aware of the situation and that McGuire's "sabbatical . . . is not to be interpreted as a sabbatical in the usual sense." (Jan. 21, 1970 Fr. Diehl Letter to McGuire, attached hereto as Ex. 11).

During this same time period, the Jesuits informed ██████████ – *the victim* of this horrible crime – that he was no longer welcome at Loyola Academy. They told him and his father that McGuire was being dealt with and would not harm any other boys, but that for the sake of all involved, it would be best for ██████████ to transfer to St. Ignatius High School. In fact, McGuire was not dealt with – rather, he was transferred to new assignments where he continued to prey on other young boys for the next 34 years.

**D. McGuire is Assigned to the University of San Francisco**

In 1976, McGuire received permission from the Chicago Provincial to teach at the University of San Francisco ("USF"). By the end of the 1980 fall semester, McGuire was removed from USF and its Jesuit community. On March 30, 1981, three months after McGuire was dismissed, Fr. Wood of the California Province of Jesuits wrote Fr. Klein, McGuire's Provincial in Chicago, to clarify that McGuire was not on leave or sabbatical from USF, but rather was considered gone for good. Fr. Wood emphasized that the only way McGuire could ever return is if he satisfied explicit conditions, including undergoing "serious psychological

evaluation and therapy.” (Mar. 30, 1981 Fr. Wood Letter to Provincial Klein, attached hereto as Ex. 12).

The exchanges between the Jesuit Province in California and those of the defendant Chicago Province reveal concerns about McGuire’s bizarre personality and “lifestyle issues,” including “bringing students to his room.” *Id.* In May 1981, the Jesuit Vice Provincial of California wrote the Dean of the College of Liberal Arts and Sciences to ask if McGuire could be or would be rehired for the next semester. The response was both terse and telling:

Father [Donald] J. McGuire, S.J. will not be employed by the College of Arts and Sciences for the academic year 1981-82. [There are plenty of faculty that can teach his course.] Furthermore, during Father McGuire’s time here, there were instances of highly questionable acts on his part in regard to the use of funds, entering into contractual commitments, and interactions with a student. Accordingly, I am not prepared to recommend Father McGuire’s returning to USF nor is the Academic Vice President willing to approve any such request.

(May 8, 1981 Letter from Dean Harnett to Fr. Wood, attached hereto as Ex. 13) (emphasis added).

After further communications with Chicago Provincial Klein, Fr. Wood drafted a memorandum to the California Provincial that stated, in part:

[Chicago Provincial] Leo Klein consulted in depth with Jim Gill in Denver about this matter. Jim has a clear understanding of the psychological dynamics at work in Don McGuire and gave Leo Klein some very helpful guidelines on how to deal with Don. It is quite clear that Don is suffering some psychological disequilibrium which manifests itself in a sort of fanaticism and messianic complex which underneath is really a severe paranoia. In spite of a sincere desire to be obedient, Don suffers, it would seem, from a deep fear of and resistance to having his life and behavior controlled by others.

(July 7, 1981 Fr. Wood Memorandum, attached hereto as Ex. 14).

Rev. James Gill, S.J., M.D., was a noted Jesuit priest and clinical psychiatrist who apparently treated pedophile priests for over 40 years. He was also the Director of the Christian

Institute for the Study of Human Sexuality. Unfortunately, we have no other information about what the Chicago Jesuits learned in 1981 when it “consulted in depth” about McGuire with one of the nation’s leading experts on priest pedophiles.

In July 1984, the Jesuits assigned McGuire to work at Santa Fe Communications in Southern California. Within four months, McGuire was dismissed from this assignment and the Bishop of Los Angeles permanently terminated his faculties and demanded that McGuire leave the diocese of Los Angeles by January 1, 1985.<sup>5</sup> (See Nov. 21, 1984 Letter from Klein to McGuire, attached hereto as Ex. 15; Dec. 21, 1984 Letter from Chancellor of Los Angeles Diocese to Klein, attached hereto as Ex. 16).

#### **E. McGuire’s Retreat Ministry**

In 1985, McGuire returned to the Chicago area. However, from this point forward McGuire never had a normal assignment again. Rather, this clearly troubled man with known sexual and personality disorders was left to his own devices to nomadically wander around the world performing retreat ministry on behalf of the Jesuits. Unsupervised, McGuire was able to sexually abuse and exploit many other children, including the three remaining Plaintiffs in this case.

By 1987 McGuire was technically assigned to the Jesuit Community at Canisius House in Evanston, IL, where he remained until some time in 2002. However, throughout the remainder of the 1980’s and thereafter, McGuire traveled extensively around the world, most significantly in the American West, expanding an extensive retreat ministry. Eventually, McGuire was

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<sup>5</sup> All priests, whether members of a religious order or a diocese, must be granted faculties by the Bishop of the local diocese in order to perform any type of ministry within that diocese. Accordingly, in addition to being assigned by his Provincial, McGuire had to be granted faculties by the local Bishop in the dioceses where he ministered.

introduced to Mother Teresa and soon became the Retreat Director for her entire order (the Missionaries of Charity (“MOC”)) worldwide.

By the end of the 1980’s, McGuire had established a large following of believers. His retreat ministry spanned the world. During this same time period, McGuire also began to complain more frequently of his medical ailments (such as diabetes). Using his medical issues as an excuse, McGuire would seek out a male “aide” to assist him in his travels and day-to-day activities. Invariably, these aides would be teenage boys from the Catholic families that McGuire had become close to through his retreat ministry. These families greatly respected McGuire and considered it an honor to have one of their sons assist him. Over time, McGuire would control the entire lives of his aides and abuse them sexually, physically, and mentally on a daily basis.

The Chicago Jesuits generally left McGuire alone during this time period, continuing to ignore whatever warning signs it had received. In fact, by this time the Jesuits’ files contained (or should have contained) documentation of: 1) the allegations involving the family in Germany and the fact that McGuire brought their son to live with him at Loyola Academy; 2) the kitchen boy in Innsbruck; 3) the repeated abuse of ██████████ at Loyola Academy; 4) the allegations regarding inappropriate interactions with students at USF; 5) McGuire’s removal from every assignment he had ever been given; 6) the termination of McGuire’s faculties in Los Angeles; 7) a consultation about McGuire with an expert on pedophilia; 8) several comments about McGuire’s personality problems; and 9) numerous questionable relationships with young boys and students.<sup>6</sup>

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<sup>6</sup> We now know that McGuire had abused several other boys (e.g., Vic Bender) by this time, but the Jesuits’ knowledge of those incidents is not documented until later.

**F. 1991 - 1995: McGuire's Abuse of Young Men Intensifies and the Jesuits Receive Additional Notice of McGuire's Pedophilic Behavior**

**1. February 1991: Complaint by Christian Brother Ricardo Palacio Regarding [REDACTED]**

In February of 1991, The Chicago Province was contacted by Br. Ricardo Palacio, Director of the Christian Brother Retreat House in St. Helena, California. (Feb. 19, 1991 Prov. Wild Memo, attached hereto as Ex. 17). McGuire had been at the center conducting a retreat to a youth group from Kolbe Academy, a private Catholic school in Napa Valley. Br. Palacio reported to Fr. Wild, the Jesuit Provincial at that time, that McGuire had been travelling with a 16 to 17 year old boy from Anchorage, Alaska ([REDACTED]) "since January." *Id.* According to Wild's report of the conversation:

Palacio became quite suspicious of this whole arrangement. . . . The boy does not seem to have slept in a separate room; nothing was disturbed in any room that he could have used. Palacio also came to Don McGuire's room at one point during the retreat and heard, just as he was about to knock, giggling inside. He then knocked, there was a sudden silence, and the boy rather than Don came and unlocked the door. His hair was askew and his shirt was untucked; Don himself, when Palacio pushed in, was lying on his bed, but fully clothed.

*Id.* The memo also indicates that Br. Palacio called the boy's mother and that "she felt that her son has in someway changed, she is concerned about him, concerned about his travelling with Don." *Id.* Fr. Wild's internal memo notes that "this travel business is at least very imprudent, perhaps much more serious." *Id.*

Father Wild did not conduct any investigation beyond questioning McGuire about this incident. (Wild Dep., p. 140, attached hereto as Ex. 18). (Had Fr. Wild reviewed McGuire's personnel file, he would have found the reports described above (e.g., the "European kitchen boy" and Fr. Reinke's letters concerning McGuire's departure from Loyola Academy). Given

the seriousness of the charge, it is reasonable to have expected at least a minimal amount of investigation.

Fr. Wild contends that Br. Palacio's phone call was his first notice of any allegation regarding McGuire's sexual allegations. (See Wild memorandum (Ex. 17) and deposition testimony (Ex. 18, p. 149)). The recent testimony of Brother Palacio indicates the opposite. According to Brother Palacio, Fr. Wild told him that the Jesuits had received other reports regarding McGuire's misconduct with minors. Specifically, Brother Palacio testified that when he telephoned Wild about McGuire's behavior with [REDACTED], "He responded that there had been other reports of this kind of stuff with . . . Father McGuire." (Palacio Dep., pp. 59-60, attached hereto as Ex. 19). Brother Palacio also testified:

Q. Did you gather from that specific communication [with Fr. Wild] that there were other allegations against Father McGuire of sex abuse with teenagers or minors?

A. Yes.

\* \* \*

Q. Did he indicate how many?

A. He did not indicate anything.

\* \* \*

Q. But he specifically told you there were other complaints?

A. Yes

Q. Did you have an understanding during your conversation that Father Wild had some familiarity with these complaints from the past?

A. Yes.

*Id.* at 60-61

It is simply impossible to reconcile Fr. Wild's denial of any knowledge regarding McGuire's history of abuse with the testimony of Brother Palacio.



2. The Jesuits Issue the First Set of Guidelines for McGuire: (February 1991)

After speaking with Brother Palacio, Fr. Wild imposed a set of “guidelines” to resolve the matter of McGuire’s behavior (“Guidelines”). He wrote McGuire and, after noting that “both you and I recognize the great public concern that exists today about any sort of sexual impropriety especially with respect to minors,” instructed McGuire as follows:

First of all, I ask that you not travel on any overnight trip with any boy or girl under the age of 18 and preferably even under the age of 21. Secondly, I asked you to confine any further contact that you might have with ██████████ to situations in which at least one of his parents would also be present.

(Feb. 27, 1991 Wild Letter to McGuire, attached hereto as Ex. 20).

Fr. Wild subsequently was copied on a letter from ██████████’s parents (who had been contacted by Br. Palacio), which attacked Br. Palacio and defended Father McGuire. (May 13, 1991 Letter, attached hereto as Ex. 21). After receiving this letter, Wild wrote to McGuire to tell him that that he had received a letter from ██████████’s parents supporting his position that “helped further to clarify matters.” (June 19, 1991 Wild Letter to McGuire, attached hereto as Ex. 22). Nonetheless, and presumably recognizing the pattern with McGuire, Wild states that the restrictions previously placed on McGuire remained in effect “for your own prudent protection.” *Id.*

Fr. Wild testified that he took no further action because the evidence on McGuire was “ambiguous.” (Ex. 18, p. 140). But even ignoring the problems with Fr. Wild’s credibility noted above, it is clear that had he reviewed McGuire’s file, he would have learned that there was nothing “ambiguous” about the situation and that a pattern had emerged. Fr. Wild also testified that no mechanisms were put into place (such as notifying McGuire’s Superior at Canisius House) to insure that the First Guidelines were followed. *Id.* at 145. At the time of his

departure from the Provincial position in late summer 1991, Wild considered this to be a "serious situation" but felt that [as to McGuire] "we didn't have fire, but we had smoke." *Id.* at 154. Essentially, McGuire was left to self-monitor, a situation that continued for more than a decade and led to disastrous results and many ruined lives.

One more event of consequence occurred at this time -- Fr. Wild created a confidential "personnel" file for McGuire. *Id.* at 43. This is a highly classified file kept under lock and key which contains the most "sensitive" information about the Jesuits, such as sexual abuse accusations. *Id.* at 27. Strangely, Fr. Wild did not go back and review what, at that point, was already an extensive file on McGuire. *See id.* at 110.

### 3. 1993: Report of Abuse of [REDACTED]

On April 26, 1993, Fr. Joseph Fessio of the California Province of Jesuits called Fran Daly, Socius of the Chicago Province (from 1991 to 1997) and informed him that McGuire:

. . . was on a trip to Russia accompanied by some young men, one of whom [16 year old [REDACTED]] he was taking showers with and reading hard pornography together. They also masturbated but McGuire [sic] may not have touched the young man.

\* \* \*

[Fessio] also mentioned that a Fr. Thurston was on this trip to Russia with them and thought Don's behavior was odd. It was Thurston talking to [the dad] which [prompted the dad] to inquire of his son.

(April 26, 1993 Daly Memo, attached hereto as Ex. 23) (emphasis added).

Fr. Daly learned from Fr. Fessio that the [REDACTED]'s lawyer, [REDACTED], had more information on this situation. Fr. Daly spoke to [REDACTED] the next day, who stated:

[REDACTED] said that Don would purchase explicit pornography, worse than Playboy, and look at it together so that [REDACTED] could learn more about his body. This went on for about a month and a half. They roomed in the same room together, take showers together in which [REDACTED] would wash Don, and [REDACTED] would give massages. They would be naked together in the room. No purely

homosexual act was committed and probably no touching of genitals but some brushing. █████ acknowledged that he would masturbate but did not know of McGuire [sic]. █████'s parents know nothing of the times McGuire and █████ were naked together.

(April 27, 1993 Daly Memo, attached hereto as Ex. 24). Later that afternoon, Fr. Daley spoke with Fr. Fessio again. Fr. Fessio told Fr. Daly:

Don needs an audience and that over the years his ego has gotten bigger. Even without this incident, Don has been on the fringe too long and has become strange. He needs to be reined in.

(See April 27, 1993 Daly Memo, attached hereto as Ex. 25).

Fr. Daly knew about Fr. Wild's Guidelines and that McGuire's actions clearly violated these Guidelines. He met with McGuire who made some startling admissions which, as always, were coupled with a manufactured excuse for his behavior: he admitted being "tolerant" of the boy "reading pornography," but said he did not buy it for him; he denied that they took showers, but admitted the boy "would wash [McGuire's] right foot since he cannot bend to do that"; he admitted sharing a room with █████, "but the door was always open." (April 30, 1993 Daly Memo, attached hereto as Ex. 26). During this conversation McGuire "admitted" that traveling with █████ was in violation of the First Guidelines imposed upon him by Fr. Wild. *Id.*

#### **4. May 1993 through January 1994: McGuire is Sent for Psychiatric Evaluation and Treatment**

At his April 30, 1993 meeting with Frs. Daly and Downey, it was agreed that on May 9, 1993, McGuire would travel to St. Luke's Institute in Maryland for an "evaluation." *Id.* The function of St. Luke's is to evaluate "those who minister in the Catholic Church" for a wide variety "of psychological and spiritual problems, such as depression, anxiety, compulsive dysfunctional behaviors (such as gambling or incurring excessive debt), alcohol and substance

abuse, a wide range of sexual issues, chronic interpersonal problems, sexual abuse, professional boundary violations, and other difficulties.” See <http://www.sli.org>

Incredibly, at the April 30 meeting, the Chicago Province specifically gave McGuire permission to conduct a retreat in Phoenix the week *before* he traveled to St. Luke’s for his evaluation. (Ex. 26) Thus, despite a “fresh” claim of child abuse, the Jesuits permitted an admittedly disobedient priest to travel to a location 1500 miles away so that he could further engage in the very type of activity which led to the serious problem for which they required an “evaluation.” And the Jesuits made no effort to contact anyone in Phoenix to warn them – rather, they relied upon McGuire to self-monitor and self-report his restrictions.

On that same day, Socius Daly spoke with ██████ (the ██████’s lawyer), who informed Fr. Daly that “there is another 15 year old boy who is close to Don that could be on this retreat.” (April 30, 1993 Daly Memorandum, attached hereto as Exhibit 27). Fr. Daly drafted a memorandum indicating that “I received this information and did not say anything.” *Id.*

What happened next is no surprise. McGuire traveled to Phoenix unmonitored. While in Arizona, McGuire molested 13 year old John Doe 117. (John Doe 117 Dep., pp. 69-72, attached hereto as Ex. 28).

##### **5. McGuire Receives Treatment for his Sexual Disorder**

As agreed, McGuire checked into St. Luke’s for an evaluation after his return from Phoenix in early May. While we do not know the specific results of this evaluation, we do know that McGuire departed St. Luke’s in late May or early June and checked into Villa St. John Vianney Hospital outside of Philadelphia for further treatment.

Saint John Vianney Center [the hospital’s current name] is a faith-centered community that specializes in the treatment of behavioral health issues that are unique to Catholic clergy and consecrated religious, as well as the clergy of other

major Christian denominations. Our research-based, multi-disciplinary approach, focuses on recovery, reconciliation and a return to ministry.

<http://www.sjvcenter.org>

The new Chicago Provincial, Fr. Schaefer, subsequently informed [REDACTED], father of [REDACTED], that McGuire had received “an extensive evaluation by a highly reputable treatment center which works with clergy who have significant health issues.” (June 7, 1993 Schaeffer Letter, attached hereto as Ex. 29). “Upon the recommendation of this evaluation, Fr. McGuire will be involved in a program at an approved and reputable facility for an extended period of time.” *Id.*

Deposition testimony about the psychological evaluation of McGuire indicates that the report diagnosed McGuire with a sexual behavior disorder and recommended residential treatment for him. (McGurn Dep., pp. 118-119, attached hereto as Ex. 30).<sup>7</sup> McGuire remained in treatment through the end of the year and into January 1994.

On June 28, 1993, Provincial Schaeffer wrote McGuire to advise of the Jesuits’ future expectations. (June 28, 1993 Schaeffer Letter to McGuire, attached hereto as Ex. 31). Fr. Schaeffer recognized that there were “questionable areas involved in this relationship [with [REDACTED] [REDACTED]]” and that McGuire clearly violated the prior Provincial’s guidelines “given . . . after a similar concern . . . two years ago.” *Id.* Schaeffer noted that “[i]n each of these cases, there is an uneasiness about your relationship with the young men involved and a sense that something just wasn’t right.” *Id.*

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<sup>7</sup> Apparently the report diagnosed McGuire with frotteurism, which is a paraphilic interest in rubbing, usually one’s pelvis or erect penis, against a non-consenting person for sexual gratification. It may involve touching any part of the body including the genital area. (Ex. 4, pp. 283-284).

By October 27, 1993, Fr. Hardon, a Jesuit who was asked to speak to Father McGuire about the [REDACTED] situation, told Fr. Daly that he had “concluded that Don has grave moral problems.” (Oct. 27, 1993 Daly Memo to Schaeffer, attached hereto as Ex. 32).

On November 12, 1993, Fr. Daly drafted a memo for the Jesuit file describing an update from a psychiatrist at St. John Vianney Hospital regarding McGuire:

Don selectively chooses people who support his opinion . . . and this is Don’s usual way of dealing with the Church, the Society, and his sexual abuse. . . . Don operates outside the constraints of Family, Church, Society, and appropriate behavior. . . . Although [REDACTED], [McGuire’s therapist] does like Don, he sees him as an enormously slippery guy who is persuasive and will always attract a gathering round himself. [REDACTED] thinks that Don will continue to get into this kind of situation because of his denial and entitlement. Usually after Don has been challenged or called in by the provincial and the complaints are either not pursued by the alledgers [sic] or minimalized, he takes this as evidence that there was no problem. . . . [REDACTED] thinks the Society must say to Don that you are not going to have the kind of ministry you did. . . . you are going to be accountable and will need regular supervision.

(Nov. 12, 1993 Daly Memo, attached hereto as Ex. 33) (emphasis added). As evidenced by this memo, by 1993 a psychiatrist treating McGuire described his conduct as “sexual abuse” and Daly says that in his report.

#### 6. Second Set of Guidelines (Verbal): (January 28, 1994)

McGuire was released from St. John’s Vianney and back in Chicago by January 28, 1994. Fr. Schaeffer met with him and told him that “[c]ertainly, there would be no unsupervised contact with minors in his future.” (See Jan. 31, 1994 Schaeffer Memo, attached hereto as Ex. 34) (emphasis added). Rather than remove him from the ministry, Schaeffer verbally issued another set of guidelines to McGuire: he was not to have any unsupervised visits with minors and “a good deal of self disclosure.” *Id.* This was followed up by another directive going

forward: all of McGuire's ministry was to be cleared by Fr. Gschwend.<sup>8</sup> (See July 18, 1994 Gschwend Letter, attached hereto as Ex. 35).

A Jesuit "support" team was set up for McGuire upon his return to Canisius House in January 1994. Remarkably, not all of the members of the support team even knew what type of treatment McGuire had received. (Ex. 1, pp. 102-104). In any event, that probably did not matter, as the McGuire "support team" met a total of one time. *Id.* at 109-110.

**7. New Report: [REDACTED] (June 13, 1994)**

In June, 1994, the Jesuits received yet another call about McGuire's abuse of a boy. This report related back to McGuire's years at Loyola Academy. (See June 13, 1994 Natsold Memo, attached hereto at Ex. 36). According to his mother, the boy ([REDACTED]) lived at Loyola Academy with McGuire while he went to school there in the 1960's. The mother reported that when she would ask her son about McGuire, he would begin to cry. *Id.* There is no evidence of any Jesuit response to [REDACTED] or his mother after receiving this information.

**8. McGuire's Abuse of John Doe 130: Abused 1990 - 1995<sup>9</sup>**

John Doe 130, who was born in August 1976, first met McGuire when he was on a retreat in eighth grade. Within the first year of meeting McGuire, John Doe 130 traveled the United States and the world with him as one of his assistants.

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<sup>8</sup>Fr. James Gschwend was ordained as a Jesuit priest in 1956. He received a Doctoral Degree in psychology in 1991 and has an extensive background in mental health services. He came back to Chicago to work on the Provincial staff in August 1993. He served as Assistant to the Provincial for Special Ministries from 1993 to 2001, was away from Chicago for slightly over a year, and then served as the Provincial's Delegate for Conduct Inquiries from 2002 to 2008.

<sup>9</sup> John Doe 130 has settled with the Jesuits and is not a Plaintiff in the current matter. Still, the facts and allegations surrounding John Doe 130's abuse, and the specific notice the Jesuits had regarding McGuire's ongoing abuse of John Doe 130, are relevant to this punitive damages motion.

In addition to all of the other documented evidence regarding McGuire, the Jesuits received specific notice regarding McGuire's ongoing abuse of this victim. On several occasions in 1993, [REDACTED] and [REDACTED] voiced serious and real concerns to the Chicago Province about McGuire's relationship with John Doe 130:

- On April 30, 1993, the Jesuits were informed that [REDACTED] was concerned about "another 15 year old boy who is close to Don that could be on" the May 1993 Arizona retreat with McGuire. (Ex. 27).
- On May 11, 1993, [REDACTED] asked that "any other victims" (one of whom was previously identified as John Doe 130) "be released from bonds to him and that they receive whatever pastoral assistance required. Obviously, this should include his personal secretary for 10 years and his other boy assistant of several years, both of whom we have not contacted at all in this matter." (May 11, 1993 [REDACTED] Letter, attached hereto as Ex. 37).
- On June 10, 1993 the Jesuits were specifically asked by [REDACTED] if they were "doing anything" about checking in on John Doe 130. (June 10, 1993 Memo, attached hereto as Ex. 38).
- On July 3, 1993, [REDACTED] asked the Jesuits to give pastoral assistance to "other potential victims, specifically [John Doe 130]." (July 3, 1993 [REDACTED] Letter, attached hereto as Ex. 39).
- On July 13, 1993, Fr. Daly wrote that [REDACTED] told him that "[John Doe 130] who has a single parent needs some pastoral care. He was very close to Fr. McGuire and much of his own self esteem is tied to Don. He and his group think that [John Doe 130] must be approached and wanted to know if Don had approached [John Doe 130] in any way." (July 13, 1993 Daly Memo, attached hereto as Ex. 40).
- On July 19, 1993, Fr. Daly wrote to [REDACTED] indicating that he was willing to follow up on the situation with [John Doe 130] by contacting [REDACTED]. (July 19, 1993 Daly letter to [REDACTED], attached hereto as Ex. 41).

But, in fact, the Jesuits ignored the repeated pleadings of the [REDACTED] and their lawyer to reach out to sixteen year old John Doe 130. They never contacted him or his mother. Fr. Daly testified that, despite receiving this information, he did not contact John Doe 130, his



mother, or anyone else because it was "the parent's responsibility or the victim's responsibility to come forward." (Ex. 4, p. 189). Subsequently, the boy's mother ("██████████") informed Fr. Gschwend that John Doe 130 had been traveling with McGuire as his assistant since he was 12 years old (approximately 1988). (See undated Gschwend Memo, attached hereto as Ex. 42). ██████████ told Fr. Gschwend that she saw [John Doe 130] sitting on McGuire's lap being stroked by McGuire. *Id.* She confronted McGuire, who "started acting very strange." *Id.* He alluded "to something horrible about my son." *Id.* Fr. Gschwend asked, "[A]re you saying that Fr. McG seemed to you to be emotionally unstable?" The boy's mother ██████████ replied:

Fr. McGuire?, thank you for saying it – I couldn't say it – I read the newspapers . . . I know about (accusations against priests) – I'm not going to do anything – I'm probably one of the ten percent that don't believe those things are true. He's (FR McG) helped me – there's something wrong – He seemed unusual.

*Id.* ██████████ subsequently sent a fax to McGuire at the hotel telling him "do not come to my home, or attempt to harass or contact my son . . . My son, [John Doe 130], requests that you leave his belongings with the concierge for ██████████ to pick up." (See Jan. 22, 1995 Fax, attached hereto as Ex. 43).

#### 9. Third Set of Guidelines: (February 17, 1995)

Shortly after the name of John Doe 130 resurfaced in 1995, Fr. Daly (who was Acting Provincial at the time because Provincial Schaeffer was in Rome for three months), wrote McGuire a "Confidential" letter setting forth a third set of guidelines regarding minors. Daly amplifies Provincial Wild's 1991 guideline as follows:

[P]lease do not travel on any overnight trip with any person, male or female, under the age of 21. In addition, I ask that you exercise extreme caution to avoid any occasion that would find you alone, behind closed doors, with anyone under the age of 21.

\* \* \*

Let us hope no more incidents come to light . . . As acting Provincial it is my responsibility to safeguard the common good of all those to whom Chicago Province Jesuits minister.

(Feb. 17, 1995 Third Set of Guidelines to McGuire, attached hereto as Ex. 44). Despite these new "Guidelines," McGuire was, once again, left to self-monitor.

**G. 1995 – 1998: McGuire is Permitted to Continue Travelling the World with his Young Male Personal Assistants**

There is a troubling lack of documentation in the Jesuit records between 1995 and 1998. We know from witness testimony that, consistent with his mission as approved by the Chicago Province, McGuire continued to maintain an extremely active travel and retreat schedule. He was constantly accompanied by a male teenage assistant who provided around-the-clock "assistance."

During this time period (and after), these boys not only travelled with McGuire, but they were constantly in and out of McGuire's residence at Canisius House in Evanston. They often slept there. The several other Jesuits who resided at Canisius House during this time would see these assistants, but none bothered to ask why they were there or what they were doing.

With the possible exception of the House Superior, the other Jesuits at Canisius House were not informed of McGuire's Guidelines. (Ex. 1, pp. 105-106, 113, 115-121). And, of course, McGuire's housemates were never told about any of the allegations against him, as the Jesuits were more concerned about McGuire's right to privacy than the protection of children. (Gschwend Dep., pp. 407, 412, attached hereto as Exhibit 45). At this point, the Jesuits still had no mechanism in place to enforce Guidelines placed on McGuire, and continued to rely upon him to "self-monitor."

1. **1998 – 2000: Letter of “Good Standing” Issue**

A Jesuit (or other order priest) requires “faculties” from the Bishop of the local diocese in order to perform mass, officiate a wedding, or perform other priestly functions. By 1998, as a condition to granting such faculties, the local diocese required a letter from religious orders, like the Jesuits, confirming that their priest was in “good standing.”

Shockingly, the Chicago Jesuits had no problem providing such a letter for McGuire. Provincial Baumann’s 1998 letter stated, in part, that “[t]o the best of my knowledge and having inquired with others in the external forum, there have never been any reports of improprieties on Father’s part . . . there is nothing to our knowledge in his background which would restrict any ministry with minors.” (See Dec. 22, 1998 Prov. Baumann Letter, attached hereto as Ex. 46) (Father Baumann succeeded Father Schaeffer as Provincial in Chicago and served from 1997 to 2003.). At deposition, Fr. Baumann had no viable explanation as to why he signed this letter. (Baumann Dep., p. 196, attached hereto as Ex. 47).<sup>10</sup> The letter was obviously patently false.

Eventually, in early 2000, McGuire sought another “letter of good standing” from the Jesuits so that he could minister in Las Vegas. Fr. Baumann ordered his Socius, Fr. McGurn (who succeeded Father Daly and served from 1997 to 2003) to investigate whether they could issue such a letter. Fr. McGurn sent Fr. Baumann a memo on January 26, 2000 stating that “I don’t think you can sign this letter.” (See Jan. 26, 2000 McGurn Memo, attached hereto as Ex. 48). Fr. McGurn stated:

Don has a history of inappropriate incidents with male adolescents (and one sexual relationship with a 20 year old woman, when he was 50 - this was back about 1981). While no direct sexual contact has been established with these young men, there is very evident wandering across boundaries by Don: The most documented complaint . . . concerned him taking a young man with him on

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<sup>10</sup> Provincial Baumann testified that “I must have felt that we were still in the process of determining the seriousness of – and the consequences of his situation.” (Ex. 47, p. 197).

retreats as his personal servant, who then gave him massages, they showered together, and read pornography together.

*Id.*

The memo goes on to summarize McGuire's long history, noting: "The earliest records in the file go back to 1991, but refer to a history of incidents in the years prior to that. No charges have ever been filed." *Id.* (emphasis added).<sup>11</sup>

## **H. McGuire's Abuse Continues Into the Next Decade**

### **1. John Doe 116: Abused from 1999 – 2003, Even After The Jesuits Receive More Compelling Information about McGuire**

The Jesuits' failure to prevent McGuire from continuing his pattern of abuse had tragic results, as epitomized in the case of John Doe 116.<sup>12</sup> John Doe 116 arrived in Chicago for the first time in 1999 by plane when he was 13 years old. After landing in Chicago, he went directly to McGuire's residence at Canisius House in Evanston. He was met at the door by Fr. Connealy, one of the house's residents. Fr. Connealy did not inquire why a 13 year old had shown up at a Jesuit residence with several suitcases asking for Fr. McGuire. By then, so many teenagers had passed through the house at all hours of the day and night that no eyebrows were raised at John Doe 116's arrival.

Within three weeks of his arrival, McGuire began to sexually, physically, and mentally abuse this 13 year old boy almost daily. The nature of the abuse was horrific and continued for the next five years. By the time it was over, John Doe 116 had been abused in several states and

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<sup>11</sup>The reason why Fr. McGurn did not find documents pre-dating 1991 may be because when Fr. Wild created the McGuire "confidential file," he did not include any documents from the Chicago Province's then existing file on McGuire. (Ex. 18, p. 110). In any event, we know that such documents existed in the Jesuit files, as they have been produced in this litigation from those files.

<sup>12</sup> John Doe 116 has settled his case with the Jesuits and is no longer a Plaintiff in the current action. Still, the facts and allegations surrounding John Doe 116's abuse, and the subsequent Jesuit inaction, are relevant to the instant motion.

countries while accompanying McGuire. Tragically, this situation could have been easily prevented if the Jesuits had simply acted prudently on what was, by then, voluminous information regarding McGuire's history and problems.

On June 1, 2000, the Jesuits were notified by Fr. Naucke, the Socius of the California Jesuit Province, that Fr. Fessio had recently informed the California Provincial that:

A 14 year old minor, [John Doe 116], the son of a conservative family in Phoenix, Arizona, is currently residing in the home of the [REDACTED] family in Massachusetts, while attending a learning disabled program.

Mr. [REDACTED] has told Fr. Fessio that Don McGuire is [John Doe 116's] legal guardian, and that [John Doe 116] is going to live with Fr. McGuire.

(See June 1, 2000 McGurn Memo, attached hereto as Ex. 49).

Fr. McGurn testified that at that time he thought this was "crazy" because "Jesuits aren't going to be having children live with them" and that "[m]y only concern was is [sic] Don trying to take on some kind of legal obligation without the provincial's permission." (Ex. 30, p. 145). He further explained that "[f]or a Jesuit to make a decision like this, take on a legal obligation without his provincial's permission" was a serious situation. *Id.* at p. 146. Remarkably, however, Fr. McGurn repeatedly testified in his deposition that he was not concerned about whether John Doe 116 was being abused. (See, e.g., *id.* at 151). McGurn's and the Jesuits' complete indifference about this very serious report is evidenced by the fact that Fr. McGurn did not follow-up on the June 1 report regarding John Doe 116 until several months later, when the Jesuits were notified of yet another situation involving McGuire and a different teenage boy (described below). At that time (October or November 2000), Fr. McGurn questioned McGuire about the issues raised in the June 1 report. McGuire assured Fr. McGurn that he was "not [John Doe 116's] legal guardian" (and that his friends the [REDACTED] were the guardians). (Ex. 30, pp. 148-152). McGurn took McGuire at his word (a recurring theme) and did no further

investigation. Had he done so, he might have learned that McGuire was, in fact, the stated guardian for John Doe 116 on documents McGuire had signed just three months prior. (See August 12, 2000 St. Lawrence Documents, attached hereto as Ex. 50). Presumably, had Father McGurn simply inquired of the residents of Canisius House, he would have discovered that John Doe 116 was essentially living with McGuire and was being abused by him on an almost daily basis. John Doe 116 continued to be abused by McGuire for an additional three or four years after this June 1, 2000 report.

As McGurn testified, "Once it was established that the [REDACTED] were his legal guardian, we had no further concern about [John Doe 116]." (Ex. 30, p. 151). This is shocking given that by this time Fr. McGurn had reviewed McGuire's significant file, summarized Fr. McGuire's "sexual problems" to Provincial Baumann, and recommended that Baumann refuse to certify McGuire as a "priest in good standing." Frs. Baumann and McGurn also knew that McGuire consistently ignored the "guidelines" he was given.

During this same time period, the Jesuits received several other reports disclosing suspicious behavior by McGuire, including that one of his "aides" had slept in the same bed with McGuire. (See Sept. 25, 2000 McGurn Memo, attached hereto as Ex. 51; Oct. 25, 2000 [REDACTED] Letter, attached hereto as Ex. 52). For example, another family (the [REDACTED]) whose teenage son served a year as McGuire's "aide," contacted the Jesuits and raised concerns about McGuire's behavior. *Id.* Similarly, another family ([REDACTED]) whose son (John Doe 119) also served as McGuire's "aide" expressed grave concerns. Ex. 52. The Jesuits responded to the [REDACTED] and [REDACTED] complaints by conducting another "investigation" of McGuire. Fr. McGurn drafted a detailed memorandum to the Provincial, which included McGuire's past history of sex abuse, complaints, treatment, and any repercussions. (See December 13, 2000 McGurn Memo,

attached hereto as Ex. 53). That memo recounts how the Jesuits concluded in 1993 that McGuire “does have a sexuality problem and he even admitted to that.” *Id.* (emphasis in original).

While investigating the █████ matter in late 2000, Fr. McGurn learned that McGuire was about to leave on a trip to India and that he would be accompanied by his new assistant, █████. Fr. McGurn testified that he asked McGuire whether █████ was over 21, but did not get a clear answer. (*See* McGurn Dep., Ex. 30, pp. 230-32). While Fr. McGurn recognized another potential violation of McGuire’s directives, he did nothing to follow up on this information. *Id.* Even more startling, Fr. McGurn testified that he did not consider whether McGuire was abusing his new assistant █████, or whether he could have prevented it. McGurn’s only explanation for his failure to consider these matters was that he was preoccupied by the █████ situation. *Id.*

2. **Fourth Set of Guidelines (Verbal & Written): (December 15, 2000 -February 13, 2001)**

The Jesuits had a series of meetings with McGuire in late 2000 and early 2001. (*See* Dec. 18, 2000 McGurn Email to Michael Perko, S.J., attached hereto as Ex. 54). At a meeting on January 3, 2001 McGuire offered – and the Jesuits accepted – the same excuses and lies he always used when confronted. (*See* Jan. 3, 2001 McGurn Memo, attached hereto as Ex. 55). Remarkably, the Jesuits continued to take McGuire’s word and ignore the vast evidence in its own files regarding McGuire’s considerable personality and sexual issues. As one of the victim’s families so presciently wrote on January 5, 2001, “[w]e did not create this mess. The mess has probably been around a long time.” (*See* Jan. 5, 2001 █████ Letter, attached hereto as Ex. 56).

On February 13, 2001, the Jesuits met with McGuire again and gave him yet another set of “Directives” to sign, which he did. (*See* Feb. 13, 2001 McGurn Memo, attached hereto as Ex. 57). Fr. McGurn noted in a memorandum that he would write the █████ and █████ about

the “arrangement to resolve the matter.” *Id.* He also indicated that he “will not reveal to them any of the directives, nor admit that Don was at fault.” *Id.* This is yet more evidence of the Jesuits’ misguided priorities – admitting nothing and protecting themselves and their priest at any cost, instead of notifying the victim’s family as to how serious McGuire’s problems were, for fear that they may get help for their son, warn others, or contact the authorities.

The Directives, signed by McGuire on February 13, 2001, specify that McGuire: (1) would not travel with or spend the night in the same room with anybody under 30; (2) would not have or utilize an executive assistant in his travels or in the performance of his duties or ministries; (3) would not have assistants in Canisius House unless explicitly permitted by his Superior; (4) would provide a written schedule in advance of each month to his Jesuit Superior; (5) would undergo treatment by a psychiatrist designated by the Chicago Provincial, and he would authorize the psychiatrist to provide reports to the Jesuits; and (6) would forward any communication received by him complaining of any action with respect to any individual. (*See* Feb. 13, 2001 signed Directives, attached hereto as Ex. 58).

### **3. 2001: Another Warning About McGuire From Another Jesuit**

In July, 2001, Provincial Baumann received a letter from a Jesuit named Marc Andrews with yet another clear warning about McGuire. The letter indicated that [REDACTED], the brother of a Jesuit novice, had been traveling with McGuire as his assistant. (*See* July 12, 2001 Fr. Mark Andrews, S.J. Letter to Provincial Baumann, attached hereto as Ex. 59). This is the same youth that Fr. McGurn had learned in December 2000 was traveling to India with McGuire.

In his correspondence, Fr. Andrews told Fr. Baumann that he remembered hearing about an accusation against McGuire by the parents of a boy during the time that Andrews was serving



as an auxiliary Consultant for Provincial Schaeffer (1991 – 1997). According to Andrews, that boy

. . . was similarly traveling with Don. My recollection is that it was not genital acting-out per se, but that Don’s behavior was clearly perceived as emotionally inappropriate. I might add that during my years at Loyola Academy I heard about another instance in which Don had a “personal assistant” whose relationship to Don was perceived as homoerotically-tinged and inappropriately dependent (he actually lived in another part of the school building, and was ultimately evicted by Jim Bur).

\* \* \*

Still, my recollection from some years ago is that the consultants agreed that Don should not be allowed to continue these “acolyte” relationships. I myself was not in favor of allowing him to be based at Canisius House. I believed then and I believe now that he is a seriously unhealthy person who needs to be closely supervised, lest he end up crossing another line.

*Id.*

#### 4. June 2002: The Jesuits Are Warned About John Doe 116 Again

In June 2002, the Jesuits were informed that McGuire was conducting a retreat in California that would include a “special” day-long retreat for minor children. (See July 29, 2003 Memo, attached hereto as Ex. 60). Fr. McGurn contacted McGuire after the retreat, and McGuire told Fr. McGurn that he did not have such an event with the children of the retreat families. Taking McGuire at his word, Fr. McGurn simply dropped this matter. *Id.* Shortly thereafter (July 2002), the Jesuits received a telephone message from Fr. C.M. Buckley of the California Province advising that “[i]t now seems Father M. is traveling again accompanied by a high school boy.” (See July 24, 2002 Naucke Memo, attached hereto as Ex. 61). Fr. Buckley phoned back on August 5, 2002 and told them that the boy was “[John Doe 116].” (See Aug. 5, 2002 Phone Memo, attached hereto as Ex. 62). By August 7, 2002, the Jesuits were busy trying to determine whether any of their past directives or guidelines could be considered a “canonical

warning” to McGuire. The Jesuits, however, did not want to disclose any action they took to the Chicago Archdiocese because, if they did so, McGuire’s faculties and his ability to minister might be revoked by the Archdiocese -- “the provincial wants to avoid having to communicate with the Archdiocese [about McGuire], if possible.” (See August 7, 2002 Memo, attached hereto as Ex. 63). Accordingly, as the Jesuits considered how to deal with McGuire, a primary goal remained keeping the situation a secret, including from the Archdiocese, so that McGuire could continue in ministry and the Jesuits could continue to avoid any appearance of scandal.

Tellingly, the Jesuits expressed no concern for and took no action to protect John Doe 116 or any other potential victim of McGuire. The Jesuits’ only concern continued to be keeping secrets and avoiding scandal.

#### **5. December 2002: Fifth Set Of Guidelines**

On December 1, 2002, McGuire received a written canonical warning. (See Dec. 1, 2002 Baumann Letter, attached hereto as Ex. 64). The Jesuits also changed and limited McGuire’s mission to “provide sacramental ministry to communities of religious women (but not to the publics which they may serve) within the geographical boundaries of the Archdiocese of Chicago.” *Id.* On June 26, 2003, after being contacted by the Chicago Archdiocese, Fr. McGurn informed the Archdiocese that the Jesuits could not issue a “letter of good standing” for McGuire. (See June 26, 2003 McGurn Letter, attached hereto as Ex. 65). On July 2, 2003, the Archdiocese of Chicago suspended McGuire’s faculties. (See July 2, 2003 Archdiocese Letter, attached hereto as Ex. 66). However, McGuire remained a Jesuit in good standing. Despite McGurn’s knowledge of McGuire’s criminal history, he nonetheless characterized the Archdiocese’s suspension of McGuire as “most regrettabl[e]” and “extremely unfortunate.” (July 3, 2002 McGurn Letter, attached hereto as Ex. 67). While this may have been

“unfortunate” for McGuire and the Jesuits, the Archdiocese’s suspension was the first time that anything was done to limit McGuire’s public ministry and potentially protect children. In June or July 2003, McGuire was re-assigned to the Woodlawn Jesuit Community near the University of Chicago. *See id.* Fr. George Lane, the Superior at the Woodlawn House, was informed of McGuire’s written directives.

In August 2003, ██████████ filed the first of several civil lawsuits against McGuire and the Jesuits. Inspired by ████████, Vic Bender came forward and filed suit about a month later. These lawsuits were reported in the media and Fr. McGurn, as well as Loyola Academy officials, offered statements and/or gave media interviews in which they claimed that they: (1) were investigating the charges; and (2) had no reason to suspect that McGuire had been abusing boys. (*See* Aug. 21, 2003 Hunt Memo, attached hereto as Ex. 68). The Jesuits made this misrepresentation knowing about McGuire’s forty year history of allegations. Even more troubling is that, at this same time, McGuire was still abusing John Doe 116.

**I. McGuire’s abuse of Plaintiffs John Does 117, 118 and 129**

**1. John Doe 129: Abused from Approximately 1984 to 1997**

While in California during the 1980’s, McGuire became close to several families. Thereafter, he frequently returned to California for retreats or other events. He did so with the knowledge and approval of the Jesuits even though the local bishop terminated his faculties. While in California, McGuire became very close with John Doe 129’s family. McGuire baptized John Doe 129 and was a frequent visitor to his family’s home.

McGuire’s abuse of John Doe 129 began in or around 1984 when he was only 6 years old, and ended in 1997 when John Doe 129 was 19 years old. The abuse of John Doe 129 was extensive and horrific and occurred whenever John Doe 129 saw McGuire. McGuire’s acts of

abuse included, but were not limited to: McGuire frequently exposing John Doe 129 to explicit pornography, McGuire fondling himself and John Doe 129 and masturbating in front of John Doe 129, McGuire frequently engaging in inappropriate and sexually graphic discussions with John Doe 129, and McGuire forcing John Doe 129 to massage McGuire's entire body, including his anus and genital area.

**2. John Doe 117: Abused from Approximately 1988 to 1994**

By the mid-1980s, McGuire's retreat ministry was very active in Phoenix, Arizona and its surrounding communities. While conducting retreats in Phoenix, McGuire met and became close with the parents of John Doe 117 and his younger brother, John Doe 118.

John Doe 117's first memory of abuse arises out of a retreat that McGuire gave in Arizona around 1988. McGuire continued to abuse John Doe 117 at every opportunity thereafter. The abuse included fondling; oral copulation; massage of McGuire's anus and McGuire putting his finger into John Doe 117's anus; exposure to pornography; sexual touching; and sexually graphic discussions.

**3. John Doe 118: Abused in 2001-2002**

John Doe 118, John Doe 117's younger brother, was born in 1987. Given the long history between his family and McGuire, it is not surprising that McGuire began to single out John Doe 118 after he reached adolescence. McGuire requested that John Doe 118 serve as his assistant during his still frequent visits to Arizona. While alone with John Doe 118 and in the guise of spiritual guidance, McGuire made sexual overtures toward him, eventually abusing him by exposing him to pornography and forcing him to give sexual massages while McGuire lay naked. This abuse occurred primarily in 2001 and 2002.

The evidence described above establishes that, prior to the time that John Doe 118 was abused, the Jesuits had received an extraordinary amount of information that put them on notice about McGuire's abhorrent behavior. Specifically, the documents and testimony in this case show that by the end of 2002, the Jesuits knew:

- (1) that there had been allegations involving McGuire's interactions with the son of a family in Germany and that McGuire subsequently brought the son to live with him at Loyola Academy;
- (2) that McGuire had "much relations" with several boys in Europe;
- (3) that Austrian police had investigated McGuire's relationship with a kitchen boy in Innsbruck who had travelled extensively with McGuire;
- (4) that ██████████ had been repeatedly abused at Loyola Academy, including that Fr. Schlax had sent Loyola Academy officials a letter indicating that ██████████ had called McGuire a "pervert" and had also made similar allegations during a meeting between Jesuit officials and Fr. Schlax;
- (5) that Fr. Reinke from Loyola Academy had reported several serious concerns about McGuire, including that he allowed his "friends" to sleep overnight in his room;
- (6) that McGuire had been accused of having inappropriate interactions with students at the University of San Francisco;
- (7) that McGuire's faculties in Los Angeles had been terminated;
- (8) that Jesuit officials had consulted with an expert on pedophilia about McGuire;
- (9) that in 1991 Brother Palacio had reported that he was "quite suspicious" of McGuire's behavior towards a 16 or 17 year old boy travelling with him;
- (10) that Fr. Fessio had reported in 1993 that McGuire had been traveling with young men, including one with whom he was taking showers, reading pornography, and masturbating;
- (11) that ██████████ and his lawyer had reported several other incidents of suspicious activities by McGuire, including specific reports about McGuire's behavior with his "boy assistant" John Doe 130;
- (12) that McGuire had been required to undergo more than six months of psychiatric treatment in 1993 for his behavior;

- (13) that the psychological evaluations of McGuire indicated that he had a sexual behavior disorder;
- (14) that a Jesuit assisting with the evaluation of McGuire in 1993 had concluded that McGuire had "grave moral problems";
- (15) that the Jesuits had received a report from ██████████'s mother in 1994 indicating that ██████████ lived with McGuire while a student at Loyola in the 1960's and that he would cry when she asked him about McGuire;
- (16) that John Doe 130's mother had called them in 1995 to report on her suspicions regarding McGuire and her son, and had also told McGuire to leave her son alone;
- (17) that in January 2000 the Jesuits could not issue a "letter in good standing" for McGuire because of the information that had been received about his behavior;
- (18) that, throughout the late 1990's and early 2000's, McGuire had utilized the services of several teenage boys as "aides" who assisted him both day and night, spent considerable time with him at Canisius House in Evanston, and travelled extensively with McGuire;
- (19) that two different families whose sons had served as McGuire's aides wrote to the Jesuits in 2000 to express concerns about McGuire;
- (20) that McGuire might have been the legal guardian of a 16 year old boy, John Doe 116, who was extremely close to McGuire;
- (21) that McGuire was travelling to India with an "aide" (██████████) in late 2000, in clear violation of the "Guidelines" imposed upon him by the Jesuits;
- (22) that in July 2001, Jesuit Marc Andrews reported suspicions about McGuire's behavior with ██████████;
- (23) that in July 2002, McGuire was scheduled to give a "special retreat" to minor children;
- (24) that McGuire was traveling with a "high school boy" (John Doe 116) in Summer 2002;
- (25) that several Jesuits had made reports about McGuire's "personality" problems; and
- (26) that McGuire had ignored *four* different sets of Guidelines placed on his behavior by various Jesuit Provincials in 1991, 1994, 1995, and 2001, each

time requiring yet more restrictive limits to be placed on his behavior (which he continued to ignore).<sup>13</sup>

**J. 2003-2004: The Jesuits Mislead the Civil Authorities and the Public About What It Knew About McGuire and the Risk he Posed**

**1. The Criminal Investigation**

In late 2003, the District Attorney of Walworth County, Wisconsin began to investigate Vic Bender's and ██████████'s claims of sexual abuse because one of the places McGuire abused each of these victims was in Lake Geneva, Wisconsin. As McGuire was not a resident of Wisconsin and left the jurisdiction, the criminal statute of limitations tolled.

On April 6, 2004, an investigator from the Wadsworth County Sheriff's Department visited the Woodlawn Jesuit house where McGuire lived. (*See* April 8, 2004 e-mail of Paul Mueller, attached hereto as Ex. 69). Upon his arrival, Fr. Paul Mueller, a resident of the house, informed the officer that McGuire was not home and invited him inside to wait for McGuire's return. Fr. Mueller then called Fr. Gschwend (the Jesuit priest in charge of investigating sexual abuse claims whose job it was to protect children) to inform him of the situation. Fr. Gschwend told him that he "should not feel any obligation to show hospitality to the officer." *Id.* *Fr. Gschwend and/or the Jesuit's legal counsel then called McGuire to warn him that an officer was waiting for him and told him not to return home.* McGuire subsequently left a voice mail message for Fr. Mueller in which "Don said that he had been contacted by the Province lawyer, advised of the situation, and instructed not to speak with the officer." *Id.* McGuire did not return home that evening. *Id.*

Mueller sent a summary of these events to Provincial Schmidt and Fr. Gschwend. His report is remarkable, for it concludes with a number of "reflections" in which Fr. Mueller shows

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<sup>13</sup> As already noted, we now know that McGuire had abused several other boys (e.g., Vic Bender) by this time, but it is unclear whether the Jesuits learned about those incidents prior to 2002.

that he was deeply troubled by the Jesuits' attempt to obstruct the police investigation and allow McGuire to do whatever he wanted. Among other things, Fr. Mueller wrote:

- "I have the uncomfortable feeling that, by calling Jim Gschwend to alert him [to] the presence of the officer, I indirectly abetted Don in avoiding contact with a legitimate police investigation; I feel as though I helped an accused priest hide from the law. In light of how much bad press the Church has gotten, I want no part in helping to hide someone from the law."
- "I have no problem referring inquiries to the province office or Jim Gschwend. But I am uncomfortable, at the level of conscience, with being or with seeming to be a shield between Don and inquiries from legitimate law enforcement officials."
- "I am concerned that [House Superior] George Lane and I both said (truthfully) to the officer who visited us on Tuesday that Don is out for most of the day every day, and that we don't know where he is or how to reach him when he is out. It strikes me that, in the spirit of the Dallas charter, there is the expectation that there will be some sort of appropriate supervision for priests who are suspended from ministry. . . . It seems to me that prudence would dictate setting up at least the appearance of appropriate supervision of Don."
- "With some frequency, Don leaves the house in clerical attire. It is my understanding that suspended priests are not supposed to appear in clerics. It seems to me that prudence would dictate that Don should not wear clerics outside the house."

*Id.*

Father Mueller -- who knew nothing of the long and sordid details of McGuire's sex abuse history and the Jesuits' knowledge of it -- thus communicates what the record in this case clearly demonstrates: the Jesuits' only objective was to protect its own "good" name and reputation. The Jesuits were willing to do anything to accomplish that objective, including, but not limited to, misleading the public, misleading McGuire's victims and their families, misleading other Jesuits and priests with information regarding McGuire, failing to cooperate with (and perhaps obstructing) legitimate police investigations, ignoring the guidelines *it* created for McGuire, failing to take any action to actively monitor or restrict McGuire, and ignoring the



mandates established by the U.S. Conference of Catholic Bishops in 2002 (*i.e.*, the “Dallas Charter”).

Provincial Schmidt testified that by this time, he was concerned about McGuire’s sexual activities, but he left all monitoring to Fr. Lane at the Woodlawn community. (*See* Schmidt Dep., p. 136, attached hereto as Ex. 70). Yet despite these concerns, Fr. Schmidt failed to take any action to inform the public about McGuire’s history or restrictions in order to protect potential victims. *See id.* at 136-40. Despite knowing that McGuire had not previously adhered to any of the directives imposed upon him, Fr. Schmidt expressed surprise to learn later that Fr. Lane was not effective at monitoring McGuire and often did not know where he was. *Id.* at 158-160, 163-167, 236-268.

## **2. The Criminal Prosecution**

As part of the criminal prosecution, District Attorney Phil Koss sought information and/or documents from the Jesuits relating to McGuire’s relationship with [REDACTED] and Vic Bender, and other sexual abuse allegations lodged against McGuire. Presumably, this information would help Mr. Koss assess *all* relevant information about McGuire.

Not only did the Jesuits refuse to cooperate with Mr. Koss’ request, they actively misled him. On January 6, 2006, a Jesuit attorney wrote Mr. Koss that “As I indicated to you over the telephone, we have very little with respect to Father McGuire.” (*See* Jan. 6, 2006 Letter to Koss, attached hereto as Ex. 71) (emphasis added). The letter then purports to describe what is in the McGuire file (*e.g.*, generic documents such as McGuire’s assignment sheet), but fails to mention *any* of the thousands of pages of documents the Jesuits possessed that directly related to allegations levied against McGuire over a period of 40 years. *See id.*

In fact, the Jesuits went even further and informed Mr. Koss (who held no subpoena powers over the Chicago Jesuits) that they would not send him a single document:

[i]n terms of voluntarily releasing any information or offering anyone to testify on behalf of the prosecution as to such records, such could, in the age of HIPAA and confidentiality, impact the rights of Father McGuire as well as expose the Province to liability. Therefore, we must respectfully decline to cooperate without his consent.

*Id.* Once again, the Jesuits demonstrated a total lack of concern for the truth, the victims of McGuire, or others that may be harmed by him. The Jesuits continued to think only of itself and how to protect itself at any cost. District Attorney Koss has confirmed that the Jesuits misled him – stating that “I naively relied on their goodness.” (*See* Oct. 20, 2007 NPR Report, attached hereto as Ex. 72).

#### **K. McGuire’s Criminal Convictions**

In February 2006, McGuire was tried in Wisconsin on five counts of sexual assault of a minor. During this time, the Chicago Jesuit leadership -- in clear violation of the Dallas Charter (which set the standards within the Catholic Church for priests accused of sexual abuse with minors) -- permitted McGuire to wear his clerical collar during his entire criminal trial.<sup>14</sup> McGuire was convicted on all counts.

In 2007, John Doe 116 reported his abuse to state and federal authorities. The Federal prosecutors in Chicago began an extensive investigation into McGuire. This included contacting the Jesuits for information about McGuire. In response, in June 2007, Fr. Schmidt convened a special meeting of the Chicago Province Consultors to address the McGuire situation. The Consultors recommended that Fr. Schmidt petition the Father General in Rome to dismiss Fr. McGuire from the Society of Jesus on grounds of sexual misconduct. Fr. Schmidt adopted that

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<sup>14</sup> Fr. Schmidt testified that he was aware that the Dallas Charter specified that priests who had been the subject of credible allegations of sexual misconduct were not permitted to wear clerical garb (Ex. 70, pp. 163-168) and that the Jesuits followed the Charter.

recommendation. This occurred sixteen months after a jury had convicted McGuire of criminal sexual assault and forty five years after the Jesuits had first received notice of McGuire's deviant behavior.

On November 2, 2007, McGuire was indicted in Federal court in Chicago for the abuse of John Doe 116. In February 2008, McGuire was formally defrocked and permanently removed from all clerical functions by Rome. In April 2008, McGuire was indicted in Arizona for molesting John Doe 117 and John Doe 118. On October 24, 2008, McGuire was convicted in Federal court in Chicago of engaging in sexual acts with John Doe 116 while traveling abroad between 2000 through 2002. In February 2009, U.S. District Judge Rebecca Pallmeyer sentenced McGuire to 25 years in prison. McGuire is currently incarcerated in a federal prison hospital in Springfield, Missouri.

Meanwhile, scores of McGuire victims -- including the three remaining Plaintiffs in this case -- have had their lives altered forever because of McGuire's abuse and the Jesuits' failure to take any action whatsoever to stop it. As set forth above, at least six Provincials of the Chicago Jesuits -- Father Flaherty, Father Klein, Father Wild, Father Schaeffer, Father Baumann, and Father Schmidt -- received specific reports regarding McGuire's abhorrent conduct and/or had access to confidential files detailing such misconduct. At least two Chicago Jesuits who served as Socius -- Fathers Daly and Father McGurn -- also had considerable notice regarding McGuire's pedophilic tendencies during their terms in office. Yet none of the Chicago Jesuits who bear responsibility for McGuire's behavior and recklessly endangering the lives of these young men has been punished.

### III. Conclusion

As demonstrated above, the Plaintiffs have met the standard for punitive damages under Illinois law. Accordingly, this Court should grant Plaintiffs' request to add a prayer for relief seeking punitive damages against Defendant.

Respectfully Submitted,



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