

I, Thomas Patrick Doyle, declare:

1. I am a Roman Catholic priest, ordained in 1970, and am presently an officer in the United States Air Force and Catholic chaplain assigned to Ramstein Air Base, Germany.
2. My educational background is outlined in my curriculum vitae, a true copy of which is attached hereto as Exhibit A. Briefly summarized, I have Master's degrees in five different fields, Political Science, Church Administration, Theology, Philosophy, and Canon Law. I also have a Doctorate in Canon Law. I have 340 graduate level credit hours in the behavioral sciences, with concentration on substance abuse, sexual disorders, sexual addiction and Critical Incident Stress Management. I am a trained addictions counselor.
3. I was ordained a priest in May 1970. I served as an assistant pastor for three years on a full time basis and as a pastoral assistant on a part time basis for another eight years. I served full time as a tribunal judge in several ecclesiastical tribunals. I have served as special canonical assistant to the Archbishop for the Military Services. I have taught Canon Law at the graduate level at three universities. I have also served as secretary-canon lawyer for the Vatican Embassy.
4. In late 1984, I became involved with the issue of sexual abuse of children by Catholic clergy while serving at the Vatican Embassy. Since that time, I have developed an expertise in the canonical and pastoral dimensions of this problem. I have worked on this issue with victims of abuse and their families, priests accused of abuse, and bishops and superiors of religious institutes. I have developed policies and procedures for dealing with cases of sexual abuse by the clergy for dioceses and religious orders in the United States, Canada, Australia and New Zealand. I have delivered lectures and seminars on this issue for clergy and lay groups throughout the U.S., in Canada, Australia, New Zealand and Ireland.
5. I have been an expert witness regarding clergy sexual abuse issues in about 200 cases. I have consulted with attorneys (but not been named as an expert witness) in about 500-700 cases since 1985. I have given testimony in three trials and have been deposed approximately 60 times.
6. I have reviewed the declarations of Sister Judith Ann Murphy, Father Craig Cox and Cardinal Roger Mahony. I am making this declaration in reference to the so-called "Formation Privilege" which is asserted by Cardinal Mahony as a basis for his refusal to reveal the contents of certain files held by

the Archdiocese of Los Angeles. All of these matters are within the context of allegations of sexual abuse of children, adolescents and adults by clergy assigned to or working in the Archdiocese of Los Angeles.

7. In her declaration of 17 June 2002, Sister Murphy states that a computer system is used to retain records of the most confidential matters of the archdiocese including allegations of sexual impropriety by the clergy. She further states that investigations into allegations of clergy sexual abuse are conducted by her office and under her oversight. Access to these computerized records is limited to and under the control of the General Counsel for civil law matters. If this material is retained in the computer system then this constitutes a violation of canon 1719 of the Code of Canon Law which states that records of such investigations be kept in the secret archive of the diocese. A computer does not constitute a secret archive.

8. Father Craig Cox states in his declaration of 17 June 2002 that as Vicar for Clergy for the Archdiocese, he received reports of problems of priests under the jurisdiction of the Archdiocese. When there is a potential for litigation arising from a priest's conduct, he states that the investigation is made under the direction of and on behalf of the General Counsel of the Archdiocese.

9. The declarations of Cardinal Mahony (February 27, 2003) and Father Cox (February 26, 2003) are more detailed and deal mostly with the attributes of confidentiality and sensitivity which are attached to any investigations and communications arising from allegations of clergy impropriety. In his conclusion, Cardinal Mahony states

“Confidentiality is essential to the pastoral work of the Vicar for the Clergy and the Archbishop; and, therefore, essential to the free exercise of the Roman Catholic religion. All of the types of communications identified herein to which I seek confidentiality are communications made in confidence, in the presence of no third persons, to a member of the clergy who, in the course and discipline and practice of the Catholic Church, is authorized or accustomed to hear such communications and, under the discipline of the Catholic Church, has a duty to keep secret.” (n. 19, p. 12)

10. According to Roman Catholic Canon Law there are two levels or areas in which judicial matters take place: the internal forum and the external forum. The internal forum is the forum or place of conscience. It is here that the most sensitive information is shared between a person and a priest or bishop. The most common example of the internal forum is the act of sacramental confession or the Sacrament of Penance as it is officially called. Information shared in this forum cannot be revealed by the priest who receives it, for any

reason. This absolute privilege of total confidentiality belongs to the penitent and has its roots in canon Law even before the Norman Conquest of England. It is this privileged relationship that has given rise to what is commonly referred to in Anglo-American Common Law as the “Priest-Penitent Privilege.”

11. The canon law reference to the internal forum is within the context of the power of governance, also known as the power of jurisdiction:

Can. 130 Of itself the power of governance is exercised for the external forum; sometimes however it is exercised for the internal forum only, but in such a way that the effects which its exercise is designed to have in the external forum are not acknowledged in that forum, except in so far as the law prescribes this for determinate cases.

12. Matters pertaining to the internal forum are never recorded or written down in any way.

13. The external forum is the other forum within which the power of governance is exercised. Matters handled in the external forum include all investigations into allegations of impropriety, commission of canonical crimes and all judicial or administrative processes related to such allegations. The Code of Canon Law, revised and promulgated in 1983, reflects a centuries-old canonical/legal tradition in the Church by containing a section entitled “On Sanction in the Church.” This Book contains the canonical crimes determined by the church legislator as well as penalties which may be assessed. Included among these crimes are certain actions which are also considered criminal in the civil law traditions and systems of many countries. Among these is canon 1395 which specifically deals with sexual contact by the clergy with minors under the age of 16.

14. The Code contains an entire section, or Book, devoted to procedural law. Part VI of this Book (Book VII), deals with the Penal procedure. All procedural matters, both administrative and judicial, civil and penal, are matters of the external forum. The ability and indeed the power of the institutional Catholic church to prosecute matters which it deems criminal in its own Code of laws is directly related to its obligation to protect not only the power and prestige of said institution and its office-holders but most important, the common good of all members of the faithful. In some instances this obligation clearly extends to the church's obligation to the civic culture and society of which it is a part.

15. Sr. Murphy, Father Cox and the Cardinal all refer to reports of allegations of sexual improprieties by the clergy which were received by the Archdiocese of Los Angeles. These reports constitute allegations of possible violations of canon 1395 and canon 1389, the texts of which are as follows:

Canon 1395, 2. If a cleric has otherwise committed an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state of the case warrants it.

Canon 1389 deals with abuse of power or function

Can. 1389 §1 A person who abuses ecclesiastical power or an office, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the office, unless a penalty for that abuse is already established by law or precept.

§2 A person who, through culpable negligence, unlawfully and with harm to another, performs or omits an act of ecclesiastical power or ministry or office, is to be punished with a just penalty.

The Code of Canon Law provides a procedure for conducting investigations into reports of possible offenses. These are part of the external forum and, while confidentiality and sensitivity is required, the information arising from this investigation is not covered by privilege.

16. Canon 1717 requires that the diocesan bishop conduct an investigation either personally or through a suitable person whom he delegates. The proceedings of this investigation are to be recorded in writing and then kept in the secret archive (canon 1719). After the investigation is concluded the information is given to the bishop who then decides whether to proceed with an administrative procedure, a judicial procedure, a pastoral admonition or nothing at all. (Canon 1718). Although canon 1717 states clearly that “*care must be taken lest anybody's good name be endangered by this investigation*” this cannot be construed to mean that the investigation and the information obtained through it are considered privileged, enjoying the highest degree of secrecy. The entire matter, from the beginning of the investigation through the judicial or administrative process, is in the external forum and not covered by any kind of extraordinary confidentiality or privilege. It would be erroneous to equate this level of confidentiality with the total confidentiality demanded by the confessional privilege.

17. In the 18 years during which I have been an expert witness and consultant on several hundred cases involving accusations of sexual abuse by the clergy, I have rarely if ever seen a case wherein the canonical requirements for a preliminary investigation were carried out either correctly or at all. If such an investigation is carried out it must be documented and the documentation must be placed in the archives. Although the archives are known as “secret” this does not mean that they contain privileged information. Information contained in the secret archives is sensitive and should be treated with confidentiality but it is not privileged and can be revealed to outsiders including secular or civil law enforcement or judicial authorities. In fact, over the years, I have been involved in many cases wherein the impartial and just conclusion of the civil process required information contained in the secret archives and this information was, in fact, subpoenaed and surrendered to authorities. Failure to carry out such an investigation, or carrying out an abbreviated, secret version with no documentation constitutes a deviation from the procedural law of the Code. Although bishops have the power to dispense from disciplinary laws of the church, Canon 87 explicitly states that bishops cannot dispense from *procedural laws* or *penal laws*.

18. In his declaration Father Cox provides a number of citations from a variety of official church documents, including documents which originated at Vatican Council II and related documents. He also cites a number of canons from the Code. The purpose is to illustrate the nature of the relationship between a bishop and a priest incardinated to the bishop's diocese. Apart from the canons, all citations are non-legal sources, being theological in nature. They use a variety of terms to describe the bishop-priest relationship: *father*, *brother*, *collaborator*, *friend* etc. None of these citations state that all communications, either oral or in writing, between a bishop and a priest, are covered by the privilege of absolute confidentiality. The reason for this is simple: these communications are not objectively covered by such a privilege. There is no place in the 1983 Code of Canon Law, the 1918 Code of Canon Law, the Acts and decrees of the Second Vatican Council or the Corpus Iuris Canonici (14th century fundamental canonical source) that creates a special privilege of confidentiality for communications between a priest and a bishop.

19. Bishops communicate with their priests on a variety of levels. A priest can conceivably ask to speak with his bishops about matters of a deep, personal nature and in his conversation; he might share matters of conscience with the bishop and ask that these matters be held in strict confidence. It is also possible that a priest would participate in the Sacrament of Penance with the bishop, i.e., go to confession. This is highly irregular however in that

priests are ordinarily discouraged from going to confession to their bishop, to the Vicar for Clergy or to other priests who are in supervisory roles over them. This practice is actually forbidden in some religious orders and may well be forbidden by local norms in some dioceses. The reasoning is obvious: the bishop is the priest's superior and his employment supervisor. Although the relationship may be cloaked in a blanket of theological verbiage, none of the euphemistic phrases can alter the fact that the bishop is, in actual practice, the priest's employer. He would hardly be able to take the administrative action needed in problematic cases if he were bound by the confessional seal concerning his priests.

20. Both Cardinal Mahony and Father Cox state that all communications between a bishop and a priest are bound by an equal level of confidentiality. This is not true. There are different levels of communication with a bishop. The scenario wherein a priest seeks to share deeply personal information with his bishop is one level. Even here, a bishop is able to share certain kinds of information with other staff members if he sees fit. Thus, the absolute confidentiality is a myth unless expressly insisted upon by the priest. Another scenario is that which involved sexual abuse. One way or the other information of alleged sexual abuse is communicated by a victim (or his or her parents) to a priest on the local level, perhaps a pastor. The pastor in turn communicates this information either directly to the cardinal or, in keeping with Los Angeles policies, with the Vicar for Clergy who then communicates it to the Cardinal and to the General Counsel. The information involves the possible commission of acts which are illegal in Canon Law and Civil Law and in each area, carry significant penalties. The communication of this information to the cardinal will probably bring about a confrontation between the priest and the cardinal and the allegation will be discussed. This entire scenario can hardly be described as an exercise in the priest's formation process. It is the investigation of a crime. It involves the public and several people are involved in sharing the information about the priest and even given by the priest. Any hope of assuming that this information is privileged is lost for a number of reasons not the least of which is the fact that so many people are privy to what the priest shared.

21. Some bishops have gone so far as to assert that it is within their power to decide when to cloak a conversation with the "confessional privilege". In effect this means that any such communications can be treated as if they did not exist. This power is purely fictional and has no basis in any Catholic Canon law or theology. It is preposterous to assert such a claim for a number of reasons not the least of which is the fact that the confessional privilege belongs

to the penitent and not the priest. The penitent owns it. The priest must observe it but the penitent is free to disclose what he or she told the priest. The bishop cannot claim that all communications with priests are necessary for the free exercise of religion and therefore totally confidential. Sometimes practicing the Catholic religion with integrity obligates the bishop to disclose information about a priest.

22. It is important to note also that in the 1917 Code of Canon Law there was a canon (canon 2209) that explicitly forbade anyone from using his ecclesiastical office to actively or tacitly condone the commission of a crime. Then 1983 Code repeats the same legislation in Canon 1329, 2.

23. There is no question that some communications between bishop and priest can and should be covered by absolute confidentiality, depending on their nature and context. It is also true that priests may discuss matters of personal sexuality and celibacy with their bishops. This is quite apart from documentation covering allegations of sexual abuse which is not only a potential canonical crime if proven but a civil law crime as well. When a bishop becomes aware of such an allegation and confronts an accused priest, the bishop is not acting as his confessor but as his superior. For the sake of good order in the Catholic community, the integrity of the sacrament of orders and the spiritual and moral welfare of the same community, such communications must be disclosed to other parties with a "need to know" so that appropriate actions might be taken. The theoretical intimate relationship between a bishop and a priest and the very exercise of the Catholic religion do not require that a bishop withhold files which may contain information related to the commission of a crime. The free exercise of the Catholic religion does not provide for the exemption of bishops and priests from the due process of the civil law in criminal cases. The duty to report suspected cases of child abuse is not a violation of the First Amendment rights of church leaders. In fact, the systematic neglect by church leaders to follow the procedures outlined by canon 1717 constitutes a violation of the procedures by the very office holders who have the primary responsibility to uphold the law.

24. Canon 384 states that the bishop is to see that priests fulfill the obligations proper to their state. This of course, includes the obligations attached to celibacy. This can be done in a variety of ways since the canon does not restrict its application. Father Cox states that priests are encouraged to communicate freely and openly with the bishop about their "deepest psychological and sexual issues, to undergo psychiatric evaluation and

treatment, and to share the results of his therapy with the Vicar and Bishop. All of this is for the purpose of the ongoing formation and sanctification of the priest.” In fact, such psychiatric evaluation and treatment cannot be automatically shared with the vicar or bishop unless the subject releases it. Also, such treatment is not mandated by Canon law nor can it be imposed on a priest. It is not done on a routine basis for all priests and only happens in cases when an allegation has been made against a priest or when some other set of circumstances require that such an evaluation take place. This is not a routine event in a priest's formation of spiritual life. In other words, the connection between psychiatric evaluation and treatment and the normal ongoing formation of a priest is illusory.

25. The confidentiality to which the declarations refer is by no means absolute nor is it restricted. Sr. Murphy seems to state that the investigations of allegations of clergy sexual impropriety are handled under her direction. If this is true then the sanctity of the bishop-priest relationship championed by the cardinal and Father Cox in their declarations is destroyed because the pertinent information is, by Sr. Murphy's own admission, shared with a number of persons, many of them not clerics. Father Cox himself states that the investigation is made under the direction and on behalf of the General Counsel, a civil lawyer. As stated, this procedure is a clear violation of Canon 1717 since only the bishop can direct and mandate such an investigation. It is also noteworthy that canon 483 states that the office of notary, required in all judicial proceedings including the investigation of canon 1717, must be a priest if the subject of the investigation is a priest. It is possible for the cardinal to delegate the vicar in individual cases, to conduct the investigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ____ day of March 2003 at Ramstein Air Base, Germany.

Thomas Patrick Doyle, O.P., J.C.D.

*Some Comments on this declaration,
July 2, 2008*

I have decided to make this declaration public in part because of the seemingly endless stream of self-serving and dishonest statements that come forth from the Archdiocese of Los Angeles. This declaration is a response to one of the more glaring fantasies concocted by the Cardinal and his minions: namely, that all communications between a bishop and his priests are covered by what he calls a "formation privilege." Accordingly, or so the myth goes, no files or notes of any kind can be disclosed for any reason for to do so would violate Cardinal Mahony's right to the free exercise of his religion.

I was asked to prepare this declaration to support the argument that there was no such thing as a privilege protecting the Cardinal and his files. The bottom line of the declaration is that the concept of a "formation privilege" is pure myth, like the Tooth Fairy, and has no basis in Canon Law, Catholic Theology, Tradition, Custom or Church History.

*The declaration became part of the legal documentation that supported the motion for disclosure. The lower court did **not support** the Cardinal's theory and ordered the files disclosed. He appealed and the appeal court upheld the lower court. The appeal brief prepared by the Cardinal's attorneys contained a lengthy, detailed personal attack on me in which they dug back as far as my high school days to try to find some way to defame me and destroy my credibility. They could not attack my argument in the declaration so they attacked me. So much for integrity in the legal profession, at least among Mahony's lawyers! The California Supreme Court upheld the lower court but this still was not enough to convince Mahony that his daydream was not real so he appealed to the U.S. Supreme Court. The outcome was predictable. The court refused to review the lower court's which amounted to an affirmation of the courts' opinion that the formation privilege belonged in a comic book but not in legitimate jurisprudence.*

Oddly enough (or perhaps not so odd), other bishops have tried the same argument with the same results. One bishop argued that he possessed some sort of power as a bishop to decide when certain matters were privileged or not.

All of this of course is fantasy conjured up by Mahony and the others. Why? The purpose is certainly not to protect the reputations of the accused priests nor does it have anything to do with the free exercise of religion. The bishops simply do not want the files made public because to do so will disclose even more evidence of a common attitude and practice of disdain for the church's victims, disdain for accountability, disdain for the concept of justice and overwhelming obsession with power and image.