Napa Think Tank – Temporal Administration – 2015

The Napa Think Tank on Temporal Administration seeks to engage experts and practitioners in a pursuit of bold, holistic, comprehensive and collaborative solutions for the Church’s temporal administration, in order to sustain and even thrive in today’s challenging and risk-filled environment.

Risks New & Old – A Fresh Perspective
Lessons Learned and Moving Forward

July 28–30, 2015

Collaborative Thought Leaders
Thank you to our speakers and topic experts who donated their time and knowledge to participate in this Think Tank.

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Mission

Since 2000, our partnership has convened experts to discuss issues that present both challenge and opportunity for the Church in America. We proactively seek to discern holistic, integrated solutions, advance insight and accountability while restoring trust, “risking it all for Christ.” We truly believe that it takes a collaborative effort of perspectives, experiences and talent to bring out the best of our stewardship efforts. These best practices should not be guarded or sold but shared proudly to a community of believers.

We appreciate having you, as an expert, join us on the journey and especially your contributing to this year’s Think Tank, where we feel called to focus on three distinct areas, all which are so important — the experience of victims, the Church’s liability and cyber risk. We feel call to ask the overriding question — what have we learned from these past 15 years of revelation of horrific sexual malfeasance, often by trusted leaders and how can we better advocate for victims who often remain silent and look ahead to how we might use our experience to combat the emerging silent killer with seemingly no boundaries — cyber risk?

Mike Patterson | **Patterson Buchanan Fobes & Leitch, Inc. P.S.**
Peter A. Persuitti | **Arthur J. Gallagher & Co.**
Program

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<tr>
<td>DAY 1: Tuesday, July 28, 2015</td>
<td>Hotel Check-In</td>
<td>Lobby</td>
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<tr>
<td>Afternoon</td>
<td>Mass – Bishop Robert Morlino (Diocese of Madison, WI)</td>
<td>Our Lady of Grapes Chapel</td>
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<tr>
<td>5:00 p.m.</td>
<td>Welcome Reception – Introductions</td>
<td>The Lobby</td>
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<td>6:45 p.m.</td>
<td><strong>Opening Dinner – Overview and Objectives</strong>&lt;br&gt;Mike Patterson and Peter Persuitti will facilitate some opening discussion for all to participate. What does a successful contribution from this group look like? What has Virtus® Learned from its deployment?</td>
<td>Siena Restaurant</td>
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<tr>
<td>DAY 2: Wednesday, July 29, 2015</td>
<td>Mass – Bishop Robert Vasa (Diocese of Santa Rosa)</td>
<td>Our Lady of Grapes Chapel</td>
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<tr>
<td>7:00 am</td>
<td>Breakfast – Morning Continental Buffet</td>
<td>Rutherford Terrace</td>
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<td>8:00 am</td>
<td>Part I – Sexual Misconduct Crisis – What have we learned over the past 15 years? Panel Discussion Led by Mike Patterson, Esq. of Patterson Buchanan Fobes &amp; Leitch, Inc. P.S. (Seattle, WA) Michael Burnett, Esq., Burnett Risk Control International, LLC (Charlotte, NC) Mark E. Chopko, Esq., Stradley Ronon Stevens &amp; Young, LLP (Washington, DC) Kathleen Mchesney, Ph.D., Kinsale Management Consulting, (Glendale, CA) Stephen J. Henne, The National Catholic Risk Retention Group, Lisle, IL</td>
<td>Carneros Ballroom – Salon D</td>
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<td>10:00 am</td>
<td>Break - Beverages</td>
<td>Carneros Ballroom</td>
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<td>10:35 am</td>
<td><strong>Roundtable Solution Building</strong>&lt;br&gt;What are the cornerstones of a healthy practice for dealing with sexual misconduct? Facilitated by Mike Patterson &amp; Peter Persuitti</td>
<td>Carneros Ballroom – Salon D</td>
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<td>12:30 p.m.</td>
<td>Lunch Buffet</td>
<td>Rutherford Terrace</td>
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<td>1:30 p.m.</td>
<td>Part II – Cyber Risk – The New Frontier The Big Picture and Alleged Breaches in Two Archdioceses Charles Leitch, Esq., Patterson Buchanan Fobes &amp; Leitch, Inc. P.S. (Seattle, WA)</td>
<td>Rutherford Terrace</td>
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<td>2:30 p.m.</td>
<td>Break – Beverages and light snacks</td>
<td>Carneros Ballroom – Salon D</td>
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<td>4:00 p.m.</td>
<td>The Intersection Examining these two topics as one – How do they intersect? What do they have in common?</td>
<td>Carneros Ballroom – Salon D</td>
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<td>4:30 p.m.</td>
<td>Closing Comments &amp; Adjourn Think Tank 2015</td>
<td>Estate Cave</td>
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<td>5:15 p.m.</td>
<td>High Mass – Fr. Jack Barker</td>
<td>Vineyard Deck (Gazebo Area at the top of the Hill)</td>
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<td>6:15 p.m.</td>
<td><strong>Napa Institute Concert, Trinitas Wine Reception</strong> followed by Dinner with the Napa Institute participants</td>
<td>Oakville Terrace</td>
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For Reference

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Website: www.temporaladministration.org
I. “Sexual Abuse in the Catholic Church – Lessons Learned and Moving Forward”

Introduction

The old saying goes, “Those who do not learn from history are doomed to repeat it.”

Although the problem of child sexual abuse is universal, all organizations that serve children and youth have likely faced this issue at one time. However, the Catholic Church in the United States is the focus of this report. For much of the past 30 years, the Catholic Church has been one of the institutions most identified with abuse and dioceses, schools, religious orders and others have faced rigorous public scrutiny in litigation, the press and from Church members. It is not surprising therefore that it is also the institution for which there is the most data regarding the abuse of children and the institution’s response to victims/survivors.

When reviewing this history, it becomes clear that through the last quarter of the 20th century and into the 21st century, the U.S. Catholic Church confronted this issue, realized its mistakes and addressed them, both pastorally and professionally. The Church’s response has evolved through those years — there are successes, as well as failures. Although lessons have been learned, best practices are emerging that will better support victims/survivors, resolve claims and reduce the possibility of future acts of abuse. This report is intended to provide an overview of what has transpired and where the Church and its followers are headed. We are fundamentally optimistic about the future given the right commitment of people and resources aimed at healing and preventing these systemic breaches of trust from ever happening again.

Awareness and Understanding of Child Sexual Abuse

An examination of the history of childhood sexual abuse by Church leaders can be broken into several stages. Before the 1980s, allegations of sexual abuse made against a cleric or staff member, was viewed as an anomaly and a personal failing, like misuse of alcohol, for which treatment and counseling would be required. Bishops and superiors were likely to view the act as an isolated incident by someone who had “strayed from the path.” There was also a belief that, with a proper state of mind and a firmness of resolve, a perpetrator could be turned from his sins and rehabilitated.

In 1984, allegations in lawsuits against a Catholic priest, Gilbert Gauthe and the Diocese of Lafayette, Louisiana, gained national attention. Press reports, like the complaints in the case, tended to focus on what the Diocesan Bishop knew about Gauthe and asked how the priest could have been allowed to remain in ministry. This case was not the only one to gain attention at this time and the sense that this was a larger issue also got the attention of the bishops as a group. Most of the accusations made at that time were made by parents on behalf of their minor children.

In 1985, at the National Conference of Catholic Bishops (NCCB) assembly in Collegeville, Minnesota, the bishops engaged in their first discussions of issues related to child sexual abuse. At Collegeville, the bishops came away with a better understanding of some aspects of the problem of abuse, but without a “game plan.” The much-mentioned report, authored by Ray Mouton, J.D., Reverend Thomas P. Doyle, O.P. and Reverend Michael Peterson, about the problem of sexual abuse in the Catholic Church was not on the agenda of the meeting or offered for NCCB discussion. In fact, the report was not widely circulated until late in 1985, and then with the disclaimer by its authors that it was not a proposal for an action plan for the Church or for any bishop. At the same time, individual bishops in 1985 had it available as a resource, along with materials being developed by the NCCB and in other places, to form their own plans and responses to deal with the abuse of children in Catholic ministries. It should be noted that the NCCB focus was clearly on bishops and dioceses; Catholic religious institutes of men and women had these resources as well but were also assisted by their own leadership forums for policy and plans.
In contrast to the prior years, in the 1990s most of the allegations being made came from adults who reported that they had been abused by priests when they were minors and that these offenses had occurred years, even decades, earlier.

Almost simultaneous with claims against the Church gaining public attention, reporting laws were amended to expand the categories of abuse, to include sexual exploitation and the categories of persons required to report abuse. In response, procedures for responding to allegations of abuse were developed by dioceses in Chicago, St. Paul-Minneapolis, Seattle, Washington, D.C. and statewide in Florida and New Jersey. In 1988, the NCCB privately addressed issues relating to reporting and policy-making in connection with dioceses. By 1992, the bishops were discussing what was being learned and how to build on that knowledge to prevent abuse. Also in 1992, the bishops affirmed the Five Principles, originally issued by the NCCB President, as building blocks that the arch/dioceses should model with regard to addressing child sexual abuse in their own policies and chanceries. The bishops commissioned a “think tank” that brought together victims, accused clergy, medical experts, treatment specialists, bishops and others for a 360-degree look at the topic.

In 1993, acting on one of the think tank’s recommendations, the bishops formed the “Ad Hoc Committee on Sexual Abuse” (Ad Hoc Committee) which was given a comprehensive mandate that directed the Ad Hoc Committee to (1) assist NCCB members in dealing with abusive priests; (2) examine ways to provide pastoral healing to victims; (3) address the morale of non-offending priests and bishops; (4) assist bishops in screening seminarians and the reassignment of known offenders; (5) recommend steps to prevent abuse; and (6) address the societal problem of sexual abuse. By 1995, more than 157 arch/dioceses reported that they had established policies to address the sexual abuse crisis. Although much of the discussion inside the NCCB remained in executive session, the Ad Hoc Committee reported publicly and its materials were widely distributed. Action — both responding to victims and preventing future harms — remained in the hands of each diocese.

In the 1990s, the sexual abuse of children and the harm it caused among the lay faithful and to the Church’s standing had become the staple of discussions inside and outside the Church. It had certainly been part of the dialogue between bishops and the Holy See, and some U.S. bishops discussed the issues of sexual abuse with Pope John Paul II during their ad limina visits. The Pope formed a commission of curial and U.S. canon law experts to develop recommendations for actions he could take that would be helpful in addressing the issues. One of the most important recommendations included the extension of the statute of limitations under canon law for the crime of sexual abuse of a minor to ten years past the victim’s 18th birthday. This recommendation was accepted by the NCCB (soon renamed the United States Conference of Catholic Bishops, “USCCB”) and received papal approval.

In the 1990s, in contrast to prior years, most of the allegations being made were from adults who reported that they had been abused by priests when they were minors. Church leaders believed, and the media reported, that the crisis that persisted in the late 1980s was now in the past, and that the Church was confidently moving forward.

The Dallas Charter

In 2002, the Boston Globe’s coverage of the criminal trial of John Geoghan, a priest of the Archdiocese of Boston, captured national attention. Beginning on the Feast of the Epiphany, the Globe began to run a series of “Spotlight” articles focusing on the issues in Boston. Other media outlets in the country began to ask similar questions. By April 2002, a new story about abuse in the Catholic Church was published “every nine minutes, 160 every day,...” according to an article published later in America. The hundreds of media reports reiterated that the Church was in crisis—that thousands of priests had abused hundreds of thousands of children causing untold damage—and these incidents had been kept secret from the public.

In an effort to provide direction to its members, the Administrative Committee of the
Charter for the Protection of Children and Young People

The *Charter for the Protection of Children and Young People* is a comprehensive set of procedures established by the USCCB in June 2002 for addressing allegations of sexual abuse of minors by Catholic clergy. The Charter also includes guidelines for reconciliation, healing, accountability and prevention of future acts of abuse.

The Charter directs action in all the following matters:
- Creating a safe environment for children and young people;
- Healing and reconciliation of victims and survivors;
- Responding promptly and effectively to allegations;
- Cooperating with civil authorities; and
- Providing for means of accountability for the future to ensure the problem continues to be effectively dealt with through the Secretariat of Child and Youth Protection and the National Review Board.

USCCB—the bishops’ national board of directors—charged the Ad Hoc Committee with developing “a comprehensive response on the national level” to ensure “the safety of children and the healing of victims and their families.” The Ad Hoc Committee began drafting a document that would evolve into the Charter for the Protection of Children and Young People. The document was approved by the USCCB at its conference in Dallas, Texas, in June, 2002 and is more commonly known as the *Dallas Charter*.

The *Dallas Charter* and its accompanying document, the *Essential Norms for Dealing with Allegations of Sexual Abuse of Minors by Priests and Deacons (Essential Norms)*, provided a more detailed framework for responding to victims/survivors than the *Five Principles*. The *Essential Norms*, approved by the Holy See, made portions of the Dallas Charter “particular” canon law for the U.S. Catholic Church. Later that year, the USCCB added a Statement of *Episcopal Commitment* that extended the Dallas Charter provisions and the bishops’ commitments. These three documents continue to be the core of the U.S. Church’s responsive and proactive actions for addressing the issue of sexual abuse in Catholic ministries.

The Dallas Charter is a covenant of four general “promises” that the bishops made to the public:

1. To promote healing and reconciliation with victims/survivors of sexual abuse;
2. To guarantee an effective response to allegations of sexual abuse of minors;
3. To ensure the accountability of our procedures; and
4. To protect the faithful in the future.

Each promise includes specific actions that the bishops must take in their own diocese or face the consequences of being the subject of a public report documenting their intransigence. Importantly, and unlike the *Five Principles*, the *Dallas Charter* provided for external and verifiable accountability in the form of external annual audits overseen by the USCCB’s National Review Board (NRB) and Office of Child and Youth Protection (OCYP).

Religious orders of men took a different approach and contracted with the Praesidium Group to review their policies for protection and response to abuse and, if they passed the evaluation, certify the programs.

The NRB, comprised of lay professionals, and the OCYP were created by the *Dallas Charter*. The NRB was given the broad mandate to “offer its advice as it collaborates with the [Ad Hoc Committee] on matters of child and youth protection, specifically on policies and best practices.” The OCYP was tasked with assisting dioceses and eparchies in establishing “safe environment programs,” establishing audit mechanisms to verify arch/diocesan and eparchial compliance with the *Dallas Charter*, and to prepare an annual public report regarding that compliance.

In addition to reviewing the annual reports of audits of arch/diocesan and eparchial compliance with the *Dallas Charter*, the NRB was also tasked with the conduct of two national studies on child sex abuse—one on the “nature and scope” of the abuse and one on its “causes and context.” In 2003, to complement the annual public reports, the USCCB commissioned the Center for Applied Research in the Apostolate (CARA) to annually gather and report data including the total number of new allegations of sexual abuse, when the alleged incidents occurred and the status of the clergy against whom allegations were made. The data also included the total amount of money expended by all arch/dioceses and men’s religious institutes for the care of survivors, legal claims and the total amount of money paid by arch/dioceses, eparchies and men’s religious institutes for child protection efforts.
A key component of the child protection efforts includes systemic change and raising the awareness and detection of abuse among employees, volunteers, congregations and families. The National Catholic Risk Retention Group, a liability company owned by more than 50 arch/dioceses and its reinsurance partner, Munich Re (then Munich-American Risk Partners), supported the development of Virtus—a proactive classroom and online training program. Religious institutes and arch/dioceses now regularly use educational programs such as Virtus and Praesidium Incorporated’s Instruments of Hope and Healing, in the 1990s, to foster awareness and detection of abuse.

Key Studies Regarding Sexual Abuse in the Catholic Church in the United States

The Nature and Scope of the Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002 (Nature and Scope Study) was conducted by and published in 2004 by the John Jay College of Criminal Justice at the request of the U.S. bishops. The Nature and Scope Study provided information about the breadth of the abuse. The study that between 1950 and 2002 nearly 4,400 priests (more than four percent of the Catholic clergy during that time period) had been accused by approximately 11,000 victims/survivors, indicating that the problem was more widespread than had been previously assumed, but less widespread than speculations by the public and media.

An analysis of the data gathered for the Nature and Scope Study shows that the incidents of abuse peaked in the late 1960s and 1970s and decreased in the mid-1980s through 2002. Victims/survivors continued to report allegations of abuse that occurred during those years. Data gathered by the CARA showed that between 2004 and 2014 there were 117 allegations of sexual abuse made against priests and deacons confirming that the number of incidents continued to decrease. Although correlation is not causation, the data show a connection between the increased understanding of the problem and the implementation of arch/diocesan policies with the decline of the alleged incidents.

Beyond the terrible consequences for the victims/survivors, a measurable impact of this crisis is the monetary cost. The Nature and Scope Study and the CARA annual updates have yielded detailed information about the cost to the arch/dioceses, eparchies and religious institutes. It is estimated that these costs have exceeded $3 billion dollars since 1950. By 2016, 14 Catholic entities had gone bankrupt as a result of substantial civil liability, settlements and other costs.

The second study conducted at the request of the USCCB was the Causes and Context of the Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2002 (Causes and Context Study). The results of this unprecedented and important study revealed that there was no single “cause” of sexual abuse of minors by Catholics priests. The researchers noted that social and cultural changes in the 1960s and 1970s led to increased levels of deviant behavior in society in general as well as among Catholic priests in the U.S. Contributing to the vulnerability of priests, during this time were organizational, psychological and situational factors. The study did not determine a specific institutional cause for the increase in the allegations of abuse that occurred in the 1970s, but determined that the incidents of abuse declined from the mid-1980s, likely due to the development of seminary education. The researchers also noted that the offending priests were not psychologically or developmentally different from priests who were not accused of sexual abuse of minors.
In previous years, the media had focused much of its attention on this problem within the Catholic Church, but it is now known that the problem is more widespread. Other adults in youth-serving organizations, faith-based institutions and sports clubs have also been accused of the sexual abuse of minors. The 2004 report, *Educator Misconduct: A Synthesis of Existing Literature for the U.S. Department of Justice* commissioned by the U.S. Department of Justice in response to a requirement in the federal *No Child Left Behind Act*, estimated that millions of children are being affected by this misconduct during their school-age years. The report concluded that far too little is known about the prevalence of sexual misconduct by teachers or other school employees and that solid national data on its frequency is clearly needed.

**Lessons Learned**

The lessons learned by Church leaders since 2002 can be put into one of three categories:

1. **Church leaders lacked an understanding of the nature and scope of the problem and its impact on the victims/survivors and their families.** Like those who led other child-serving institutions of the time, as confirmed by the Causes and Context Study, many bishops, religious superiors and clergy were uneducated about the problem of the sexual abuse of minors. This lack of education was the result of several cultural and institutional influences that existed in the U.S. prior to 1980. Sexual abuse of minors within institutions was not recognized as a widespread problem, some clergy were naïve to the fact that such offenses could and did occur, or how to recognize when a child had been victimized. Furthermore, clergy formation was limited in the area of human sexuality and the lack of training programs for others involved in youth-serving ministries was not unique to the Catholic Church.

2. **Some Church leaders relied too heavily on the questionable advice of psychologists and attorneys in dealing with the accused.** Notwithstanding the fact that victims/survivors and their families often did not want to report their allegations of abuse to law enforcement authorities, some Church leaders believed that an abuser’s confession and will to avoid these types of “sins” in the future was all that was needed to protect children from the offender. Other bishops relied on the expertise of psychologists who advised that the offender could be “cured” from pedophilia, ephebophilia or personality disorders through therapeutic treatments or by eliminating contributory factors, such as alcoholism or drug addiction. In protecting the institutional Church in individual cases, some attorneys did not always focus on the important pastoral dimensions of each individual case catching the public eye. Allowing those who had been credibly accused of abuse to remain in ministry created risks both to young people and to the reputation of the Church.

3. **Lack of systems of accountability and transparency, and the apparent cover-up of heinous crimes generated widespread hostility, and lack of confidence and trust in Church leaders and the institutional Church.** Before U.S. bishops began to implement abuse prevention policies in the 1980s, other than the Code of Canon Law, they were not held accountable to any internal formal written standard or mandate. Although two canonical documents were issued by the Holy See in 1922 and 1962, there is almost no indication that Church leaders around the world either knew about them or followed them in specific cases. However, the culture of the Church as well as concern for the privacy of all involved, arranged for any accusation that was made to be kept confidential. Secular law until the 1980s either did not require reporting of abuse or excluded religious institutions. This changed over time. Policies and procedures evolved and with the adoption of the Charter and Essential Norms. There were more effective provisions to prevent sexual misconduct, to properly respond to sexual abuse claims, to provide pastoral care of victims/survivors and their families, to educate priests about sexual misconduct and to provide assistance for priests who engage in sexual misconduct.
With the Charter and Norms, the U.S. bishops also instituted and committed themselves to a policy regarding clergy sexual abuse of minors, commonly referred to as “zero tolerance”. Under this policy, now the law of the Church in the United States, if a cleric engages in a single incident of sexual contact, sexual misconduct or sexually motivated behavior with a minor, he is to be removed from ministry. Canon law now defines a minor as a person under the age of 18. Removal from ministry is required in all cases, regardless of when it occurred. Although some bishops acknowledged that permanent removal from ministry may be harsh, all of them expressly resolved to strictly enforce the policy.

Until 2002, Church leaders rarely commented on the issue or incidence of sexual abuse by Catholic clergy. After the adoption of the Charter and in conjunction with numerous lawsuits, the U.S. bishops were more forthcoming about the matter. However, the concepts of truth, transparency and accountability are broader than a mea culpa on the part of bishops or a letter to the faithful. Honesty about past abuses and cover-ups of abuse is essential for restoring trust. The challenge exists for bishops when they attempt to “set the record straight” over inaccurate media accounts that omit important information about specific cases or fail to put them in a more comprehensive context. Care must be taken to provide necessary, accurate information without appearing callous, defensive or untruthful.

Moving Forward: Challenges and Opportunities
What we have learned from the past will assist current and future Church leaders, clergy, religious and the laity in better understanding the problem of sexual abuse in society in general, and in Catholic institutions in particular. These lessons will help Church leaders to more effectively respond to allegations of abuse in the future and to prevent future abuse from occurring; Church leadership knows that they will be accountable for the actions and inactions of those responsible for the protection of the young and vulnerable within the Church’s ministries, and for being transparent about past and future actions. In addition, the lessons learned will help guide the way for better stewardship of the Church’s temporal resources and legal strategies driven by fairness and compassion, so that the Church’s good works may grow in support of its many vital missions.

1. **Prevention of Future Abuse**
   The implementation of abuse awareness and prevention programs and policies have been successful in creating safe environments in Church ministries as evidenced by the significant reduction in the number of abuse allegations since the mid-1980s. However, sexual abuse of minors still occurs within the Catholic Church in the U.S. and it is essential that arch/dioceses, religious communities, seminaries and other Catholic organizations continue to maintain these programs and policies. Church policies should consider not only criminal sexual misconduct; but also conduct that may not be criminal, is sexually coercive, manipulative, exploitive or indicative of grooming or boundary violations. To ensure compliance with the programs and policies, these entities must continue to be subject to external, third-party compliance audits or reviews. In addition, arch/dioceses and religious institutes should utilize best-practices in screening members, employees and volunteers.

2. **Improved Response to Allegations of Abuse**
   Victim/survivors perform a unique ministry for the Church that is vital to the well-being of the men and women abused by clerics. The compassion and care afforded to those who have been abused by persons representing the Church is essential to their healing and, even, to their reconciliation with the Church. The men and women who do this work in the Church must be supported and encouraged. As important, Church leaders must continue to reach out to the victims/survivors and seek their forgiveness for the harm that has been done to them.

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**Looking Ahead…**

**Six Key Themes**
1. **Prevention of Future Abuse**
2. **Improved Response to Allegations of Abuse**
3. **Accountability**
4. **Transparency**
5. **A Compassionate Legal Approach**
6. **Complacency is the Enemy of Progress in Protecting Children**
3. **Accountability**
   Archdioceses and religious institutes must promptly report allegations of sexual abuse whether required by law, policy or civil agreement. Bishops and religious superiors are responsible for ensuring that offenders are removed from ministry, to include laicization when appropriate. Notwithstanding the fact that some cunning and unrepentant offenders attempt to manipulate canon law to their advantage, they must be held accountable for their actions. Similarly, if Church leaders cover up allegations and protect known offenders, they too will be held accountable to the faithful and the Holy See.

4. **Transparency**
   Although the Charter and Norms lack specifics as to what constitutes transparency, past experience shows that Church leaders need to be honest and forthcoming about the individual and collective issues of sexual abuse within their archdioceses and religious institutes. The USCCB and the Conference of Major Superiors of Men need to continue to annually report information relating to allegations, known offenses and offenders, child protection efforts and the expenditures associated with victim/survivor care and abuse prevention programs. Communications directors play an important role in providing this information to the public. Directors should assist members of the media in understanding the progress that has been made in the Church in terms of reducing the incidence of sexual abuse of minors as well as ensuring that the media is aware of how individual offenders have been dealt with in order to protect the young and vulnerable.

5. **A Compassionate Legal Approach**
   Victims/survivors continue to rightly seek redress in the civil courts for the harm that has been done to them. The victimization of boys and girls in years past continues to strain the Church’s financial resources and is expected to continue. In some states, the revisions and temporary lifting of statutes of limitations has significantly increased the number of lawsuits against archdioceses and religious institutions. Furthermore, in some courts, arguments based on “fraudulent concealment” through which the Church loses its defense of the statute of limitations, have been accepted. The challenge for the Church, and its legal advisors, throughout the process of litigation, is to ensure there is just compensation for victims/survivors and that these persons are treated with compassion and concern reflective of the Church’s values. It is not just about the law, but also involves the pastoral mission of the Church.

6. **Complacency is the Enemy of Progress in Protecting Children**
   Church leaders, clergy, religious and the laity are all responsible for ensuring that Catholic ministries are conducted in a safe and respectful manner. No one can afford to become complacent about policies and procedures, despite the “issue fatigue” that may occur in dealing with these difficult issues. The lessons learned by the U.S. Catholic Church will be reviewed by the members of the Pontifical Commission for the Protection of Minors, headed by Cardinal Sean O’Malley, O.F.M, of the Archdiocese of Boston. Although, some of the lessons learned and the programs developed in the U.S. may assist Catholic entities in other countries, it is imperative that the U.S. Church and its members continue to learn from the difficult lessons of the past and move forward to care for those who have been harmed and to vigilantly protect the young and vulnerable.
Risks New & Old — A Fresh Perspective  

Lessons Learned and Moving Forward

Insurance analysis arising from sexual abuse claims in the Catholic Church must include, to some extent, analysis of underlying liability and legal issues.

Until the mid-1960s, Catholic dioceses generally did not purchase casualty coverage with high limits. Typically, the only coverage available was that purchased by individual parishes. For example, after the December 1, 1958, Our Lady of the Angels fire in Chicago, the only coverage available for the deaths of 92 students and three nuns was a $5,000 third-party liability policy limit purchased by the parish, resulting in comprehensive general liability programs brokered by the Arthur J. Gallagher & Co., with higher limits. Generally, though, high limits were unnecessary. Parishioners rarely filed lawsuits against the Church. Sexual abuse in the Church generally was not known by parishioners. Statutes of limitation periods were short. “Long tail” and progressive tort liability arising from injurious asbestos exposure, environmental contamination and continuous sexual abuse over months or years were not yet part of American jurisprudence.

However, beginning in the early 1960s, the need for higher limits became apparent. States began to eliminate the charitable immunity defense previously enjoyed by charitable, religious and nonprofit entities. Courts embraced “mental and emotional distress” damages, providing recovery for more intangible and subjective harm beyond bodily injury and medical expenses. Society became more litigious. These developments gave rise to tort liability against the Catholic Church for its negligent acts and omissions that led to misconduct, including sexual abuse of minors; thereby requiring higher limits of coverage. In recent years, statutes of limitation for sexual abuse have been lengthened or eliminated. The state of Oregon went so far as to find that the Catholic Church is vicariously liable for clerics’ criminal sexual abuse, because their access to minor victims occurred within the “course and scope” of their priestly duties and “benefited” the Church. Of course, this is inconceivable to the faithful. How could sexual abuse ever be within a priest’s duties and how could it ever benefit the Church? Now, fraudulent concealment is accepted in some jurisdictions as a means to avoid the statute of limitations.

Previously, general liability coverage was provided on an “occurrence” basis, generally defined as an, “unexpected” or “unintended” event or happening that took place during the policy period. When claimants began to allege sexual abuse that had occurred well in the past, coverage was only available under a long-expired policy in place when the event occurred. Many times, policies had been discarded decades before, because when a policy period ended, insureds did not contemplate that new claims would be based on an unknown “occurrence” that took place under an expired policy. Decades later, when claims were based on sexual abuse that occurred during those long-expired policies, providing proof of insurance became difficult for Catholic entities. Dioceses attempted to locate policies or proof of policy limits, terms and conditions of discarded policies. The task was difficult and, at times, unsuccessful, even when insurers and policy numbers and policy periods were known.

However, even when a policy was located, obtaining coverage was a formidable challenge for dioceses. Although some bishops have paid for the defense of their priests accused of sexual abuse, coverage does not attach for a perpetrator. Sexual abuse is an intentional and inherently injurious criminal act; both the act and resulting harm are intended. It is against public policy to provide coverage for intentional criminal acts. Additionally, intentional acts are not “unexpected” or “unintended” occurrences or harm. However, tort claims based in negligence against employers of perpetrators appeared to be for “unintended” and “unexpected” harm. No bishop “intended” for a priest to sexually abuse a child. Generally, bishops did not “expect” a cleric, employee or volunteer to sexually abuse, but they may be alleged to have been negligent in their supervision
of a perpetrator. Even after bishops became more aware of clergy sexual abuse, sexual abuse was considered a moral, spiritual and psychological failure that could be “cured” with psychological treatment, spiritual renewal, direction and reconciliation. Until 1985, mental health experts believed they could cure pedophilia. Errant priests were put through treatment protocols and bishops were advised that the offending clerics were cured, would not reoffend and could be returned to ministry. Arguably, when a “cured” cleric reoffended, the abuse could be deemed “unexpected” by the bishop, because he thought the cured cleric would not backslide. Because it is unexpected, the subsequent abuse could be deemed an insurable event. Nevertheless, insurers asserted aggressive defenses when it was apparent that a bishop knew about the abusive proclivities of a priest. Insurers, with some success, argued that the abuse was not “unexpected” from the standpoint of the insured diocese and thus not an insurable “occurrence.” The determination of coverage under the circumstances was very fact-specific, and both insurers and insureds filed scores of declaratory judgments seeking the courts’ determination as to whether coverage existed for sexual abuse claims.

Questions such as “what did diocesan officials know about a priest’s abuses and proclivities and when did they know it?” and “when did diocesan officials reasonably become aware that — despite psychologists’ advice that a cleric was cured — his re-offense could be expected?” became critical to the determination of coverage.

In the 1980s, insurers began providing coverage on a “claims-made” basis. Coverage is provided for a “claim” that is “made” during the policy period or extended reporting period. Coverage may arise from an occurrence that pre-dated the policy period, as long as it happened sometime after a “retroactive date” (usually the date coverage first began with the insurer). Coverage attaches only for claims made during the policy period (or a short subsequent temporary reporting period) that insurers are not called upon to provide coverage for historic “long tail” claims asserted decades after an insurable occurrence. This results in more predictable losses and may mitigate the insurer’s risk, which may reduce the cost of insurance for the insured. In addition, in the mid-1980s, insurers added sexual misconduct exclusions into policies. (e.g., The Bishop's Program of coverage provided by the Lloyd’s Market issued a comprehensive sexual misconduct exclusion in effect as of July 1, 1986.) Catholic insureds were denied coverage for the emerging trend of losses. By the late 1980s, insurers were not providing sexual misconduct coverage and expressly excluded coverage for such claims. This dynamic gave rise to the creation of The National Catholic Risk Retention Group in 1988 to serve the needs of bishops who were increasingly defending sexual abuse claims. TNCRRG provided claims-made sexual misconduct coverage to dioceses when few other insurers would. In the early 1990s, some other insurers began to offer limited sexual misconduct coverage, sometimes stand-alone, usually only with somewhat modest sub-limits and strict limitations.

Catholic dioceses, partly in response to the sexual misconduct crisis, increasingly began to shift to self-insured coverage, typically at lower costs to the insured. Under a self-insured program, the insurer’s layer of coverage does not become available until the insured has paid a specified “self-insured retention.” Sometimes, an additional, more “catastrophic” type of “stop loss” insurance is available for insureds under self-insurance programs. “Stop loss” insurance provides an additional “aggregate excess” coverage to stop the potentially devastating accumulation of an insured’s multiple self-insured retention payments on multiple claims. Under these programs, the insurer provides the additional limit of excess coverage once an insured has paid a specified aggregate of self-insured retentions on multiple claims. These programs incentivize insureds to invest in effective risk control measures to avoid or reduce payments of their own funds on claims, and to avoid misuse and to handle abuse claims in a cost-effective manner to prevent extensive defense costs and other costly claims handling expenses (“skin in the game”).
Temporal Administration

Risks New & Old — A Fresh Perspective
Lessons Learned and Moving Forward

The downside for the insurer is that it has little control over the handling of a claim until after the insured has paid its own self-insured retention. In addition, most policies include an aggregate limit of coverage. An aggregate limit provides that an insurer’s obligation to pay for claims is capped once it has paid a specified aggregate amount on claims on an insured’s behalf. This has the effect of protecting the insurer against repeated, unlimited payments on multiple claims and leads to the insured becoming more judicious in claims handling costs, realizing that there is a cap on their coverage beyond the per-claim limit. A cap on an insurer’s obligations and on coverage available to the insured under the policy may also influence the cost of the coverage. Another factor that may affect coverage available and the cost of coverage to insureds is whether the policy is a “duty to defend” policy or an “indemnity” policy. Under a duty to defend policy, the insurer has a duty to pay for the insured’s ongoing defense costs during the course of a claim in addition to the limit of coverage available to pay for a settlement or verdict. The insurer’s duty to defend extends to cover the costs of potentially non-covered claims (although the duty to defend and loss coverage may end if it is determined during the course of litigation that a coverage exclusion applies). Because of the potential for significant defense costs, these policies typically cost much more than indemnity policies. The insurer technically is not obligated to pay for defense costs and loss payments until the conclusion of the claim, when the insurer then indemnifies — or reimburses — the insured for its covered defense costs and losses. Under an indemnity policy, the insurer has the luxury of hindsight at the conclusion of a claim to determine their indemnity obligations to the insured, and may be able to parse out covered versus non-covered costs incurred during the course of litigation. The insurer may even be able at to deny coverage based on information that became known or legal determinations made during the course of litigation which results in the claim being non-covered under the terms and conditions of the policy. (However, this may create other risks for the indemnity insurer; the insurer has less control over the claim handling and defense of a claim when they are not paying for the defense from the beginning of the claim.) These policies cost less because the risk to the insurer is mitigated. In addition, some policies are “self-eroding” or “wasting,” meaning that the payment-of-defense costs reduce the available limit of coverage to pay a settlement or verdict.

All of these insurance products may impact settlement demands. Increasingly, plaintiffs’ settlement demands reflect the limits of coverage available to an insured defendant. When a diocese is self-funded, exorbitant demands may result in bankruptcy or may exhaust self-insured funds, causing difficulty for attorneys who represent multiple claimants to obtain large settlements for their clients. Self-insurance and aggregate limits of policies reduce the accessible proceeds available for settlements, especially when self-eroding or wasting limits are reduced by attorneys’ fees. Because defense costs erode the limits of such policies, extensive litigation may significantly reduce the amount available for settlements. For these reasons, mediation or other forms of alternative dispute resolution may be a better course of action for both sexual abuse victims and Church entities. These forms of claim resolution are less expensive, more conducive to healing and compassionate outreach and result in more risk transfer funds going to the victims rather than to attorneys.

These dynamics encourage more investment in risk control measures to prevent abuse and to handle abuse claims in an expedited, cost-effective and compassionate manner. These measures affect an insured diocese’s insurability, loss history, cost of insurance and claims handling costs. An ounce of prevention is worth a pound of cure.

Mediation or other forms of alternative dispute resolution may be a better course of action for both sexual abuse victims and Church entities.
II “Cyber Risk – The New Frontier”

As we prepared to focus on what we had learned over the past 15 years from the sexual misconduct crisis, we were struck by another ‘silent’ epidemic that was popping up around us and now in three of the dioceses in the U.S.—cyber data breaches. Did others connect the patterns that we saw in comparing these two risks—silent, data privacy, boundary breaches, incidents occurring due often to organization’s constituency misbehavior, coverages (and triggers) that were unclear and use of mediation as a preferred form of recourse? We may be witnessing a convergence of the misconduct malfeasance and cyber risk in that this nexus is where the next wave of misconduct may predominately lurk.

As we looking back to bring a fresh perspective to the “old risk,” we thought it logical and prudent to continue the connection in the hopes of learning from our past experiences as we confront another frontier in cyber risk. This was almost immediately reinforced just prior to our Think Tank through an article published by Martin Frappolli “Cyber Risk is Not a Technology Problem” just prior to our July 2015 Think Tank (Risk Insider May, 2015).

Our primary presenter Charles Leitch is a founding principal and litigation attorney with a Seattle-based law firm that is a co-host of the Think Tank. Charles is also an expert on the topic of cyber risk, having spent many years in the field of digital supervision, social media, responsible use of technology and HIB prevention, including specific presentation formats for children, parents, teachers and skilled professionals.

Charles began his presentation with a focused look at the breaches that have been alleged in the diocesan landscape—the Archdiocese of Seattle and the Archdiocese of Portland. Since 2015, another significant breach has been reported in another part of the country. What is striking about these breaches is the lack of clarity about the breach and the sources of the breach—ranging from a third-party background screening firm to a hacker in Ukraine. Charles reminded us of the multiple forms of potential cyber-attack:

- Point of sale
- Blackmail/extortion
- Data destruction
- Identity theft/fraud
- Any information stored electronically

![Digital Universe Statistics](image)

“Ten years from now, when we look back at how this era of Big Data evolved... we will be stunned at how uninformed we used to be when we made decisions.”

— Bill Boesworth, DataStax CEO
Exactly what is the liability here? It is an evolving determination; it could be a failure to protect data, an impact from data breach or a privacy violation infringement of intellectual property. In the case of the breaches that dioceses have sustained thus far, there was significant reputational concern, notice was provided to known victims, credit monitoring offered and relationships became strained as, in one case, false IRS returns had lasting individual impact. And we may be no further ahead in understanding the cause of the breach.

“The good news may be the fact that there is coverage, although with each passing day the underwriting demands and the experience will threaten the broad appetite that might be present now (and quickly fading). Separate from this discussion but to this point, David Kimmel, CEO of CyberRiskPartners (New York | London | Hong Kong | Sydney) (www.cyberiskpartners.com) has been leading an effort to bring an underwriting and rating discipline to this vast exposure. Reviewing a presentation that he recently gave, he sees the cyber threat landscape rapidly evolving.

Beyond coverage, though, Charles Leitch insists that “cyber security must be considered.” Given the nebulous nature of a breach, there seem to be more questions than answers when it comes to fully understand the incident, the impact and getting your head around containing the risk. Martin Frappolli goes as far as to say “for fire, we build safe buildings, install sprinklers and fire extinguishers and conduct fire drills. We do so before we transfer the risk by insurance. We should do the same with cyber risk.”

One of the fascinating developments of the 21st century as we grapple with this emerging exposure is the way coverage has been enhanced by value-added services that are vital to mitigating incidents. Some carriers are bundling services such as forensic, legal counsel, notification and credit monitoring in to the coverage and this is certainly something that Mary Santi, Chancellor of the Archdiocese of Seattle, unfortunately learned the hard way. With minimal CGL coverage and none of these bundled services, she quickly became skillful in finding these resources which she learned quickly are hard to find and very expensive.

Charles Leitch reinforced the costs of a claim with this slide:

<table>
<thead>
<tr>
<th>Cyber Liability Claim Breakdown</th>
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</thead>
<tbody>
<tr>
<td><strong>Per Claim:</strong></td>
</tr>
<tr>
<td>Crisis Services - $800,000</td>
</tr>
<tr>
<td>Legal Defense - $500,000</td>
</tr>
<tr>
<td>Settlement - $1,000,000</td>
</tr>
</tbody>
</table>

The role of the “cloud” has been front and center. It is rapidly being utilized and constantly changing. It brings the promise of lower costs, efficiency and storage capacity—but does it transfer the security and risk? Charles went on to highlight the perils of the cloud with a focus on the contracts established with third party providers.

» Can you include such preventive contract items as “reasonable security,” include audit and enforcement terms such as “assessment/scanning rights” and “noncompliance reporting” and incident response terms?

» Can a clause about “data breach cooperation” be added, including a definition of a breach—trigger, reporting, due diligence and right to post incident investigation, being mindful of breach notice laws.
While cyber security requires a balancing of confidentiality, accuracy (authenticity) and availability, Charles concluded with valuable best practices for:

**Employees**
- Screen those individuals who will have access to sensitive data
- Limit access on a “need-to-know” basis when it comes to sensitive data
- Ensure former employees do not retain access to sensitive data
- Require “strong” passwords

**Physical Security**
- Install/ensure physical security for equipment that is proportional to the risk it presents (i.e., data servers in secure area or limit mobile access)
- Require log off computers and/or have automatic log off timed into system
- Track shipping of sensitive information

**Operations**
- Identify the sensitive information that you possess (i.e. social security numbers, credit card information, etc.)
- Understand sources of sensitive information and method of processing
- Collect only information that you actually need

As we circled back to the discussion in the beginning, the insurance coverage, this session determined that there are many aspects to the coverage that are all important:
- Multimedia liability
- Network security / privacy liability
- Data recovery & business interruption
- Privacy regulatory defense & penalties
- Crisis management & customer notification
- Data extortion
- Payment card industry fines or penalties

And according to David Kimmell, there are many interested parties which will enhance the availability of cyber coverage.
Perhaps like misconduct, cyber risk will also evolve and the definition will become more clear (and perhaps more limiting in terms of coverage), and similar to misconduct we will look to insurance and self-insurance options. And perhaps, like misconduct, cyber risk is witnessing an insurance marketplace in flux (who can forget the mid-80s when misconduct coverage was cancelled). Some are looking for a simplified underwriting process, while others are hoping for an expansion of coverage forms. Perhaps David Kimmel is closest to the solution in giving us hope that there will be coverage for what appears to be a new frontier of catastrophic exposure for the Church.

**Cyber Insurance – a Fast-Growing Specialty Line**

- Explosion of data, increase in attack surfaces and attackers, and ongoing attribution challenges
- Senior management and board pressure
- Focus and publicity / increased awareness and education
- Substantial SME market opportunity
- Regulatory and legal trends
- Market need for a holistic solution
- Insurance industry capabilities – in unique position to help shape the dialogue
- Enhanced actuarial data and approaches
- Government initiatives around information sharing and threat collaboration

*Cyber insurance will be an expected business expense and purchased concurrently with other standard coverages*
Points prepared by Mary Santi, Chancellor, Roman Catholic Archdiocese of Seattle. You can read more about the Archdiocese's breach online.

Preparatory measures for cybercrime, based on the breach experience of the Archdiocese of Seattle.

- Identify and hire legal counsel to
  - Review documents and contracts (e.g., criminal background check authorization form to conform with FCRA and case law, contract with background check service provider);
  - Be prepared to step in and coordinate efforts of various service providers in the event of a breach (a local firm is best if you can identify one with the needed expertise).

- Identify and hire forensic experts to
  - Conduct a forensic review of systems;
  - Be prepared to step in and conduct forensic investigation in the event of a breach (be sure the forensic expert and attorney will be able to work together well).

- Identify membership and roles for internal team; have team meet to review your plan and preliminary efforts
  - Coordinator
  - Attorney
  - Communications (external and internal)
  - IT
  - Subject matter expert (in our case, Safe Environment Coordinator)

- Identify other resources and update annually to be prepared in the event of a breach
  - Call center to handle emails and calls (will require scripts to be developed as soon as possible after the incident)
  - Credit monitoring services
  - Mail center to send notices to potential victims

- Be sure you have enough cybercrime insurance coverage—our direct costs resulting from the breach are approximately $800,000
“Pastoral ministry in a missionary key seeks to abandon the complacent attitude that says: “We have always done it this way.” I invite everyone to be bold and creative in this task of rethinking the goals, structures, style and methods of evangelization in their respective communities.”

Evangelii Gaudium
Pope Francis, Apostolic Exhortation 2014, Page 18