

November 2017

## Embezzlement - The Next Generation

Joseph A. DiVito, Esq.

Kevin M. Kearney, Esq.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Business Organizations Law Commons](#)

---

### Recommended Citation

Joseph A. DiVito, Esq. and Kevin M. Kearney, Esq. (2002) "Embezzlement - The Next Generation," *The Catholic Lawyer*. Vol. 42 : No. 1 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol42/iss1/3>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

# EMBEZZLEMENT- THE NEXT GENERATION

JOSEPH A. DIVITO, ESQ. \*  
KEVIN M. KEARNEY, ESQ. †

Michael Moses: Good Afternoon. Our next session is on embezzlement. You will notice that the caption of this session is “The Next Generation.” That means that the focus of this session is not so much on how to prevent embezzlement—although our presenters will say a little bit about that—but what to do when embezzlement is discovered or suspected. We have two presenters, each with experience on the issue.

Joe DiVito is a shareholder in the law firm of DiVito & Higham in St. Petersburg, Florida. Joe’s firm has represented the Diocese of St. Petersburg since 1968, and he is currently General Counsel to the diocese. Kevin Kearney is a partner in the law firm of Wingate, Kearney & Cullen in Brooklyn, New York who represents the Diocese of Brooklyn, including all the Catholic parishes and schools in Brooklyn and Queens. Kevin has been a presenter at past annual meetings. With that, I’ll turn it over to Joe.

Joseph DiVito: Good Afternoon. It was about mid November, and Florida was in the midst of its fifth or sixth recount, and I was at the Pastoral Center on business. I came back and I had a message from Mike that said to call about speaking at the National Meeting. I’m thinking, “Now, what are they going to ask me to speak about?” I’ve been coming here for a number of years. I called Mike and he said he wanted me to talk about embezzlement. I thought, “Why in the world would he want me to talk about embezzlement?” I realized then that he wanted someone from Florida who was good at creative accounting.

So, with that, we are going to take a look at the first

---

\* Diocese of St. Petersburg, Florida.

† Diocese of Brooklyn, New York.

generation which was presented to you several years ago at the meeting. I am not going to spend a lot of time on it other than to mention that one of the best methods of preventing the case studies that we are going to go over with you, which happens after the embezzlement is discovered, is to have in place some sort of process of internal controls that will allow a reasonable type of oversight by your Bishop, by your Diocese, or by your Finance office.

We've just listed a few things to pass suggestions on: to have proper accounting and internal controls for the Dioceses in the different accounts, to have internal controls for your parishes and not to overlook those types of accounts with the different clubs, organizations, Moms and Dads, school committees, and so forth, that have checking accounts, and not to overlook other entities that you might have in the way of cemeteries, Radio/T.V., and other corporations. This includes Catholic Charities, where there is the opportunity for someone who might be somewhat removed from the general Diocesan office to have the temptation for misappropriation. Issues that you need to address about keeping the records, who balances the check book, simple things that all of us, I think, are familiar with, need to be reinforced from time to time with your Diocesan representative in Finance or the department that oversees that role.

The question of audits, internal or outside audits, is given to you because after having gone through the process of an embezzlement case, our Diocese put in place a process in which approximately one-third of the parishes will be audited every year by an outside firm. The outside firm is not going to do it according to Accounting Standard No. 5, whatever that is. But they are going to do it on a much less formal basis in connection with the Diocesan Finance council. The goal there was to help look at enforcing the internal controls and to offer some protection for the Pastors, Principals, and the different heads of organizations. It's been in place for two and a half, three years now. By and large, it has worked fairly well. Some of the priests were very resistant to the process, but now they see it as a means of protecting themselves. Now when someone complains about what is happening, they are able to say that the review process takes place and that things are generally on the up and up.

Now with that, we are not going to go through each page of

the outline that's here for you. This is Kevin's and my perspective of what we did. The list is not meant to be inclusive and we hope that at the end of our presentation you all have more things to add to it. But it is a process that we used on where to start. The way we are going to present it to you is that we each are going to share with you a case study that we have had happen to us. One in which a lay person was the embezzler and the other in which a member of the clergy was the embezzler. With that we will get into the case studies and give you some background.

That reminds me of another story. Things are not always as they appear. There was a man who was very wealthy who took a trip with his dog on an African Safari. They started off on the Safari and the dog went frolicking all through the jungle and he got lost. He was in the jungle and he's mindful that things are really kind of eery out there and he sees a leopard coming at him. The leopard is about to attack. The dog thinks, "What am I going to do? This leopard is going to eat me." So, the dog sits down in front of a pile of bones and he says, "Boy, this leopard is really good, I sure wish I had another one." Up in the tree was a monkey. The monkey saw the whole thing. The Leopard backed off his attack. He left and the monkey chased after him, because he thought, "I live here in the jungle and this dog, this city slicker is here visiting, he shouldn't get away with that." So, the monkey goes after the leopard and he tells the leopard the whole story. The leopard is just fuming, and says to the monkey, "Climb on my back, we'll go get that dog." They head back to the dog. The dog sees them coming and now he's really worried because he sees the monkey on the back of the leopard. He's thinking to himself, "What am I going to do now?" The leopard is now circling and getting ready to attack. The dog again lays down in front of the bones and in a loud voice says, "Boy, that leopard sure was good. Where is that darn monkey? I sent him out to bring me one over an hour ago and he hasn't come back yet." The moral of that story is, things are not always as they appear. And what Kevin and I have to share with you are some facts that led to the conclusion that they are not always as they appear.

My first scenario dealt with a lay person who was the Business Manager/Head Maintenance Supervisor/All Around Jack-of-All-Trades for the pastor of a fairly significant parish

that had a fairly large parish festival every year. The parish festival account was handled by this gentleman. At this particular time, he happened to be on vacation, the parish secretary who usually opened the mail happened to be on vacation, and the bank statement came in. The person who received it didn't know what to do with it, so she brought it to the pastor and said, "This came in, let me give this to you." He realized that he didn't look at this that often but he opened it and inside he found a check payable to this maintenance person for \$10,000. So, if we go back to our outline, fertile ground, what to look for and our situation, it happened under other discoveries. It was just an absolute accidental discovery that if that set of circumstances had not happened, he would have never opened that bank statement. So, he called the Diocesan office and the Vicar General became involved. They called my office. That's how we were informed. We then proceeded with the internal investigation that we described to you and went backward to review the other bank statements to see what there was going on. The festival happens once a year. There is a flurry of activity and then very little activity. There is generally a fairly small working balance kept in the account.

A fast forward to what happened in our situation when the man came back. We came to "confession being good for the soul" and confronted him. His answer was, "Father that was a loan. I had some CD's, they hadn't come due yet. I didn't want to take the penalty and I wrote myself a check for the \$10,000 and I have a promissory note that I am going to pay it back." We didn't get into a whole lot of arguing. We had already made the decision that the Pastor's trust was gone and that he was going to terminate him. He was terminated, but he went fighting the entire way. It made the Pastor very much aware of the different accounts that he did not oversee and that he needed to be more involved or have his parish finance council more involved in what was happening with these accounts. So, that's just a simple process that we faced. It wasn't a highly controversial one. We did examine the possibility of whether to turn the matter over to the State Attorney on criminal charges but he did produce a promissory note. But, whether you believe that was his intent or not, we felt that it was at least enough to cause the State Attorney not to enter a finding or an indictment. We decided not to take it any further, but to let the matter end there

and to dismiss him and terminate him. He did file a claim for unemployment compensation, threatened to file wrongful termination, but nothing more came of that after we wrote to the lawyer. So, I'll turn the next portion over to Kevin.

Kevin Kearney: Thank you, Joe. I've been getting a little bit of ribbing about our dress up here. Both Joe and I have apparently made some determinations. But, as I said to some of the folks in the back, in Brooklyn and in Coney Island, this is resort casual. But, as an accommodation to all of you folks, I'm going to unbutton my button while I go forward.

I similarly had a question about my being invited up here to speak. When last I spoke here it was having to do with trouble that the Diocese of Brooklyn and one of our parishes had with the Internal Revenue Service. Today I am speaking about troubles that we had with embezzlers, and I just wonder what else I can figure out to screw up before the next time that we are asked to come and speak again. Somebody asked as I was coming up, this is not a "how to" course. This is "how not to."

In any event, the first case I want to discuss, as Joe has said, involves a lay person. I want to point out two very specific aspects of that particular case, of which there are many aspects, and try to outline its key elements. But, here again the employee was a very trusted, and in fact most trusted employee, and had risen from the ranks within our pension office to be the Administrator of the Pension Office of the Diocese of Brooklyn. The diocesan pension fund is quite a significant fund with about \$300 million in assets. This person was the administrator of the office. Motivation, as we find out, is simple and not too grandiose. It is just a matter of some simple needs and greed. We say here in the outline to look for examples of unusual wealth. In fact, in the case we had, there were not examples of unusual wealth, there were examples of people who were living a little bit better than they should have given the salaries that they get from the church. But frankly, the greed comes from wanting a nicer house, school for the children, and better colleges than they otherwise would have been able to attend. Maybe some automobiles for the children, but certainly not anything you would tie into very easily as exorbitant wealth.

Discovery: similar to Joe's, it was an accident. It's strange because it too was an opening of the mail when somebody was away. It was a statement that raised some questions, and that's

how we got started. Interestingly enough, a couple of years ago I saw a report of an FBI survey on corporate embezzlement. As we all know, we are just one small aspect of what goes on in Corporate America, vis-a-vis embezzlement. In terms of the methods and the likelihood of discovery, I was surprised when I saw that many of the items that we put down to prevent embezzlement are not how embezzlement is found. Outside audits, internal audits, all kinds of double checks and balances are low on the totem pole. The primary one is basically accident, which is very interesting, but we try and do our best.

Nonetheless, in this case we had three criteria: recovery, restitution, and in our case, prosecution. The amount of money which was taken was a little in excess of \$1 million over a period of about 10 or 12 years. So, it was significant in total, but maybe not so significant given the size of the responsibility.

What I want to talk about in connection with this case was our insurance coverage. We did have in the Diocese of Brooklyn a Fidelity bond insurance policy. You have a copy of a standard or a draft policy that we have. It is in your materials there and I will talk about it in more detail in my next case study. But, that is not the policy in effect at the time of this particular embezzlement, which was about five years ago. This is one which we currently have in place. We had at that time a deductible of \$5,000 that was in place at the time. Because of what we've done in Brooklyn, because of what you folks have done around the nation, our policy has a deductible of \$50,000 and we are lucky to have that, I guess.

First and foremost, we notified the carrier. We hired outside forensic auditors to do a complete audit of the books and records. In this particular case, the way the Pension office functioned at the time—it does not any longer—is that all pension payments from all the various entities came into the Administrator's office and into a transition account. All the expenses of that office came out of that account and what was left over went to the Trust of the Pension fund. So, you had this gap here of money laying around so to speak. That's where the money was taken from. In terms of the claim, it was fairly easy to resolve and the insurance company did agree to pay us the claim. Immediately though, we, in concert with the insurance company, embarked on a recovery process. That is very essential. At that time, the carrier was very helpful in that. They wanted to get their money

back. One of the aspects of recovery from our perspective was very helpful because the cost of outside auditors and the cost of legal counsel are not recoverable under the insurance policy.

So, we want to get as much money back from the insurance company and then even look elsewhere to see where we might recover. This brings me to my last point and that was a recovery against a third party defendant. That is what you would always like to see. In this case, we did have a third party defendant. We had certified auditors. It depends a lot on when you have outside auditors, what they are engaged to do, and what kind of audit they are giving. In this case, they gave a full and complete unqualified opinion on their audits. When we went back and asked for their work papers, we did find a very clear smoking gun, if you will, having to do with work papers. The mistakes come from the outside auditors as to who retains them. We had a Pension Plan Committee which received the audited statements every year, but did nothing about them. They were not presented by the outside auditors. The outside auditors truly believed that they were hired by and reported back to the Administrator of the office. With that came all the problems that you can foresee.

The work papers showed a number of anomalies that the auditors had come up with. How did they resolve the anomalies? They went and asked the Administrator of the Office, "Why does this not jibe?" Not strangely enough, she had good answers for every single one and they were resolved by the time the audit was issued. We were able to get the insurance claim paid. We then brought a claim against the accountants. They were very willing and able, through their insurance carrier, to settle very quickly. In the course of that settlement, we also recovered the cost of our auditors and our counsel.

One last little anecdote about this is that during the course of the publicity regarding this case, I had received a call from one of my friendly IRS agents who was much more alert than I thought, who happened to be reading this in the newspaper, and said, "Isn't this a particular problem?" There seems to be money around for which Uncle Sam has not been properly compensated. That posed an interesting situation for us. It became a fight to the finish and a race to the assets. There is a very interesting situation of a boat that was down in Florida, a very modest sort of speed boat that this lady had bought and docked in Florida.



The IRS came in one day with helicopters and armed guards and repossessed the boat. We fought the IRS and prevailed. That's basically my first study. Thank you.

Joseph DiVito: We've tried to give you a broad range of factual scenarios when we picked these. The first one that I gave you didn't go that far. Kevin raised some very good points when the dollars increase. One of the questions in your materials is, "Should there be a different standard for lay persons as opposed to clergy?" We have had other situations with lay persons for whom we did call in the State's Attorney's office. The next scenario involved a member of the clergy who embezzled approximately \$250,000-\$300,000. The dollar amount was not the significant sensationalism in this case study. Rather, the reasons behind it, which I will give to you in a minute, is what led to the sensational facts.

We had a complaint that came into us. According to the outline, this complaint would fall under "fertile ground." It seems that the longtime bookkeeper at the parish noticed a number of things that were a little bit suspect of what was going on in two of the parish accounts. One of them being an account that they had for the poor, sometimes called the needy account. Like St. Vincent DePaul they have different names. It was the collection from the poor boxes. It was kept in a segregated checking account.

The other account had to do with the general parish operating account where there were some large sums of money that were moved in and out from time to time. Being very loyal to the pastor, she was torn on what to do about it. Her mother happened to be a bookkeeper for another parish for many, many years and knew our Vicar General very well. The daughter talked with her mother. The mother then brought the complaint to the Vicar General who then brought our office into the picture. We began then to try and investigate this complaint. Under our "Next Generation, What Do You Do?," we informed the Ordinary and the marching orders were to gather as much information as we could without letting the priest know anything just yet, because at this point, we simply had some hearsay information. We had nothing in writing, nothing of real significant proof. There was great reluctance because of the priest and his reputation, which was very, very outstanding, to do much of anything.

We began the internal investigation by contacting the bookkeeper and meeting with her privately, and asking her if she could get copies of any of these statements. Well, the account for the poor was kept personally by the priest in his office, in a locked cabinet. She could not have access to that. She did have some bank statements that she was able to get because some sort of reporting was done to the finance office. She also was able to get some of the copies of the large checks from the parish operating account, which were suspect, but on their face, didn't really give us a whole lot of information to go on.

So, we began to look for some patterns of things that were unusual. In the course of talking with the bookkeeper, it turns out that there was a young man who frequented the parish very often, the pastor's office, many times at the end of the day or late into the day and would stay after the staff would leave. He was coming around fairly often, and when the pastor was not there was asking the staff if he would be able to have a check to help for his son. They were in financial need and fearing eviction, electric bills, and all those usual types of things. She noticed how frequently he was coming around. This information led to some additional questions and we were able to put a number of things together that crossed over the line as far as we felt had enough to confront the priest about the incident.

It turned out unrelated to all of this, for several months our office had been receiving some anonymous calls from, interestingly enough, an individual named Kevin, whose real name happened to be Joe. We didn't know that at the time we prepared this. But, Kevin was calling anonymously claiming he was involved in an improper sexual relationship with a priest. He didn't want to go to the authorities. He was basically shaking us down, wanting us to pay him something, to settle with him, or he was going to go public. He wouldn't identify the priest. In our diocese, we don't typically investigate an anonymous complaint. We gave him all the usual lines. He needs to make an appointment. We will keep it confidential. But, we needed him to make a formal complaint, identify himself, and we needed to then go forward on this complaint.

I give you that background because when we met with the priest, he immediately denied the allegation, and after a mere three to four minutes, broke down and did confess to everything.

We asked him why was he doing this. He said, "Well, you know!" We didn't understand what he was talking about. To make a long story short, he thought the young man did come forward and turn him in. He did not know it was his own bookkeeper. With that, we put two and two together and figured out who the anonymous person was. There was an improper sexual relationship between the two of them. That's what led to the sensationalism in our scenario. The young man was in the process of blackmailing the priest. It began in the rectory. They would watch adult movies together. He would say he needed some extra money. The priest paid him out of his own pocket first. The small sums began to add up to \$5,000 for this, \$10,000 for that. He gave the priest a line that he had a large inheritance coming to him from his father's estate up North and he'd be able to pay the priest back as soon as he got his inheritance. It was a classic set-up. He used all of this to gain an upper hand and hold it over the priest, who was an elderly gentlemen probably in his late sixties at the time. So, he paid him, and he paid him over time. When his funds were exhausted, he then turned to the account for the poor and began paying the man's electric bills, utilities bills, every bill imaginable. The young man still wanted more. He then wanted larger sums of money. The priest didn't have any other money left so he began taking it out of the parish building account that had been accumulating. At that point, we had all the information. We then had our investigation somewhat completed. When we went to meet with the priest, we did not announce we were coming. The Vicar General, our Chancellor, and I simply drove over to the parish and showed up unannounced and caught him a bit off guard. I would encourage that type of approach. It has some harshness to it. But I really believe that had he had time to think, he would know something was up on why we were coming if that had been announced. So, by coming unannounced and catching him a bit off guard, he broke down very quickly and told us the whole story.

In my materials, we put a copy of the resignation letter. We actually typed that letter right then and there at the parish, with our Chancellor present, so that we wouldn't have any canonical issues. We got him to resign his position as pastor of the parish and basically put him on a short leave of suspension, so to speak. We wanted to get him out of there. The reason was,

not so much for the fear of the money, we felt we could stop that bleeding. The problem was that the young man continued to come around and demanded to see the priest and wanted to hit him again because he did not know that we had found out. We went through the process of confronting him and then we got into, "Now what do we do?" Our bishop decided there would not be a double standard for clergy and lay persons. We did in fact call the State Attorney's office, who was very surprised to receive the call, sent his top two team members over to meet with us and the bishop personally, wanting to know that if we went down this path was the bishop committed to seeing it through. He told him personally that he was. He would help in the investigation however he could, and that he would cooperate as best as he could. He wanted them to do their investigation, and wanted them also to go after the blackmailer. We began a process then of knowing it was going to come out, and knowing the sensationalism was not in the dollars but in the publicity of the sex.

So, we then decided a process of proceeding with notifying the parish. The first thing we did was to meet with staff. The second thing we did was to ask for an immediate meeting of the parish council. In your materials, we put a copy of the summary of the comments from the parish council, which I found very enlightening, almost to the person. They did not want to see any more harm come of him. They felt very hurt, betrayed as you might expect. They were aware that he had resigned from his position and together with them we formed a course of action on presenting it to the parish at Sunday's Mass where we had a chance to tell the parish. Our bishop believes in being very proactive in taking the lead because you can take a lot of the wind out of the sails of how the press will treat you. It worked fairly well. On Monday, we did release the press statement. The Mass was on Sunday. We had a very short letter read and that too is in your materials. We didn't want to get into the graphics because we knew it was a family situation with Mass, so it was kept very short and succinct.

I did not include any of the press headings, but they were as large as what Kevin has put in your materials. Our publicity ran for about fourteen months. It went through a full scale investigation and indictment. Every day the press was looking up the assets of the blackmailer, looking up the assets of the

priest, running the story on what was going to happen, wanting to know if the diocese was going to make the parish whole, wanting to know if the priest was going to go to jail, etc.

Fast forwarding to the end of the story, the priest did enter into a settlement plea. He was sentenced to two years. Fortunately for us, the judge was cooperative in allowing the imprisonment to take place through house arrest. A copy of our bishop's letter to the judge at the time of sentencing is also in the back of your materials.

The parish council was very appreciative of the diocese coming to them, working with them, and helping them know and understand what was going to happen. This was especially true with helping them to prepare for the publicity such as T.V. cameras showing up right in front of the church and interviewing people as they would try to come out from Mass. We handled that with our Communications Director, with the press having a lead person take all questions, asking them to respect the reverence of the church's ceremonies on Sunday, and respect the rights and privacy of a number of individuals. He was our lead contact to the press and that also worked very well.

That's that process we went through in handling the sensationalized case. I am going to turn it back over to Kevin and he'll share with you his version of what happened.

Kevin Kearney: It's a little bit like, "Can you top this?" We are going to see what's out there after we finish. My second case also deals with a clergyman. This one is still in process so there are a lot of unanswered questions. I don't know where it's all going to end. But, I certainly know where we are at this point. The point in this case was a pastor who was about 73 years old and very eminent within the Diocese of Brooklyn. He was one of the most learned clergyman in the diocese, he was intellectual, eclectic, played the violin, and was always very welcomed at many social events. Sadly, as often is the case, he was a fellow that I knew personally from when I was a little child growing up and my father was representing the Diocese. He had been, at one time, the President of the Seminary College in the Diocese of Brooklyn. He had doctorates and he was very qualified. I don't know what the psychological description or diagnosis is of him. He has gone away and has come back with a fairly clear bill of health, which is odd to me, given what had happened. I think there must be a little thing at the end of, what they call, the

DSMs or whatever, that if all else fails there is one diagnosis: he's nuts! Because that's what we have here.

The motive was one of Robin Hood, if you will. Rob from the rich and give to the poor. Except his poor were three or four specific low-life, two-bit criminals in the area who just happened to hit the mother load in connection with this particular fellow. For ten years or so, he engaged upon a defalcation of funds, which the bishop had said in his statement (and I'm referring only to public statements that have been made) adds up to in excess of \$2 million. That is still an accurate amount. The investigation is still ongoing. But again, this all came to light despite the most recent sessions at the NDAA and the implementation within the Diocese of Brooklyn of random audits. We conduct random audits of parishes. We respond to complaints that come in regarding any odd behavior. We have sessions that I have presented to parish auditors on what to look for in terms of representing parishes. Annual statements which are delivered to the diocese are reviewed. The more capable we become in providing these services, I still tend to think that the thieves are one step ahead of us in trying to figure out how to get around it, and the simplicity of their plans is remarkable. I'm sure many can say how we should have known it, but we didn't.

There was an account—a bank account—that was opened by a previous pastor. This was a very wealthy parish and was opened by the pastor in that capacity. In the State of New York, we have a Religious Corporation Law, so the pastor acted as the secretary of a separate and distinct religious corporation. In his capacity, in that regard, he opens up a bank account. Unless he tells somebody about it, nobody knows about it. That's what you have to look into—how you get a hold of all the accounts. Through his authority as a corporate officer, he was able to open up this account. We have never seen from this bank what you would call a corporate resolution which would have permitted the opening of this account. Presumably, the corporate resolution needed more signatures than just the secretary. I don't know if you are familiar with this, but the way that banks deal with churches and the opening of accounts, things can be fairly loose, especially with a person held in such high regard.

So, despite all efforts there remained a major problem. What was happening was, among other schemes, that the current pastor was soliciting donations personally. He would

solicit personal donations from parishioners in fairly large amounts for various reasons. Some were for a particular poor individual that he happened to know. No amount was too big or too small. These checks would be deposited into this account and then through various modalities these funds were distributed to the incorrigible individuals who I previously mentioned. We are still in the process of reviewing all canceled charges and deposits in and out of this account. We are trying to recreate, and it has taken the better part of six to eight months, to come up with the documentation that we need. It is painstakingly slow. All of this information is on microfiche, and piece by piece we are getting together a pretty good story of what happened.

As I said, in this particular case, we have a parish. We have a parish corporation, so the aggrieved party is that corporation. So, when we talk about filing claims, engaging outside auditors, making a claim to the District Attorney—which was done in this case—that is all done through the parish corporation. When the bishop operates in connection with this corporation, he operates as president of this distinct corporation. When I act as counsel, it is counsel to this corporation. We want to keep that separateness between the diocese and the parish because at some point we anticipate civil litigation coming out of some of these cases. Some individuals have been significantly harmed.

We have referred the entire matter to the District Attorney. The District Attorney is ongoing in his investigation. We've cooperated with the DA. Interestingly enough, we have tried to get the information as quickly as we can. The District Attorney has subpoenaed all the records of the banks involved, and we have asked, as depositors, for all the records. At least in Queens County, in the City of New York, the private depositor has more success than the District Attorney because once the DA starts to enforce those subpoenas, you have a whole other ball of wax of legal counsel on the part of the bank. So, we have kind of gone through it and tried to get as much information as we can and then provide that information to the District Attorney.

In connection with the public relations and dealing with the parish, you have two very important aspects of this particular case. One is, we have a very wealthy parish. We have a very good parish that has been virtually bankrupted by this particular individual. Not so that anybody would know because there was enough money to fund the school and there was

enough money to do a lot of other things. But, there wasn't the money that they should have had. So, you have not only people who have donated and are hurt, you have a parish that is very hurt. This is why our Bishop, from the very outset, wanted to balance the legal concerns with the pastoral concerns. He agreed to take the heat and respond in a pastoral way.

Our bishop determined that he would take our legal advice, however, we also would treat this matter pastorally. He went out as Joe's bishop did. He went out to the parish. He spoke at every Mass on a particular Sunday. He made his statement that was reproduced and given to all the media. Once spoken, this statement became the source of a single official pronouncement. It contained many of the facts, good and bad. I have provided the statement of our bishop as well as some of the headlines which appeared in the New York newspapers. That's just a little bit of what it means to have a scandal like this in the City of New York.

The one headline I find most amusing states, "Priest Eyed In \$8 Million Scheme." I wish the reporters would tell us where there is 8 million dollars. We've never come up with that figure. I also have a list here of the days the Bishop's statement came out, the news articles came out, and the headlines. As you can see, the first newspaper article was on Sunday, October 1, and they ran all the way through Friday. Then on Saturday, I guess the New York Times and the other papers in New York City, like the Lord, took the seventh day off. There were no stories on the seventh day. Then it ran for another week. Unlike Florida, Joe DiVito's case, no other shoe fell. And that's what we were all waiting for, when is the other shoe going to fall? From where did this come the ability of somebody to ask of this priest this kind of money? Where did it come from? We thought of the whole panoply of what we might learn. That shoe has not dropped yet. With the shoe not dropping the story has been dropped and it's only periodically picked up by news media.

Insofar as the criminal action, we did turn the case over to the Queens District Attorney, as I said. There have been no indictments brought to bear. We have a real particular problem, or the DA does, I guess, in "the authority of pastor" issue. An officer of a corporation. The claim that he made was an honest claim. He gave all this money to needy individuals. Well, I guess the emphasis is "needy" and the definition of "needy." But,



he will stick to that. He acknowledges the money but he's always been giving it to charity. That's where we are.

The sad part about this case from the criminal standpoint is that even if the priest, and it's possible and it may be likely, pleaded to a crime, we are not going to be able to get very easily from the DA's office the other real "low life" who have taken advantage of him. That to us is more of a personal hurt than anything else. So, we don't know where the criminal case is going.

In terms of the insurance, as I mentioned before, this is a much harder insurance claim to pursue. We anticipate some real discussions with the carrier when we complete the notice of claim. As you see in the materials, one of the issues is the definition of who is covered or who is a covered employee. It excludes officers and trustees of the corporation, or trustees of the corporation I should say. We will live and die on the other exception to the exclusion that anybody who is operating in an administrative capacity as if you were employee would also be covered. But this is not going to be easy. In this particular case, we do have outside auditors. We have not yet gotten the light to shine on them. It is very different from auditors of a pension fund. The question becomes what they are engaged to do and that engagement is not exactly the same as what a pension accountant is engaged to do.

Finally, I just want to end under the category of "Truly Beating a Dead Horse," with a letter that we received from Deirdre in connection with the preparation for this. As if we in Brooklyn and in St. Petersburg don't have enough problems with this type of case, Deirdre has to remind us that the embezzler might also be subject to the excess benefit rule of the Internal Revenue Service. So, we thank her for that. Once again, she's always awake.

Joe DiVito: Before I give it back to Mike, who I guess will coordinate questions, I want to mention just a couple of additional things on the insurance. In our diocese, at the diocesan level, there is a fairly significant fidelity bond in place. At the parish level, we have a very small one. It was only \$100,000. The reason for that was that the parishes aren't supposed to keep that much money. We do not have a religious corporation. They are unincorporated associations. All of the finances, except for a small operating account that is supposed to

be equal to the parishes tied to their collection, is kept at the local level. So our ability to collect on the insurance was a \$10,000 deductible with a \$100,000 benefit, which we did collect right away. The question then came up, "Should the diocese or the bishop help make the parish whole?" He committed to doing that through a series of things, not just giving them back the money, but giving them a number of steps that are not really relevant here. But, the bishop's commitment back to the parish was that they as a whole would not suffer. It was not a very wealthy parish. The \$200,000 that they were short was extremely significant in wiping out their building account for some small classroom buildings for CCD programs. So, it did make us take a look at the bonds, the fidelity bonds that we have and reinforce the levels of authority at the parish level. So, I'll give it back to Mike and take your questions or hear your comments.

Question: Hi, this is Deirdre from USCCB. Kevin, let me ask you this question. With the donors that this pastor was hitting up personally for money, I was having a hard time figuring how the finance counsel wouldn't notice \$500,000 missing every year for five years in a row. Some of them, I assume, were giving significant funds for whatever purpose the pastor was telling about. What happened when they wanted a substantiation statement from the parish so that they could deduct the \$10,000 that they gave for charity through the church? Why didn't some of them complain?

Answer: That's a good question. I may have misspoken. The majority of gifts, so to speak, were de minimis. But, nonetheless, they were such that they would usually end up in a statement of contribution. We're just coming to realize that now as we are looking through the activity in these accounts. Among other things, he was skimming the collection. He would skim special collections and diocesan collections, which I guess were things that the parish wouldn't necessarily care too much about. How much they shipped up to the diocese on the school account. But, I don't know. We never had a complaint. Or at least I am not aware of any complaint.

The amount of work that this individual had to do to maintain this process as we look at it, literally took every moment of his waking hours. He was at the bank two and three times a day making transactions. So, I look at that and say,

“What’s with the bank?” There were a couple of transactions that were \$9,000. So, there were some Office of the Currency problems. There were unanswered questions. He also inveigled himself into a trusting relationship with some wealthy people and served as a personal trustee of some funds.

Lastly, which really gets to our diocesan crow, is that we just undertook within the last five or six years a \$50 million capital campaign which resulted in about \$75 million of pledges. Part of that campaign, as many of these are, kicked back to the parish fifty percent or so, after the initial goal is made. There are about two or three areas where he requested those monies. Sadly, there is no follow-up on where that money went. Those are very large amounts. So some of the larger amounts came in to the bank accounts from the diocese.

Jim Byrne, Diocese of Joliet in Illinois: As you know, some bishops have a policy that they don’t want to prosecute, whether the individual is a priest or a lay person. When there is insurance, I think that some insurance companies are quick to exploit that and that the insurance might take the position that certainly there is coverage. We will be more than happy to pay the claim. However, we want the individual prosecuted and we think that you have an obligation, or that we can trip that. You either have an obligation through the corporation clause, or we can trip that ourselves. It seems that some might comment that that’s an unfair position. Does anyone here have any experience in dealing with the carriers to back them off that position?

Answer: I am not a coverage counselor at all, but I was surprised in the first case study that I had in terms of the lay person, where we spoke to the carrier and they retained recovery counsel right away. I was surprised, although it seemed to make sense after I thought about it, that recovery counsel and the carrier were not quick to prosecute individuals because if the person is in jail, there is no hope of recovery from that individual. A lot of money may go to defense attorneys that could more easily go to the carrier. So, what the carrier did in that particular case was to take all civil capabilities of attachment and things like that.

In our second case, where the facts are somewhat difficult for us, and as I said I anticipate a difficulty with the carrier, it is our belief that some type of criminal prosecution and maybe plea will almost be necessary to prevail on the insurance claim.

Answer: We've not had the problem come up. The insurance coverage in our situation was so relatively minor that they paid their claim right away. I would only add that the bishop's decision to prosecute was not based on the insurance at all. He wrestled with the whole issue and decided that if there was a lay individual that we would prosecute because he had in the past. He was very much taking the heat from some of the other priests when he made the decision. But he stuck by the decision. He explained to them that he would not have a double standard and that they should know it.

Michael Moses: I want to thank Kevin and Joe for their work in putting this session together.

