

# A Grievous Error in Judge Joseph LaPlante's Court

POSTED BY FR. GORDON J. MACRAE ON JUNE 22, 2016

**Editor's Note:** *The following is a guest post by Ryan A. MacDonald, author of ["The Trial of Father MacRae: A Conspiracy of Fraud."](#)*

I am not here to cast Donald Trump-like aspersions upon a judge whose decision I simply do not like. I have no doubt that Father Gordon MacRae would bar me from publishing here if I did. I am simply here to describe a grievous error that occurred in United States District Court in Concord, New Hampshire, and other facts that continue to trouble me greatly a year after I published an important article on this site: ["Judge Joseph LaPlante Denies Priest's Appeal."](#)

Many people have come to believe that the 1994 prosecution and trial of Father Gordon MacRae, and subsequent appeals, have left an innocent man in prison and a gaping wound on the integrity of the criminal justice system. One issue that I and others simply cannot comprehend is that no one in this system – absolutely no one – has allowed this accused priest to utter a single word in his own defense.

After the prosecution rested its case in 1994 – with lots of theatrics but no evidence – Judge Arthur Brennan addressed MacRae directly, outside the presence of the jury. He cautioned MacRae against testifying in his own defense. If he did so, the judge warned, the door would be opened to allow other claims from Thomas Grover, his brothers, and others to come before the jury and taint its view of this case.

The public defender who minimally handled MacRae's direct appeal in 1996 said that he was surprised by Judge Brennan's warning, but could find no legal precedent to cite it as an

appeal issue. At one point in the trial, Judge Brennan instructed the jurors to “disregard inconsistencies in Thomas Grover’s testimony.” As Dorothy Rabinowitz wrote in *The Wall Street Journal*, “they had much to disregard” (WSJ, “[A Priest’s Story: Part II](#),” April 28, 2005).

In a sentencing hearing weeks after the trial, Judge Arthur Brennan sentenced MacRae to a term of 67 years in prison – more than thirty times the two-year maximum sentence proposed to MacRae pre-trial, deals that the priest rejected citing his innocence of the charges. During the sentencing phase, he was not permitted to say a single word in his own defense while the Judge berated him for observing his Constitutional right to a jury trial.

When sentencing MacRae, Judge Arthur Brennan offered some evidence and testimony of his own: “This court has heard clear and convincing evidence that you created child pornography of your victims.” In the entire trial, not a single word about child pornography was ever raised. Eleven years later, the lead detective in the case admitted to Dorothy Rabinowitz of *The Wall Street Journal*, “There was never any evidence of pornography.”

MacRae, in prison after the trial, was neither present nor represented by counsel as Thomas Grover and his brothers continued the fraud in civil court seeking lucrative settlements from the Catholic Diocese of Manchester. Everyone had a voice and a lawyer except Gordon MacRae.

And he was silenced yet again, not even permitted to be present, in his direct state appeal in 1996 when judges dismissed as “harmless error” the egregious testimony of a psychological expert that should not have been admitted at trial while MacRae’s defense was allowed no expert. As Innocence Project founders, Attorneys Barry Scheck and Peter Neufeld described in their book, [Actual Innocence](#) (Random House 2000):

*“For an innocent person, the two most dangerous words in the language of the law are ‘harmless error.’ These are the magic words that appellate courts use to absolve police officers and prosecutors of misconduct.” (p. 172)*

## **“ESPECIALLY A CATHOLIC PRIEST”**

There was a lot to absolve. As *The Wall Street Journal*’s Dorothy Rabinowitz described (see “[The Trials of Father MacRae](#),” May 13, 2013): “Those aware of the facts of this case find it hard to imagine that any court today would ignore the perversion of justice it represents.” I exposed some concrete examples of those perversions of justice in “[The Trial of Father MacRae: A Conspiracy of Fraud](#).”

It is an inescapable fact of injustice that from 2012 to 2015 three additional judges and courts heard motions to revisit this trial, but dismissed them without permitting a single word of testimony from defendant Gordon MacRae or any of the witnesses who have come forward, some quite courageously.

On March 17, 2015, Judge Joseph LaPlante heard oral arguments from attorneys Robert Rosenthal and Cathy Green representing the imprisoned priest, and Assistant Attorney General Elizabeth Woodcock for the prosecution. Neither Father MacRae nor any of the newly presented witnesses in this case were present, nor was any of their testimony heard. The arguments took just under two hours, a flash in time compared to the twenty-two years MacRae has thus far spent in wrongful imprisonment. On March 25, 2015, Judge LaPlante dismissed the *habeas corpus* petition from going forward. There was to be no further hearing on testimony, merits or evidence.

Additionally, Judge LaPlante declined to grant a Certificate of Appealability to bring this matter to the First Circuit Court of Appeals. This had the effect of forcing MacRae to fund an added appeal of the denial of a Certificate of Appealability. One full year later, in April of 2016, the

First Circuit Court of Appeals declined to reverse the decision not to allow a further appeal. I held my pen until that decision was rendered.

I do not want to use limited space here to rehash what I wrote in "[Judge Joseph LaPlante Denies Priest's Appeal](#)." I hope that after reading this article, you will go back to read it for yourselves for it lays out all the reasons why I believe this outcome to be an abuse of judicial discretion. Denying the Certificate of Appeal had the effect of bankrupting the defense of a man who has spent twenty-two years in prison for crimes that most observers today conclude never took place.

## **THE GRIEVOUS ERROR**

However, none of that addresses the error that I am here today to address. I have spent considerable time reading a transcript of that hearing and Judge LaPlante's ruling. A significant part of both troubled me greatly, and I know that it troubled Father MacRae as well. It simply did not concur with MacRae's memory of this case, and his memory, according to Dorothy Rabinowitz, is "encyclopedic." The error involves a point that was heavily stressed by Judge LaPlante in both the transcript and his dismissal order. I will begin with the transcript. The speaker is Judge LaPlante:

*"Now, leaving [Thomas] Grover's credibility aside, nothing that [new witnesses] say undermines what seems to be a very important piece of evidence in the underlying criminal trial which is that when [James] McLaughlin, a detective from Keene, confronted MacRae with these accusations, he didn't deny them. He had a very unusual response, basically quibbling with [Detective] McLaughlin over the proper terminology to apply to a person who is sexually attracted to children under 14 or 15. I don't even remember the terms right now, but he basically corrected the detective for using the word pedophile. He came up with a more correct term – a more precise term. Whether that was even correct is*

*debatable. But it was a very unusual response. It wasn't a denial. It wasn't the type of conduct that one would expect one to undertake when accused in that way. Especially a Catholic priest... MacRae did not react in a manner one would expect of an innocent person."* (T: 51-52)

Now, the excerpt above reflects just two paragraphs of a 70-page court transcript, but it was an extensive part of the reasoning behind Judge LaPlante's two-page decision dismissing the federal *habeas* petition. What Judge LaPlante described above is a claim that Detective McLaughlin confronted Father MacRae about the charges involving Thomas Grover, referred to MacRae as a "pedophile," and then instead of simply denying it, MacRae supposedly corrected McLaughlin by telling him that the correct term is "hebophile."

There is just one major problem here. It never happened! Detective James McLaughlin never once "confronted MacRae with these accusations," nor did any of what Judge LaPlante refers to above have any connection with the case at hand. This is an egregious perversion of justice.

When I read this I was very troubled. Father MacRae has been confined in a 96-square-foot cell for twenty-two years with very limited access to documents in this case and no access to online research. As the above scenario surfaced, his lawyers sent him a statement to sign stating that he never made any such admission to Detective McLaughlin, but "told him that someone who might be attracted to someone Grover's age would be an 'phebophile,' not a 'pedophile.'" "

MacRae was troubled because he has no memory of McLaughlin ever discussing any aspect of the Thomas Grover case with him. He simply assumed that someone (his own lawyers? the prosecutors?) who have access to transcripts, must have found such a reference somewhere.

But they did not. No such reference exists. In the case for

which Father MacRae was indicted and faced trial, McLaughlin and the prosecutors brought secret indictments. This priest first learned of the very existence of this case on the night of May 5, 1993, the night that police showed up at his door to arrest him on charges that were then over a decade old. He had no subsequent or even previous discussion about these charges with McLaughlin.

So what is going on here? When I got to the bottom of it, the truth was spine-chilling in its gross manipulation of this defendant, but it had no connection whatsoever with Thomas Grover's charges or this trial or the appeal of this case. Bear with me, please, for this is indeed a complex account.

### **WHACK-A-MOLE JUSTICE HOLDS COURT**

In 1988, a full five years before Thomas Grover and his brothers concocted their scheme to accuse Gordon MacRae, Keene, NH sex crimes Detective James McLaughlin targeted a number of Catholic priests who had lived and worked in the Keene area. One of them was Father MacRae who was assigned in Keene from 1983 to 1987. In 1987 and 1988, on a leave from parish ministry, MacRae was Executive Director of a regional chemical dependency treatment center near Keene, and in 1989 he became Director of Admissions for the Servants of the Paraclete facility for troubled priests in Albuquerque, NM.

No one had come to Detective McLaughlin with a complaint about MacRae. He launched an exhaustive investigation based on a letter from a state social worker claiming that MacRae was once a priest in Florida where he "molested two boys, one of whom was murdered and his body mutilated." Dorothy Rabinowitz wrote about that contrived and slanderous account in "[A Priest's Story: Part One](#)" (WSJ, April 27, 2005). The Florida story had no basis in fact. MacRae had never been a priest in Florida nor had such a crime even occurred there. The social worker's claimed source was an official of the Diocese of Manchester who later denied it. For Detective McLaughlin,

however, it became probable cause to launch a moral panic.

On September 19, 1989, Father MacRae received a telephone call from his sister in the Boston area. Upset and angry, she informed him that she received a call from Detective McLaughlin in Keene who told her that he was investigating MacRae for creating pornographic photographs of Keene youths. She gave her brother the number that McLaughlin left, and of course, knowing there was no truth to the claim, the priest called that number.

This was all set up in advance. That particular telephone line into the Keene Police Department was automatically recorded so McLaughlin was not required to obtain a warrant to call and record the priest. A warrant would require evidence, and there was none. This was a fishing expedition. In this telephone call, McLaughlin accused MacRae of taking pornographic photos of 15-year-old Jon Plankey who was later described by McLaughlin as an employee of his in "a family owned business." It was also later discovered that McLaughlin and Plankey had made similar claims against three others, one of them Timothy Smith, a local Protestant church choir director who was charged and pled guilty.

MacRae vehemently denied the claim. He did not know he was being recorded, but at some point he invited McLaughlin to search his earthly possessions which were still stored in New Hampshire. McLaughlin declined to search anything, but stated that Plankey's claims would become part of a lawsuit against the Diocese of Manchester. MacRae insisted that no such photographs were ever taken and do not exist. He asked McLaughlin why he isn't even interested in searching for them. The detective reportedly replied, "Because I know there will be nothing there. You probably gave them to another priest."

The detective wrote a report about this telephone conversation. It was report file number 89-12196 dated September 19, 1989. In that report, McLaughlin wrote that he

recorded the conversation. His report claimed that he and Jon Plankey listened to the tape together, and that "a transcript will be made of this tape." MacRae states (above) that McLaughlin said, "You probably gave [the photographs] to another priest." If true, McLaughlin omitted this from his report, but it would have been present on the tape and transcript. So, where are they? And where are the condemning photographs?

Also in that report, McLaughlin wrote that he asked MacRae if he is a "pedophile." His report claims that MacRae corrected him saying, "the correct term would be 'hebophile.'" MacRae says he has never even heard of this word. I have found a reference to that word in only two places: McLaughlin's 1989 report, and a transcript of a 1988 Geraldo Rivera Show faxed to McLaughlin (described below).

Among the many people McLaughlin approached in 1988-1989 looking for someone to accuse MacRae were members of the Grover family. Their mother, Patricia Grover, was then a social worker for the state agency that investigates child abuse cases, a position in which she interfaced often with Detective McLaughlin. His 1988 report indicated that Mrs. Grover would interview her three adopted sons, Thomas, David, and Jonathan Grover, all in their early twenties. None voiced a complaint about MacRae. Five years later, when the prospect of money loomed, all three changed their minds at the same time. Demonstrating the role that expectations of money played in this case, there is hard evidence that McLaughlin conducted some of his investigation from the office of Attorney Robert Upton, Thomas Grover's contingency lawyer.

In 1993, as MacRae prepared for trial in the Thomas Grover case, state prosecutors were required to turn over all police reports related to the priest. MacRae was shocked to learn of a vast 72-page 1988 report and the 1989 report of the taped phone call with the "hebophile" claim.



When Thomas Grover accused MacRae five years later in 1993, prosecutors attempted to introduce into the trial the Plankey claim from 1989 as so-called "404-B" evidence of "other bad acts." The defense filed a motion to obtain the recordings referred to in McLaughlin's 1989 report. Judge Arthur Brennan ordered the state to turn over all recordings that McLaughlin claimed in reports to have made. McLaughlin wrote in a sworn statement that the tapes were lost due to having been "recycled." Judge Brennan also ordered him to turn over the transcript of the 1989 recording. McLaughlin claimed that due to a clerical error the transcript was never made. The 1989 tape recorded conversation detailed herein is well documented (see [USDC-NM 1504](#), §§ 28-32).

I can only conclude today that McLaughlin knew the recording contained his comment, "You probably gave [the lewd photos] to another priest," a statement that would have unmasked a vile prejudice that would have weighed heavily in the trial. So the recordings disappeared. So did the so called "404-B" evidence.

Eleven years after this trial, after claiming repeatedly and under oath that all the tape recordings of MacRae that McLaughlin referenced in his reports were "recycled" and cannot be produced, the detective mailed one of them to Dorothy Rabinowitz at *The Wall Street Journal*. It contained 45 minutes of Father MacRae sounding bewildered by the lurid accusations aimed at him, and his reference that he should talk to a lawyer, a request McLaughlin claims the priest never made.

This issue of tape recordings is very suspicious and has never been explained. McLaughlin claimed to have taped three phone conversations with MacRae, without his knowledge, and though there was no evidence obtained, McLaughlin attributed remarks to MacRae that the priest says he never made. Then all the tape recordings disappeared. The only witnesses to their existence or content are the detective and the priest. So why do the courts believe one over the other? Further, it seems

that it was McLaughlin's practice to tape record all conversations with accusers, but in this one case he produced not a single tape recording of any interview with the Grover brothers. In every other case of this sort he meticulously created recordings and preserved them as evidence. In some cases, including a claimant against another priest, McLaughlin arranged a polygraph for the accuser. None of this happened in the MacRae case. It should be noted here that MacRae himself underwent two voluntary polygraph examinations and passed them both.

There is more. It seems that the source of the "hebophile" term for which Judge Joseph LaPlante dismissed MacRae's petition may have been McLaughlin himself. Among the discovery obtained from the 1989 report about Jon Plankey's claims of pornographic photos was a transcript faxed from the Geraldo Rivera Show to the Keene Police Department on November 14, 1988. The pages of the transcript were labeled by prosecutors in the discovery material as E-326 through E-331.

The topic of the "Geraldo" transcript that became part of Detective McLaughlin's file was "The Church's Sexual Watergate." It contains this passage that someone at either Keene Police or the prosecutor's office underlined and marked with a bold asterisk before sending it in pre-trial discovery in 1994. The transcript has nothing to do with the MacRae case, nor was he ever a part of it. It details a conversation between Geraldo Rivera and "Roland Lewis, Attorney for Church sex abuse victims":

***Geraldo:** "Did there come a time, sir, when this priest was recognized to be a pedophile by the church and was taken to St. Luke's Institute to be treated?"*

***Mr. Lewis:** "They sent him to St. Luke's Institute. He was kept there 12 weeks. During that time it was determined, according to their medical records, that he was a homosexual. We finally were able to obtain copies of those medical*

*records. We have had them evaluated. They establish without question that he is a pedophile and a hebophile."*

**Geraldo:** *"What's a hebophile?"*

**Mr. Lewis:** *"It's an abuser of adolescent children."*

**Geraldo:** *"I thought that's what a pedophile was. Help me."*

**Mr. Lewis:** *"The preadolescent is primarily a pedophile. The adolescent is a hebophile."*

I wrote of this same transcript, and the role it played in the MacRae case, in another article, "[A Touch of Deja Vu](#)." It seems that someone has lifted the supposed 1989 telephone conversation between Father MacRae and Detective McLaughlin – mired in suspicions of misconduct over missing tapes and transcripts – implanted it into the unrelated trial involving Thomas Grover, then used it twenty-two years later to deny access to justice in Father MacRae's appeals. If this is the state of criminal justice, it is only half right. It is criminal. But it isn't justice.

## **WHAT WOULD SAINT THOMAS MORE DO?**

According to the Catholic Lawyer's Guild invitation, the award is bestowed upon a Catholic lawyer or judge "who embodies the spirit of St. Thomas More in courage, dedication, integrity, civility, and compassion toward others." [On September 13, 2012 the St. Thomas More Award was presented by Bishop Libasci and the Catholic Lawyer's Guild to The Honorable Joseph N. LaPlante](#). On September 13, 2012, a full year before MacRae's habeas corpus petition came before Judge LaPlante, the annual "Red Mass" for the legal and law enforcement community took place at Saint Joseph Cathedral up in the Diocese of Manchester, New Hampshire. It was officiated by The Most Reverend Peter A. Libasci, Bishop of Manchester. Following the Mass, Bishop Libasci was a guest of honor as the New Hampshire

Catholic Lawyer's Guild held its annual awards dinner at the Radisson Hotel to honor the 2012 recipient of the St. Thomas More Award.

Saint Thomas More would have heard all sides. He would not, as so many have done, simply assume a priest's guilt. He would not have made comments like "especially a Catholic priest." He would not have presumed the existence of evidence he had never seen nor heard for himself. He would have gotten to the truth of the matter before tossing the case off his desk. He would not have allowed the continued judicial railroading of an innocent man.