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### Church Raised Concerns in '60s

About Herek Court Papers Show Questions were First Raised in the Seminary and Later When he was Working as A Priest

By Joseph Morton  
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Daniel Herek's tendency to seek contact with young boys raised concerns among Roman Catholic Church officials as early as his time in seminary in the 1960s, according to church documents obtained by The World-Herald.

One of the documents also indicates that about 1980, a top official of the Omaha Archdiocese discouraged someone from pursuing criminal charges against the Omaha priest.

That official is identified in other court records as the Rev. James Cain, who was chancellor of the archdiocese from 1969 to 1981. Cain served as chancellor under then-Archbishop Daniel Sheehan.

Cain said Friday he does not remember anyone ever wanting to pursue criminal charges against Herek, but he did acknowledge complaints then about Herek taking children in the parish on outings without parental approval.

He said he recalls "people being alarmed about Father Herek taking children on trips. I don't remember them saying they wanted to press charges."

Cain, now pastor at St. Joseph Church in Springfield, Neb., also said, "While I was chancellor, we didn't have anybody saying anything about sexual abuse."

Herek was convicted in 1998 of sexually assaulting an altar boy and manufacturing child pornography while he was pastor at St. Richard Catholic Church in Omaha. He is scheduled to be released from prison Tuesday, when he will be taken to the Douglas County Health Center for a mental evaluation.

The church documents are court exhibits in a civil lawsuit pending against the Omaha Catholic Archdiocese. That civil suit and five others filed in Douglas County allege that church officials knew the danger that Herek presented and failed to protect young male parishioners from him.

The church documents are only part of the case and cannot be placed in full context. Much of the evidence gathered so far is not part of the court file available to the public, and there are court-ordered restrictions on all parties about revealing evidence in the case.

The documents include reports to the archdiocese in the mid-1960s from the now-defunct St. John Seminary, northwest of Elkhorn, where Mount Michael Benedictine High School is today.

The reports describe Herek as having academic and social problems. Herek was 20 years old and had just completed his second year of college studies at the time of one of the reports, dated May 15, 1965.

"He has difficulty relating to his peers, and seeks his contacts with younger boys," the report said. "Having been admonished concerning this several times, he cooperated only in a token manner. He is a weak candidate and a definite risk."

Herek was ordained in 1971.

Also included in the same court file is a May 1997 memo that was written by the current chancellor of

the archdiocese, the Rev. Michael Gutsell, to the St. Luke Institute in Maryland.

Herek was being sent to the institute, which specializes in treating clergy for sexual disorders, after a cleaning woman found pornographic materials involving young boys in the St. Richard rectory. That discovery is what eventually led to criminal charges being filed against Herek.

Gutsell has been chancellor, the chief assistant to the archbishop, since January 1994.

In the memo to the institute, Gutsell described the background of the Herek case, including references to parishioners' previous complaints.

"Over the years of Daniel Patrick Herek's priesthood there have been suspicions and allegations of inappropriate behavior with adolescents or teens," Gutsell wrote in the memo. "More than 16 years ago the Chancellor discouraged one individual from pressing charges against Daniel Patrick Herek."

According to documents filed by one of the plaintiffs, Gutsell testified in a deposition that the chancellor in question was Cain.

Gutsell also refers in the 1997 memo to more recent allegations.

"During the past 3 and a half years, staff persons and parishioners have raised concerns about Daniel Patrick Herek's behavior with young people, specifically in relationship with one teenager ... and on the occasion of 8th grade retreats taking place away from parish property," Gutsell wrote.

Gutsell declined to comment on the documents Friday because of the pending civil suits.

In August 1997, Gutsell met with St. Richard parishioners to discuss the Herek case. During that meeting, Gutsell said that Herek and other priests undergo rigorous screening during seminary training but that it was possible for an individual to "get around or through even the best checks."

Gutsell said in 1998 that the archdiocese had heard concerns about Herek but that no reports raised alarms until a pornographic videotape was found in May 1997.

Omaha attorney Harold Zabin is representing the boy who was the basis for the criminal complaint, plus the boy's mother and three other former altar boys who have sued over alleged abuse.

All of those plaintiffs and their families declined to be interviewed through Zabin. The attorney did make a short statement on their behalf: "If the archdiocese had acted responsibly, there wouldn't have been as many victims of Father Herek as there are, and Father Herek would have received treatment much sooner."

The one remaining plaintiff, another former altar boy, is represented by attorney Martin Spellman, who could not be reached for comment.

Douglas County District Judge Robert Burkhard has overruled a number of the archdiocese's objections to the lawsuits so far and allowed the cases to proceed.

In September, Burkhard will hear a motion to consolidate the five cases being handled by Zabin, and the suits could go to trial by the end of the year.

Nationwide, civil lawsuits involving sexual abuse by priests sometimes have yielded large jury verdicts. A jury awarded nearly \$ 120million several years ago to 11 former altar boys in Dallas who were sexually abused by former priest Rudolph Kos.

The plaintiffs agreed to a \$ 30 million settlement after the Dallas diocese said paying the \$ 120 million would have brought on bankruptcy.

An Omaha trial lawyer with no connection to the Herek case was asked to assess Gutsell's 1997 memo. After being read portions of the memo, Jerry Alexander said it might greatly help the plaintiffs'

case.

"Documents with statements like this are certainly what civil attorneys would call 'smoking guns,'" Alexander said. "The issue will be whether the document is admitted into evidence."

Even though the documents are exhibits for the purposes of pretrial motions, a judge would have to rule whether they can be used as evidence at trial.

Herek was sent to the Lincoln Correctional Center in January 1999 to serve 20 months to five years for sexual assault. Under Nebraska's good-time law, his sentence will be completed Tuesday.

He will not immediately be freed, however. First he will go to the Douglas County Health Center, where he is expected to be evaluated for mental fitness.

The County Board of Mental Health will decide whether he is a danger to himself or others and should be committed. Herek will serve five years of probation for his conviction for manufacturing child pornography and must register as a sex offender.

He remains a priest but never again will be permitted to function as a priest in any capacity, according to the archdiocese.

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