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Via CM/ECF

30 December 2016

Catherine O'Hagan Wolfe, Clerk of the Court  
US Court of Appeals, Second Circuit  
40 Centre Street  
New York, NY 10007

Re: *Fratello v. Catholic Archdiocese of NY et al*, 16-1271-cv  
Appellees' letter dated December 7, 2016

Dear Honorable Clerk:

This letter responds to opposing counsel's letter dated December 7, 2016.

First, the *Ginalski* case,<sup>1</sup> written by a magistrate judge in Indiana, may not be a "pertinent and significant authority" within the meaning of FRAP 28 (j). If so, the case provides a very strong reason to reject its expansive view of ministerial immunity, as it reveals the danger posed by extending ministerial immunity so far. Ms. Ginalski had a background in education, not religion, and 17 years as a public school principal. She was metamorphosed by the Indiana federal court into a religious minister<sup>2</sup> and then deprived of her federal rights. Yet the Roman Catholic Church did not view Ms. Ginalski as a religious minister. Only the federal district court viewed her as such.

Second, while Magistrate Judge Paul Cherry is likely a fine judge, the present appeal requires more than abstract legal argument. The Founding Father's intent and our democracy are

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<sup>1</sup> *Ginalski v. Roman Catholic Diocese of Gary, Ind.*, 2016 WL 7100558 (N.D. Ind. 2016).

<sup>2</sup> In contrast to the spiritual/pastoral, the Roman Catholic Church has "ministries of service," such as secular education.

SUBJECT: Board of Inquiry Nominees

at stake. How and what American children are taught is essential to our Nation's democratic self-governance.

Third, the Court can easily locate *Ginalski* on Westlaw. It cannot so readily find scientific material that must be considered, for example, Chapter 13 from THE MEANING OF HUMAN EXISTENCE, written by one of the great minds of our time, Professor E.O. Wilson. For this reason, I am attaching a copy Chapter 13 to this letter.

Religious doctrine is indeed an “Idol of the Mind.” Unconstrained indoctrination in “religious” elementary schools is something this Court should be reluctant to endorse. This Court should not deprive lay school teachers and principals of legal protection, for it is these people who must protect the children for whom they act *in loco parentis*—and particularly when the choice is between the child welfare as future adult American citizens or adherence to a religious demagogue or self-anointed school bureaucrat.

Word count: 335

Respectfully submitted,

/S/

Michael D. Diederich, Jr.  
*Attorney for Appellant*

attachment

*The*  
MEANING  
OF  
HUMAN  
EXISTENCE

EDWARD O.  
WILSON

WINNER OF THE PULITZER PRIZE

13

Religion

Rapture, a "joy excessive and sweet," as Spain's great mystic Saint Teresa of Ávila described it in her 1563–65 diary, can be achieved variously by music, religion—and hallucinogenic drugs such as the Amazonian religion-enhancer ayahuasca. Neurobiologists have tracked at least some of the peak experience of music to at least one cause, the release of the transmitter molecule dopamine within the striatum of the brain. The same biochemical reward system also mediates pleasure in food and sex. Because music began in Paleolithic times—bird-bone and ivory flutes date back more than thirty thousand years—and because it remains universal in hunter-gatherer societies around the world, it is reasonable to conclude that our loving devotion to it has been hard-wired by evolution in the human brain.

In almost all living societies, from hunter-gatherer to civilized-urban, there exists an intimate relation

between music and religion. Are there genes for religiosity that prescribe a neural and biochemical mediation similar to that of music? Yes, says evidence from the relatively young discipline of the neuroscience of religion. The methods of inquiry include twin studies that measure the role of genetic variation, along with studies of hallucinogenic drugs that mimic religious experience. Also used are data concerning the impact on religiosity of brain lesions and other disorders, and, not least, the direct trajectory of the neural events tracked by brain imaging. Altogether, the results of the neuroscience of religion thus far suggest strongly that a religious instinct does indeed exist.

Of course there is far more to religion than its biological roots. Its history is as old or nearly so as that of humanity itself. The attempted resolution of its mysteries lies at the heart of philosophy. The purest, most general form of religion is expressed by theology, of which the central questions are the existence of God and God's personal relation to humanity. Deeply religious people want to find a way to approach and touch this deity—if not His literal transubstantiated flesh and blood in the Catholic manner, at least to ask Him for personal guidance and beneficence. Most also hope for life after death, passing into an astral world where they will join in bliss those who have gone before. Theological spirituality, in

short, seeks the bridge between the real and the supernatural. It dreams of God's dominion, where souls of the Earthly dead live on together in peaceful eternity.

The brain was made for religion and religion for the human brain. In every second of the believer's conscious life religious belief plays multiple, mostly nurturing roles. All the followers are unified into a vastly extended family, a metaphorical band of brothers and sisters, reliable, obedient to one supreme law, and guaranteed immortality as the benefit of membership.

The deity is higher than any prophet, high priest, imam, mystic saint, cult leader, president, emperor, dictator, the lot. He is the final and forever alpha male, or She the alpha female. Being supernatural and infinitely powerful, the deity can perform miracles beyond the reach of human understanding. Throughout prehistory and most of history, people needed religion to explain the occurrence of most phenomena around them. Torrential rain and flooding, a lightning bolt streaking across the sky, the sudden death of a child. God caused it. He or She was the cause in the cause-and-effect required for sanity. And the ways of God, albeit charged with meaning for our lives, are a mystery. With the coming of science, more and more natural phenomena have come to be understood as effects linked to other analyzable phenomena, and supernatural explanations of cause-and-



effect have receded. But the deep, instinctive appeal of religion and religionlike ideology has remained.

The great religions are inspired by belief in an incorruptible deity—or multiple kinds of deities, who may also constitute an all-powerful family. They perform services invaluable to civilization. Their priests bring solemnity to the rites of passage through the cycle of life and death. They sacralize the basic tenets of civil and moral law, comfort the afflicted, and take care of the desperately poor. Inspired by their example, followers strive to be righteous in the sight of man and God. The churches over which they preside are centers of community life. When all else fails, these sacred places, where God dwells immanent on Earth, become ultimate refuges against the iniquities and tragedies of secular life. They and their ministers make more bearable tyranny, war, starvation, and the worst of natural catastrophes.

The great religions are also, and tragically, sources of ceaseless and unnecessary suffering. They are impediments to the grasp of reality needed to solve most social problems in the real world. Their exquisitely human flaw is tribalism. The instinctual force of tribalism in the genesis of religiosity is far stronger than the yearning for spirituality. People deeply need membership in a group, whether religious or secular. From a lifetime of emotional experience, they know that happiness, and indeed

survival itself, require that they bond with others who share some amount of genetic kinship, language, moral beliefs, geographical location, social purpose, and dress code—preferably all of these but at least two or three for most purposes. It is tribalism, not the moral tenets and humanitarian thought of pure religion, that makes good people do bad things.

Unfortunately a religious group defines itself foremost by its creation story, the supernatural narrative that explains how humans came into existence. And this story is also the heart of tribalism. No matter how gentle and high-minded, or subtly explained, the core belief assures its members that God favors them above all others. It teaches that members of other religions worship the wrong gods, use wrong rituals, follow false prophets, and believe fantastic creation stories. There is no way around the soul-satisfying but cruel discrimination that organized religions by definition must practice among themselves. I doubt there ever has been an imam who suggested that his followers try Roman Catholicism or a priest who urged the reverse.

Acceptance of a particular creation story, and of accounts of miracles vouchsafed by it, is called the faith of the believer. Faith is biologically understandable as a Darwinian device for survival and increased reproduction. It is forged by the success of the tribe, the tribe is

united by it when competing with other tribes, and it can be a key to success within the tribe for those members most effective in manipulating the faith to gain internal support. The unending conflicts that generated this powerful social practice were widespread through the Paleolithic Era and have continued unabated to the present time. In more secular societies faith tends to be transmuted into religionlike political ideologies. Sometimes the two great belief categories are combined. Hence, "God favors my political principles over yours, and my principles, not yours, favor God."

Religious faith offers enormous psychological benefit to the believers. It gives them an explanation for their existence. It makes them feel loved and protected above the members of every other tribal group. The price imposed by the gods and their priests in more primitive societies is unquestioning belief and submission. Throughout evolutionary time this bargain for the human soul was the only bond with the strength to hold the tribe together in both peace and war. It invested its members with a proud identity, legitimized rules of conduct, and explained the mysterious cycle of life and death.

For ages no tribe could survive unless the meaning of its existence was defined by a creation story. The price of the loss of faith was a hemorrhage of commitment, a

weakening and dissipation of common purpose. In the early history of each tribe—late Iron Age for Judaeo-Christianity, and seventh century CE for Islam—the myth had to be set in stone in order to work. Once set, no part of it could be discarded. No doubts must be heard by the tribe. The only solution to an outmoded dogma was to finesse or conveniently forget it. Or, in the extreme, break away with a new, competing dogma.

Obviously no two creation stories can both be true. All of those invented by the many known thousands of religions and sects in fact have certainly been false. A great many educated citizens have realized that their own faiths are indeed false, or at least questionable in details. But they understand the rule attributed to the Roman stoic philosopher Seneca the Younger that religion is regarded by the common people as true, by the wise as false, and by rulers as useful.

Scientists by nature tend to be cautious in anything they say about religion, even when expressing skepticism. The distinguished physiologist Anton (Ajax) J. Carlson, when asked what he thought of the 1950 *ex cathedra* (that is, infallible) pronouncement by Pius XII that the Virgin Mary ascended bodily into heaven, is reported to have responded that he couldn't be sure because he wasn't there, but of one thing he was certain, that she passed out at thirty thousand feet.



Might it be better just to leave this vexatious matter alone? Not deny, just forget? After all, the great majority of people in the world are sort of getting along, more or less. However, negligence in the matter is dangerous, both short-term and long-term. National wars may have subsided, obviously due to the fear of their possibly catastrophic outcomes to both sides. But insurgencies, civil wars, and terrorism have not. The principal driving force of mass murders committed during them is tribalism, and the central rationale for lethal tribalism is sectarian religion—in particular the conflict between those faithful to different myths. At the time of writing the civilized world flinches before the brutal struggles between Shiites and Sunnis, the murder of Ahmadiyya Muslims in Pakistan's cities by other Muslims, and the slaughter of Muslims by Buddhist-led "extremists" in Myanmar. Even the blocking by ultra-Orthodox Jews of liberal Jewish women from the Western Wall is a menacing early symptom of the same social pathology.

Religious warriors are not an anomaly. It is a mistake to classify believers of particular religious and dogmatic religionlike ideologies into two groups, moderate versus extremist. The true cause of hatred and violence is faith versus faith, an outward expression of the ancient instinct of tribalism. Faith is the one thing that makes otherwise good people do bad things. Nowhere do peo-

ple tolerate attacks on their person, their family, their country—or their creation myth. In America, for example, it is possible in most places to openly debate different views on religious spirituality—including the nature and even the existence of God, providing it is in the context of theology and philosophy. But it is forbidden to question closely, if at all, the creation myth—the faith—of another person or group, no matter how absurd. To disparage anything in someone else's sacred creation myth is "religious bigotry." It is taken as the equivalent of a personal threat.

Another way of expressing the history of religion is that faith has hijacked religious spirituality. The prophets and leaders of organized religions, consciously or not, have put spirituality in the service of groups defined by their creation myths. Awe-inspiring ceremonies and sacred rites and rituals and sacrifices are given the deity in return for worldly security and the promise of immortality. As part of the exchange the deity must also make correct moral decisions. Within the Christian faith, among most of the denominational tribes, God is obliged to be against one or more of the following: homosexuality, artificial contraception, female bishops, and evolution.

The Founding Fathers of the United States understood the risk of tribal religious conflict very well.

George Washington observed, "Of all the animosities which have existed among mankind those which are caused by difference of sentiments in religion appear to be the most inveterate and distressing and ought most to be deprecated." James Madison agreed, noting the "torrents of blood" that result from religious competition. John Adams insisted that "the government of the United States is not in any sense founded on the Christian religion." America has slipped a bit since then. It has become almost mandatory for political leaders to assure the electorate that they have a faith, even, as for the Mormonism of Mitt Romney, if it looks ridiculous to the great majority. Presidents often listen to the counsel of Christian advisers. The phrase "under God" was introduced into the Pledge of Allegiance in 1954, and today no major political candidate would dare suggest it be removed.

Most serious writers on religion conflate the transcendent quest for meaning with the tribalistic defense of creation myths. They accept, or fear to deny, the existence of a personal deity. They read into the creation myths humanity's effort to communicate with the deity, as part of the search for an uncorrupted life now and beyond death. Intellectual compromisers one and all, they include liberal theologians of the Niebuhr school, philosophers battenning on learned ambiguity, literary

admirers of C. S. Lewis, and others persuaded, after deep thought, that there must be Something Out There. They tend to be unconscious of prehistory and the biological evolution of human instinct, both of which beg to shed light on this very important subject.

The compromisers face an insoluble problem, which the great, conflicted nineteenth century Danish philosopher Søren Kierkegaard called the Absolute Paradox. Dogmas forced on believers, he said, are not just impossible but incomprehensible—hence absurd. What Kierkegaard had in mind in particular was the core of the Christian creation myth. "The Absurd is that the eternal truth has come to exist, that God has come to exist, is born, has grown up and so on, and has become just like a person, impossible to tell apart from another person." It was incomprehensible, even if declared true, Kierkegaard continued, that God as Christ entered into the physical world in order to suffer, leaving martyrs to suffer for real.

The Absolute Paradox tears at all in every religion who seek an honest resolution of body and soul. It is the inability to conceive of an all-knowing divinity who created a hundred billion galaxies, yet whose humanlike emotions include feelings of pleasure, love, generosity, vindictiveness, and a consistent and puzzling lack of concern for the horrific things Earth-dwellers endure under



the deity's rule. To explain that "God is testing our faith" and "God moves in mysterious ways" doesn't cut it.

As Carl Jung once said, some problems can never be solved, only outgrown. And so it must be for the Absolute Paradox. There is no solution because there is nothing to solve. The problem is not in the nature or even in the existence of God. It is in the biological origins of human existence and in the nature of the human mind, and what made us the evolutionary pinnacle of the biosphere. The best way to live in this real world is to free ourselves of demons and tribal gods.

## Free Will

Neuroscientists who work on the human brain seldom mention free will. Most consider it a subject better left, at least for the time being, to philosophers. "We will attend to it when we're ready and have time," they seem to say. Meanwhile, their sights are set on the brighter and more realistically conceived grail of science, the physical basis of consciousness, of which free will is a part. No scientific quest is more important to humanity than to nail the phantom of conscious thought. Everyone, scientists, philosophers, and religious believers alike, can agree with the neurobiologist Gerald Edelman that "consciousness is the guarantor of all we hold to be human and precious. Its permanent loss is considered to be the equivalent of death, even if the body persists in its vital signs."

The physical basis of consciousness won't be an easy phenomenon to grasp. The human brain is the most complex system known in the Universe, either organic