THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Case No. 2023-001491

On Writ of Certiorari
to the South Carolina Court of Appeals

John Doe, ... Petitioner,

v.

Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ... Respondents.

SECOND AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

ORDER

THIS MATTER came before the Court on separate motions for summary judgment on all causes of action: (1) Defendants' Motion for Summary Judgment based upon the common law Doctrine of Charitable Immunity; (2) Motion for Summary Judgment on the Statute of Limitations / lack of admissible evidence of repressed memory syndrome; and (3) Motion for Summary Judgment based upon the *res judicata* effect of a 2007 class action settlement. Having analyzed the briefing submitted by the Defendants (Plaintiff did not submit a brief in opposition) and the oral arguments heard on December 12, 2019, the Court orders that the Defendants' Motion for Summary Judgment based on Charitable Immunity is hereby **GRANTED**. Having reached this conclusion, the Court does not rule on the other two dispositive motions before it.

UNDISPUTED FACTS

Plaintiff John Doe alleges he was sexually abused by two teachers at Sacred Heart School, Chris Hartnett and Hal Brooks, during the school year he was in 7th grade – 1970 – 1971. Sacred Heart School is listed in the *Official Catholic Directory* as part of the Roman

Catholic Diocese of Charleston.[1] The record reflects that Hal Brooks taught at Sacred Heart for the Fall semester of 1970 only.[2] Brooks denies engaging in any sexual abuse of Plaintiff Doe.

The Bishop of Charleston, a Corporation Sole, (referred to alternately as "the Diocese") is a charitable entity, and has been since Bishop of Charleston, a Corporation Sole was created by the General Assembly in 1880.[3] Since 1946, the federal government has recognized the United States Conference of Catholic Bishops as having a group designation as a charitable organization and has determined that all agencies and instrumentalities, and the educational, charitable, and religious institutions listed in the *Official Catholic Directory* qualify for charitable status. The record contains the I.R.S. determination from 1970 establishing the charitable status of both the Diocese and Sacred Heart School. Additionally, the Diocese submitted the affidavit of John Barker, Chief Financial Officer of the Diocese, attesting that the Corporation Sole, from its inception until the present, has been a charitable entity.

STANDARD FOR SUMMARY JUDGMENT

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim.[4] The trial court must grant the motion "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

[1] The Diocese of Charleston's *Official Catholic Directory* listing for 1970 – 1971 is in the record before this Court.
[2] *See Affidavit of Harold Brooks.*
[3] *See* Affidavit of John Barker and Act of the General Assembly, December 13, 1880.
[4] Rule 56(a), SCRCP.

judgment as a matter of law."[5] In situations where the plaintiff bears the burden of proof, a defendant may satisfy its initial burden by "showing"--that is, pointing out to the [trial] court--that there is an absence of evidence to support the plaintiff's case.[6] Once the defendant has carried its initial burden, plaintiff must come forward with admissible evidence to show that there is a genuine issue of fact remaining for trial.[7] The plaintiff must "do more than show that there is some metaphysical doubt as to the material facts," and must show that there is a genuine issue for trial.[8] The plaintiff may not rest upon the mere allegations of his pleadings.[9]

1. There is no genuine issue of material fact that the Diocese of Charleston is, and was in 1970, a charitable entity.

It is clear from the record before this Court that the Roman Catholic Diocese of Charleston was and remains a charity. This includes Sacred Heart School, which is listed in the 1970 *Official Catholic Directory*. All of the officers, directors, employees, and agents of the Diocese or Sacred Heart would, therefore, have been personnel of a charitable organization. All of the school's activities relevant to this case were within the scope of the school's role as a charitable entity. There is no evidence in the record that the injuries in this case arise from any for-profit activities on the part of the Diocese or Sacred Heart School. Likewise, there is no evidence in the record establishing that the Diocese *is not* a charitable entity.[10]

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[5] *Id.* Rule 56(c).
[6] *Id.* (alteration in original) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).
[7] Baughman, 306 S.C. at 115, 410 S.E.2d at 545.
[8] *Id.*
[9] *Id.*
[10] It is worthy of note that 26 U.S.C. § 7611 contains specific restrictions on efforts to inquire into a church's tax exempt charitable status – that inquiry may only be commenced by the Secretary of the Treasury or another appropriate high-level Treasury official; the inquiry must

Further, while not determinative of this case, several judges in this Circuit have recognized the Diocese's charitable status and have granted summary judgment based upon common law charitable immunity for claims arising before 1981. Notably, Judge Deadra Jefferson granted summary judgment to the Diocese in *Doe v. The Diocese of Charleston*, Civil Action No. 02-CP-10-0770, in which she held that Sacred Heart School and the Diocese were charitable entities and were immune from suit arising from allegations of sexual abuse that occurred in 1960. Likewise, Judge J.C. Nicholson granted the Diocese's summary judgment motions in several cases in 2017. Judge Jefferson's Order is part of the record before this Court, as is one of Judge Nicholson's Orders from 2017.

2. The Doctrine of Charitable Immunity.

For nearly all of the 20th Century, the law in South Carolina was that charities were immune from suit in tort. The Doctrine of Charitable Immunity was espoused in South Carolina in *Linder v. Columbia Hospital of Richmond County*, in which the Supreme Court held "a charitable corporation is not liable [for] injuries resulting from the negligent or tortious acts of a servant, in the course of his employment [if] such corporation has exercised due care in his selection."[11] In *Vermillion v. Williams College of Due West*, the Supreme Court went further:

> [T]he exemption of public charities from liability and actions for damages for tort rests not upon the relation of the injured party to the charity, but upon grounds of public policy, which forbids the crippling or destruction of charities which are

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begin within 3 years; and suit over the charitable status may only be brought by the government in the United States District Court for the District of Columbia.

[11] *Linder*, 98 S.C. 25, 81 S.E. 512, 512-14 (1914). Notably, the record contains the Affidavit of Dr. Monica Applewhite, the Diocese's expert witness, affirming that the Diocese complied with the standard of care in hiring the two teachers at the time they were hired in around 1970. She detailed the fact that the teachers were very recent college graduates who had no report of predilections toward sexually abusing minors prior to their being hired. Dr. Applewhite also discussed the very limited means available to a school to check the backgrounds of applicants at that time.

> established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself or of its superior officers, or agents, or of its servants or employees. The principle is that in a organized society, the rights of the individual must, in some instances, be subordinated to the public good . . . that being so, what difference can it make whether the tort is out of the corporation itself or its superior officers and agents or that of its servants, liability for the one would effectually embarrass or sweep away the charity as the other. It would therefore be illogical to admit liability for one and deny it for the other. [12]

The *Vermillion* Court held that charitable institutions were exempt from liability for the torts of their agents whether they were selected with or without due care.[13]

In 1959, the South Carolina Supreme Court reaffirmed the defense of charitable immunity in *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*. As before, the Supreme Court held that charitable entities were immune from suit in tort for activities within the scope of the charity's charitable mission. [14] As Judge Jefferson held, Catholic Schools are very much part of the charitable mission of the Roman Catholic Church.

In 1966, the Supreme Court again specifically reiterated the doctrine of absolute charitable immunity and applied it to a tort claim against the Diocese and declared the Church to be a true charity entitled to immunity from suit altogether.[15] The Court further held that a charity's immunity from suit is unaffected by the fact that the charity procured liability insurance that would cover the loss.[16] Rather, the Diocese was immune from suit in tort. The *Decker* Court affirmed the dismissal of a negligence suit on the Diocese's demurrer.

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[12] *Vermillion v. Williams College of Due West*, 104 S.C. 197, 88 S.E. 649, 650 (1916); *Lindler v. Columbia Hospital*, 81 S.C. 25, 81 S.E. 512 (1914).
[13] *Vermillion*, at *Id.*
[14] *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, 235 S.C. 305, 111 S.E.2d 568 (1959) and again in *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264, 268 (1966).
[15] *Decker v. Bishop of Charleston*, at 268.
[16] *Id.* at 269.

In 1981, the South Carolina Supreme Court abrogated the doctrine of charitable immunity.[17] However, the Court only did away with charitable immunity going forward – the abrogation could not be applied retrospectively.[18] Thus, a Court must apply charitable immunity as it existed at the time of the allegedly tortious activity.[19]

As late as 1979, in *Douglass v. Florence Gen'l. Hosp.*, the Supreme Court reaffirmed the doctrine of charitable immunity for torts that occurred while the doctrine remained effective.[20] The plaintiff in that case filed suit prior to the Supreme Court's decision in *Brown v. Anderson Cty. Hosp.*, although the case was pending when the *Brown* decision was issued. The trial court dismissed plaintiff's complaint based upon charitable immunity and determined that *Brown* applied only prospectively and could not give life to plaintiff's complaint. The Supreme Court affirmed that decision because *Brown* created liability where, before, there had been none. Florence General Hospital was immune from suit for its employees' negligence, even if heedless or reckless.[21]

There is no question based upon the record before this Court that the Doctrine of Charitable Immunity was in full force and effect during the entire time Hartnett and Brooks are alleged to have abused the Plaintiff. The events that gave rise to the injuries sustained by the Plaintiff occurred at the time the Doctrine of Charitable Immunity was the law in South

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[17] *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981).
[18] *See Hupman v. Erskine College*, 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984), *Hasell v. Medical Society of S.C.* 288 S.C. 318, 342 S.E. 594, 595 (1986) *see also Brown v. Anderson Cty. Hosp.*, 234 S.E.2d 873 (S.C. 1977) (modifying charitable immunity as to hospitals only to render them liable for heedless and reckless acts and prospectively only).
[19] *See Laughridge v. Parkinson*, 403 S.E.2d 120, 120 (1991) (holding that charitable immunity law in existence at the time of tortious conduct in 1979 must be applied).
[20] *Douglass v. Florence Gen'l. Hosp.*, 259 S.E.2d 117 (S.C. 1979),
[21] *Douglass*, 259 S.E.2d at 118.

Carolina. It is an absolute defense to a claim which arose from the actions complained of by the Plaintiff against the Defendants.

3. Application of the Doctrine of Charitable Immunity.

Applying these principles, it is clear that Plaintiff's claims are barred by the Doctrine of Charitable Immunity. The record before the Court contains no evidence establishing that there is any factual issue that the Bishop of Charleston, a Corporation Sole is a charitable institution, and the now-shuttered Sacred Heart School, its officers, agents, and employees are all part of a charitable organization. There can be no dispute that the Corporation Sole and Sacred Heart School were "charities" under the law of South Carolina. The events in question happened some eleven years before the Supreme Court abrogated common law charitable immunity in 1981. Accordingly, at the time of the events in question, it was the law of this State that charities were immune from all tort liability.

The Diocese is, and has been, a charity entitled to common law charitable immunity as the law established at the time of any actions alleged in this case. It is without question that both South Carolina and federal authorities have long-determined the Diocese to be a charitable institution.[22] South Carolina law does not permit the courts of this state to substitute its judgment for the judgment of an agency.[23] Unlike the legislatively created limitation on liability

[22] In addition to the affidavit of John Barker establishing the Catholic Church's charitable status, the Court can take judicial notice of the *fact* that, since 1946, the federal government has recognized the United States Conference of Catholic Bishops as having a group designation as a charitable organization and has determined that all agencies and instrumentalities, and the educational, charitable, and religious institutions listed in the *Official Catholic Directory* qualify for charitable status. *See Internal Revenue Service Group Determination Letter*, attached as ***Exhibit C*** and ***Exhibit D***, Official Catholic Directory, 1971.

[23] *See e.g.* S.C. Code Ann. § 1-23-380(6).

for charities, immunity from suit is *not* an issue to be applied after a jury verdict. Rather, pre-1981 charitable immunity shields charities from suit altogether.

It is important to note that charitable organizations are recognized as such by the federal government – whose rules, regulations, and enforcement govern whether an organization can be considered a charity and exempt for state and federal taxes. When the General Assembly codified the common law doctrine of charitable immunity, it specifically premised charitable status on the Internal Revenue Service's determination.[24] That is a determination of the federal government that the state is required to honor by the Supremacy Clause of the Constitution. In addition, the federal code contains a specific provision regarding the procedure to review and revoke a charity's status – that can only be done by the Department of the Treasury and for very specific reasons.[25] Federal law affords no private right of action to challenge a church's charitable status.

CONCLUSION

As the Courts of this State have consistently and repeatedly held, Plaintiff's claims are barred by the common law Doctrine of Charitable Immunity. The Corporation Sole, and all its ministries, schools, and affiliates listed in the *Official Catholic Directory* are in fact charities and no amount of pleading or argument can change that. Nor can it change the Internal Revenue Service's determination – not just for the Diocese of Charleston, but for the entirety of the American church – that the Church is a charitable institution. There is no genuine issue of

[24] *See* S.C. Code Ann. § 33-56-20.

[25] 26 U.S.C. § 7611 contains specific restrictions on efforts to inquire into a church's tax exempt charitable status – that inquiry may only be commenced by the Secretary of the Treasury or another appropriate high-level Treasury official; the inquiry must begin within 3 years; and suit over the charitable status may only be brought by the government in the United States District Court for the District of Columbia.

material fact regarding the Church's status as a charitable organization and there is no admissible evidence to the contrary. The Court must apply charitable immunity as it existed in 1971, and, on that basis, Defendants' Motion for Summary Judgment is hereby **GRANTED** and all claims and causes of action of Plaintiff in this case are hereby **DISMISSED WITH PREJUDICE**.

Based upon the foregoing, the Court need not reach the separate motions regarding the statute of limitations or *res judicata*.

IT IS SO ORDERED.

Hon. Bentley D. Price
Circuit Court Judge

8th day of January, 2019
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1003929

John Doe
PLAINTIFF(S)

Diocese Of Charleston The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The Motion to Reconsider the granting of Summary Judgment is DENIED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/08/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: John Doe VS Diocese Of Charleston The

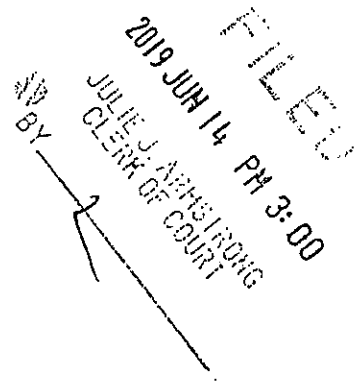
Case Number: 2018CP1003929

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CA No. 18-CP-10-3929
	)	
John Doe,	)	
	)	
Plaintiff,	)	
	)	**Scheduling Order**
vs.	)	
	)	
	)	
The Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	



This case was filed on the 8th day of August, 2018, and is now before the Court concerning the completion of discovery and the scheduling of pretrial procedures and trial. Having considered the positions of the parties and their consent to a scheduling order, it is hereby ordered as follows:

1. All motions to amend the pleadings and to join additional parties shall be filed on or before August 31, 2019;

2. The Plaintiff and Defendants must identify and disclose any experts on or before September 15, 2019;

3. Discovery shall be completed on or before October 15, 2019. All discovery requests must be served in time for the responses thereto to be served by this date;

4. All dispositive motions shall be filed and served on or before October 30, 2019.

5. This case shall be mediated prior to trial.

6. A pre-trial hearing shall be set on or before November 15, 2019. The pre-trial hearing shall be attended by counsel who will participate in the trial of the case and who is vested with full authority to make agreements as to all matters pertaining to the trial. Counsel shall exchange pre-trial briefs ten (10) days before the pre-trial hearing, which briefs shall list any pending matters to be resolved pre-trial, a list of witnesses, and a good faith estimate of the time needed for trial. All pending matters including all motions will be resolved in this hearing.

7. Upon completion of the pre-trial hearing, the case will be set for a day certain trial to be had within the next ensuing forty-five (45) days.

8. This Order is subject to modification only by the Court for good cause shown.

9. In the event that the dates set herein are continued or otherwise modified, the remaining provisions of this Order shall remain in full force and effect.

10. **FAILURE ON THE PART OF COUNSEL OR AN UNREPRESENTED PARTY TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER WILL SUBJECT THE LAWYER OR COUNSEL TO SANCTIONS UNDER THE RULES AND MAY RESULT IN DISMISSAL OR STIKING OF ALL THE PLEADINGS OF THE FAILING PARTY.**

AND IT IS SO ORDERED.

Charleston, South Carolina
June 14th, 2019

The Honorable Bentley D. Price

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON John Doe, Plaintiff, vs. The Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CA No. 18-CP-10-3929 AMENDED COMPLAINT **Jury Trial Requested** Outrage, Negligence/Gross Negligence, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress, Fraudulent Concealment, Civil Conspiracy, Negligent Retention or Supervision, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe is a pseudonym for a former Charleston County resident who is still a resident of South Carolina and who, while living in the Charleston area, attended schools and churches operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the Plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the Defendants.

2. Defendant The Diocese of Charleston, a Corporation Sole (hereinafter referred to as

"Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina (now located in the same city and county at 901 Orange Grove Road). Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy and its lay employee activities, the exercise of authority over the various members of its denomination, and the maintenance of the well-being of its members, spiritual and otherwise.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests and others employed by the Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Sacred Heart Catholic Church and the adjacent school formerly known as Sacred Heart Catholic School, and now known as Charleston Catholic School (hereinafter "Charleston Catholic"), all located in the City of Charleston, South Carolina.

5. Diocese, as part of its general mission, encouraged its parishioners, such as the Plaintiff, to

enter, use, and attend its many activities on its premises and otherwise, including school, worship, social, and religious based functions, and induced Plaintiff and other minor children to participate and/or facilitate illegal gambling operations including bingo, raffle, drawings, door prizes, lotteries, and other games of chance. As such, the Diocese undertook a duty to ensure its premises, functions, and activities were lawful and safe from all dangers which were reasonably foreseeable. In particular, the Defendants and predecessor bishops owed minors, including the then minor Plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop and predecessor bishops represented to parishioners, including the Plaintiff and/or his parents, that its facilities and functions were places of safety and that they would protect parishioners and participants, including the Plaintiff, from harm.

6. At all times relevant, the Diocese owned and operated schools, including Charleston Catholic School, operated as a commercial enterprise to make a profit. By way of example, Charleston Catholic School requires anyone who wants to attend the school to pay a sum of money for the services provided by the school in the form of tuition. Multiple tuition rates are utilized, including one for parishioners of parishes on the Charleston peninsula, a higher rate for parishioners of non-peninsula Catholic parishes, and another rate for Non-Catholic students. Upon information and belief, the Diocese did and does purchase books, supplies, clothing, and other items, marks up the price, and sells the items for a profit. Such an exchange of money goods and services is a business venture.

7. At all times material to the incidents alleged in this complaint, Chris Hartnett ("Hartnett")

and Hal Brooks ("Brooks") were teachers assigned to Charleston Catholic School. Hartnett and Brooks were assigned to Charleston Catholic School by the Diocese and Bishop and, at all times, under the direct supervision, employ and control of the Diocese and its then Bishop.

8. Hartnett and Brooks were each employed by Diocese and Bishop as a teacher, youth leader, advisor, counselor, and in a position of authority over Plaintiff at Sacred Heart Catholic Church and School. In their roles, Hartnett and Brooks came to have access to and to know the most personal and confidential information of parishioners and students including the Plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Hartnett and Brooks as teachers, youth leaders, advisors, counselors, and in a position of authority over Plaintiff. Among other things, Diocese and Bishop encouraged Plaintiff and other parishioners to share with and trust Hartnett and Brooks and other of its employees with deeply personal information and with their personal safety, education, development, and salvation. As part of their employment, Defendants reached out to parishioners of the Diocese and particularly young students and assisted them and cultivated relationships of trust and confidence with them.

9. Plaintiff, a member of a large, prominent and active Catholic family, and a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Sacred Heart church and school. Among other things, Plaintiff was an altar boy and participated in the youth programs and/or school with which Hartnett and Brooks worked.

10. Plaintiff came to know Hartnett and Brooks through these various church and school related programs and activities. Based on this relationship, as cultivated by Sacred Heart Church and School and encouraged by the Diocese and the Bishop, Plaintiff admired, trusted, revered and respected Hartnett and Brooks as holy men, authority figures, advisors, role models, counselors and teachers. In school and church, he was taught and instructed to do so. As a result, Plaintiff entrusted to Hartnett and Brooks his personal safety and shared with Hartnett and Brooks his most confidential information, and he took direction from them.

11. Because of Plaintiff's position as a minor, together with Hartnett and Brooks' positions in the Roman Catholic Church as teachers, youth leaders, holy men, advisors, counselors, and authority figures, Hartnett and Brooks were able to have control and influence over Plaintiff. By their words and actions, Hartnett and Brooks represented to Plaintiff that their relationship was one in which Hartnett and Brooks were to provide instruction, supervision, counseling, comfort and advice to Plaintiff, and to look out for Plaintiff's well-being and best interests. These representations were untrue and intended to deceive Plaintiff. Hartnett and Brooks used these representations and their various positions to gain Plaintiff's trust and confidence and to obtain control over him.

12. Approximately around the ages of 12 to 14 Plaintiff, then a minor child born in 1957, was sexually assaulted by Hartnett and Brooks. This abuse took place on various occasions at various locations.

13. These incidents occurred while Hartnett and Brooks were employees and youth leaders of Sacred Heart Catholic Church and School and the Diocese. These assaults upon Plaintiff

occurred on the premises of Sacred Heart Church and School complex, property owned and controlled by the Defendants, as well as other locations. For example, Hartnett and Brooks preyed on young boys, including the Plaintiff, in various church properties and elsewhere, such as beaches and other places in the state, for the purposes of molestation.

14. Based on the relationship of trust and confidence cultivated by Hartnett and Brooks and encouraged by Diocese and Bishop and agents and officials thereof, Plaintiff justifiably believed and relied on Hartnett and Brooks and gave Hartnett and Brooks his trust and confidence. By their words and actions, Hartnett and Brooks assured Plaintiff that their abusive conduct was legal and proper. Hartnett and Brooks and Defendants actively concealed the wrongfulness of their exploitation and misconduct involving children, Plaintiff included. As a result, and because Plaintiff was a minor child, plaintiff was unable to understand the wrongfulness and illegality of Hartnett and Brooks' sexual abuse of him and the related injury. Hartnett and Brooks also threatened Plaintiff with recrimination if Plaintiff revealed Hartnett and Brooks' actions and told Plaintiff nobody would believe him if he reported the conduct.

15. Plaintiff is informed and believes that the Defendants knew, or should have known, that Hartnett and Brooks had deviant sexual propensities. Furthermore, the Defendants knew or should have known that Hartnett and Brooks were molesting minor boys on the premises of the Diocese property, and at other locations as well. Nevertheless, the Defendants failed to warn the Plaintiff and other minor children similarly situated, or their parents, of the danger posed by Hartnett and Brooks, failed to protect the Plaintiff on Diocese premises and

activities, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Hartnett and Brooks and others. In fact, concealment of the conduct of the teachers and other Diocese employees was the official policy of the Diocese and the Catholic Church and was and is, like gambling operations conducted, violative of the laws of South Carolina.

16. Plaintiff has only learned within the past two years of the causal relationship between his injuries and the sexual abuse as well as the Defendants' knowledge of Hartnett and Brooks history, proclivities, and actions, and has similarly only then learned of Defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to Plaintiff now becoming so aware, and Plaintiff could not have so known or learned previously. His memory was repressed.

17. For many years up to and including the present, Defendant Diocese and the Catholic Church itself had knowledge that employees, agents, and officials of the Diocese were sexually abusing children. Defendants took part in a cover up of such actionable and criminal activity, which action was itself illegal.

18. In 1962, the Holy See, (the Vatican) which dictates policy and procedure for the entire church and the Bishops, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

19. The INSTRUCTION identifies as the worst crime any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A) The Vatican INSTRUCTION encourages Bishops and church leaders to

avoid "scandal." (Ex. A) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

20. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

21. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where victims are enticed to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A) It mentions that church officials could transfer offending priests to different assignments. (Ex. A)

22. Pursuant to the dictates of the INSTRUCTION, at all points in the process of handling sex abuse cases, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents locked in secret archives. (Ex. A)

23. Often, rather than compensating abuse victims and ridding themselves of abusing priests and/or agents, the Diocese would fund mental health or medical treatment of the abusing priests and/or agents. Other times, the Diocese would simply pay the abusing priest to take a sabbatical or to otherwise go on "leave." The Diocese, pursuant to the mandate from the

Holy See, would keep secret and conceal the truth of the matter from parishioners, including the Plaintiff, the general public and law enforcement officials. The funds used for such payments were funds acquired by the Diocese, at least in part, from the commercial operation of its schools and its illegal gambling operations.

24. When payments were made to victims of sexual abuse, these payments were also, pursuant to mandates from the Holy See, kept secret and concealed from parishioners, including the Plaintiff, the general public and law enforcement officials. In some cases, the Diocese first laundered the payments by having an unrelated priest or parish send money to a parish with an abuse victim, without proper disclosure, to pay the victim of sexual abuse by one of its priests and/or agents. The funds used for such payments were funds acquired by the Diocese, at least in part, from the commercial operation of its schools and its illegal gambling operations and contributions.

25. Under Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as the dictates of the INSTRUCTION, or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees, including Chris Hartnett and Hal Brooks, using various relationships of priest, youth leader, advisor, counselor, and a position of authority over Plaintiff, which they cultivated, reinforced this belief.

26. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and its agents and employees and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as and including Hartnett and Brooks, that he must conceal that Hartnett and

Brooks had committed upon him a horrible sin, or risk an afterlife of damnation.

27. As a result of the actions and/or inactions of the Defendants, and through the operation of the commercial and/or illegal gambling operations described herein, Hartnett and Brooks were allowed, and did, prey upon Plaintiff by engaging in the defined "worst sin." Plaintiff has suffered from Hartnett's and Brooks' conduct and the conduct of the Defendants, by, among other things, years of psychological damage with physical manifestations.

28. Plaintiff's severe psychological damage, the equivalent of a misshapen mind and physical manifestations associated therewith, were proximately caused by the actions and/or inactions of the Defendants; and said damage prevented Plaintiff from recognizing, understanding, and asserting his legal claims relative to the childhood sexual abuse he suffered at the hands of Hartnett and Brooks and the other Defendants.

29. As alleged herein, the Diocese, pursuant to the mandate from the Holy See, would keep secret and conceal the truth regarding its knowledge of the perpetrators of child sexual abuse as well as its illegal acquisition and use of funds from commercial and/or illegal gambling operations to fund the concealment of its knowledge and operations from parishioners, including the Plaintiff, the general public and law enforcement officials. Such conduct prevented Plaintiff from reasonable discovery of the existence of a cause of action and has caused and will cause Plaintiff and others irreparable harm to which there is an absence of an adequate remedy at law.

FOR A FIRST CAUSE OF ACTION:
(OUTRAGE/INTENTIONAL INFLICTION OF EMOTION DISTRESS)

30. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as

if fully stated herein.

31. The Defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community or society. The actions of Defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable person could be expected to endure it, and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

32. As a direct and proximate result of the outrageous conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these Defendants or others. Plaintiff further requests the court enjoin these Defendants from conducting, or having minor children participate and/or facilitate, their illegal gambling operations including bingo, raffle, drawings, door prizes, lotteries, and other games of chance, which Defendants use to fund the cover-up of child sexual abuse by its priests, employees, and agents as alleged herein, and enjoin these Defendants from failing and/or refusing to report allegations of child sexual abuse to the proper legal authorities.

FOR A SECOND CAUSE OF ACTION:
(NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS)

33. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as

if fully stated herein.

34. As alleged above, Plaintiff was sexually assaulted on multiple occasions around the ages of 12 to 14 by Chris Hartnett and Hal Brooks who were agents of the Defendants, teachers, youth leaders, advisors, supervisors, counselors, and in positions of authority over Plaintiff. Hartnett and Brooks duties to the Plaintiff arose from their employment with Diocese and Bishop.

35. As a result of the relationships between Plaintiff and Hartnett and Brooks, Plaintiff and the Defendants, and/or Hartnett and Brooks and the Defendants, Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, willful, or wanton in relation to the Plaintiff, in that they failed to:

a. Monitor Hartnett and Brooks' behavior while on premises of the Defendants including, but not limited to, Sacred Heart Church and School, and/or while engaged in activities associated with school, church, youth development and pleasure activities wherever same took place;

b. Properly investigate Hartnett and Brooks backgrounds through a proper background and thorough check, to determine their proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff, and to oversee them and their activities with children of the school/diocese;

c. Address Hartnett and Brooks' past conduct either at the time they first became involved with the Defendants or subsequently;

d. Ignoring Hartnett and Brooks' known predilections toward sexually assaulting young boys, when it was known or the Defendants should have known of those predilections;

e. Allowing Hartnett and Brooks to work with young boys, including the Plaintiff, alone and unsupervised;

f. Maintain and keep their property and premises where Hartnett and Brooks worked in a reasonably safe condition;

g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Hartnett and Brooks

h. Warn the Plaintiff and/or his family of Hartnett and Brooks deviant sexual proclivities;

i. Fulfill their duties *in loco parentis* to the Plaintiff;

j. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs and activities such as those conducted by the Defendants through Hartnett and Brooks;

k. Warn them of teachers known to have a sexual interest in children and known to act inappropriately on that interest;

l. Supervise Hartnett and Brooks in a manner so as to eliminate chances to sexually abuse children;

m. Not allow teachers in schools of the Diocese to travel alone with child students;

n. Take steps to report to civil and criminal authorities a priest, agent, and/or employee

of the Church/School/Diocese who sexually abused children, so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions, and because the law of South Carolina requires such reporting;

o. Notify parents of those children who have/had been exposed to Hartnett and Brooks and the now adult victims themselves;

p. Exercise due care for the safety and well-being of Plaintiff and others similarly situated.

36. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, willful, and wanton behavior of the Defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the Defendants for actual damages, and punitive damage in a sufficient amount to deter such similar conduct by these Defendants or others, all as determined by the trier of facts.

FOR A THIRD CAUSE OF ACTION:
(BREACH OF FIDUCIARY DUTY)

37. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

38. By and through the relationships described herein, Defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, as student at Sacred Heart School and a parishioner of Sacred Heart Catholic Church, Defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff.

The Defendants undertook a duty to provide a safe environment for Plaintiff, as well as for all children at the schools of the Diocese, at its churches, and at its activities and all interactions by agents and/or employees of Defendants with children. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

39. By entering into a fiduciary relationship with Plaintiff, Defendants were obligated to act only in the best interests of Plaintiff. This duty extended to Defendants' agents and employees, Hartnett and Brooks included.

40. Plaintiff reposed trust and confidence in Hartnett and Brooks, his teachers, advisors, counselors, and role models and in the Defendants. As a result of Hartnett and Brooks predatory acts described above and the Diocese and Bishop's failure to act properly on Hartnett and Brooks' conduct, the Defendants breached the duties owed to the Plaintiff.

41. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the Defendants and through agents, Plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these Defendants and others.

FOR A FOURTH CAUSE OF ACTION:
(FRAUDULENT CONCEALMENT)

42. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

43. Defendants knew or should have known of Hartnett and Brooks sexually deviant propensities with minors prior to the sexual molestation of Plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the Defendants had such knowledge

about Hartnett and Brooks deviant and sexual propensities prior to the abuse perpetrated on him. Further, Plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, Defendants concealed material facts from Plaintiff, inducing Plaintiff and his family into a false belief that children were safe being around Hartnett and Brooks, a false belief that no other children were sexually abused by Hartnett and Brooks, and a false belief that the Defendants did not possess knowledge that Hartnett and Brooks engaged in predatory sexual practices and abused other children, among other things.

44. The Defendants' failure to report, as required by law, along with their active concealment of Hartnett and Brooks' above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, and as required by South Carolina law, constitutes fraudulent concealment of the information about Hartnett and Brooks from their potential prey. This fraudulent concealment lasted until the present.

45. As a direct and proximate result of the outrageous conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these Defendants and others. Plaintiff further requests the court enjoin these Defendants from conducting, or having minor children participate and/or facilitate, their illegal gambling operations including bingo, raffle, drawings, door prizes, lotteries, and other games of chance, which Defendants use to fund the cover-up of child sexual abuse by its priests, employees, and agents as alleged herein, and

enjoin these Defendants from failing and/or refusing to report allegations of child sexual abuse to the proper legal authorities.

FOR A FIFTH CAUSE OF ACTION:
(CIVIL CONSPIRACY)

46. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

47. Prior to the abuse of the Plaintiff, Plaintiff is informed and believes two or more individuals, including agents of the Defendants were aware of Hartnett and Brooks sexually deviant propensities with minors. The failure of these agents of the Defendants to report Hartnett and Brooks to the proper authorities, the active concealment of their knowledge about Hartnett's and Brooks' deviant activities, and their agreement to do nothing to stop, or at least report, the abusers' activities constitutes a conspiracy, or a conspiracy of silence. The purpose behind this conspiracy was to protect Defendants and Hartnett and Brooks and Defendants at the Plaintiff's expense, proximately resulting in injury to the Plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Hartnett and Brooks and their sexually deviant propensities, this Plaintiff included.

48. As a direct and proximate result of the conspiratorial conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these Defendants or others. Plaintiff further requests the court enjoin these Defendants from conducting, or having minor children participate and/or facilitate, their illegal gambling operations including bingo, raffle, drawings, door

prizes, lotteries, and other games of chance, which Defendants use to fund the cover-up of child sexual abuse by its priests, employees, and agents as alleged herein, and enjoin these Defendants from failing and/or refusing to report allegations of child sexual abuse to the proper legal authorities.

FOR A SIXTH CAUSE OF ACTION:
(NEGLIGENT RETENTION OR SUPERVISION)

49. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

50. Hartnett and Brooks were hired by agents for the Defendants, or the Defendants themselves, prior to the abuse upon the Plaintiff.

51. The agents for the Defendants knew or should have known about Hartnett and Brooks sexually deviant propensities. Despite such knowledge, the agents for Defendants failed to take steps to protect the minors at Charleston Church and School, including the minor Plaintiff.

52. Despite having knowledge of Hartnett's and Brooks' sexually deviant propensities with minors, the Defendants directly or through agents continued to retain them as youth leaders, advisors, counselors, and teachers, without warning the parents of children, or the children at Sacred Heart Church and School, who were their potential prey. Several of these children, Plaintiff included, became Hartnett's and Brooks' actual prey.

53. Despite having knowledge of Hartnett's and Brooks' sexually deviant propensities with minor students, the agents of the Defendants did not properly supervise them. Consequently, they were able to continue to perpetrate sexually deviant attacks on minors.

54. Plaintiff was a minor child attending Sacred Heart Church and School, where Hartnett and Brooks were assigned. Therefore, if not for Hartnett and Brooks continued employment by Defendants, Plaintiff would not have been injured.

55. Plaintiff was one of those minor students who was injured because the agents of the Defendants failed to supervise Hartnett and Brooks even though they knew or should have known of their sexually deviant propensities with minors.

56. As a direct and proximate result of the Defendants' negligent conduct, Plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these Defendants or others.

FOR A SEVENTH CAUSE OF ACTION:
(BREACH OF CONTRACT)

57. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

58. By and through the Plaintiff's attendance at Sacred Heart school in exchange for the payment of, among other things, tuition and fees, a legally binding contract was formed between Plaintiff and Defendants. As part of the contract Defendants agreed to keep Plaintiff in a safe environment and condition.

59. Implied in every contract is a covenant of good faith and fair dealing.

60. By and through the conduct described herein, Defendants breached the contract with the Plaintiff.

61. As a direct and proximate result of the Defendants' breach(es), Plaintiff sustained and

continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury against these Defendants.

FOR AN EIGHTH CAUSE OF ACTION:
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

62. The allegations of paragraphs 1 through 28 above are incorporated into this cause of action as if fully stated herein.

63. By and through the Plaintiff's attendance at Sacred Heart School in exchange for the payment of, among other things, tuition and fees, a legally binding contract was formed between Plaintiff and Defendants. As part of the contract Defendants agreed to keep Plaintiff in a safe environment and condition.

64. Implied in every contract is a covenant of good faith and fair dealing.

65. By and through the conduct described herein, and further by allowing Defendants' agents/employees to take minor children under their care and supervision away, on out of town travel and otherwise, including the Defendants' concealment of information and knowledge of Defendants' agents/employees conduct from the Plaintiff and others, Defendants breached the contract with the Plaintiff with fraudulent intent relating to the breach of the contract and not merely to its making, and with fraudulent acts accompanying the breach.

66. Moreover, the Diocese acted with fraudulent intent relating to the breach of the contract and not merely to its making, and with fraudulent acts accompanying the breach by actively concealing information regarding the commercial operation of its schools, its illegal

gambling activity, and its secret payments and/or reassignments of priests and/or other abusing employees or agents.

67. As a direct and proximate result of the Defendants' breach(es), Plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these Defendants or others. Plaintiff further requests the court enjoin these Defendants from conducting, or having minor children participate and/or facilitate, their illegal gambling operations including bingo, raffle, drawings, door prizes, lotteries, and other games of chance, which Defendants use to fund the cover-up of child sexual abuse by its priests, employees, and agents as alleged herein, and enjoin these Defendants from failing and/or refusing to report allegations of child sexual abuse to the proper legal authorities.

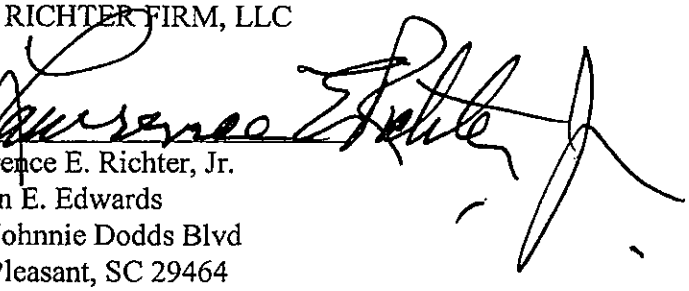
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the Defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, injunctive relief as requested herein, that the costs of this action be taxed against the Defendants, and such other and further relief as the Court shall deem just and proper.

Signature page to follow

Respectfully submitted,

THE RICHTER FIRM, LLC

By: 

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ATTORNEYS FOR PLAINTIFF

29th day of Aug, 2018
Mount Pleasant, South Carolina

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

TO ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES "EVEN OF THE ORIENTAL RITE"

INSTRUCTION

CONFIDENTIAL

ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

~~1151~~

INSTRUCTION

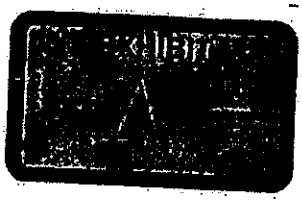
On the manner of proceeding in cases of the crime of solicitation

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; It is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents ~~1161~~ remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1569).



3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the meanwhile by the prescription of law or from approved constitutions (Canon 198, § 1); [This norm does not apply], however, to the vicar general, except from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not [commit such cases] on an habitual basis or for the entire group of these cases, but must delegate as often as needed (toties quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which Canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (toties quoties). Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless by chance even if not cited he is still present [at the process], the Acts must be considered [totally] invalid. But, if, however,

he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses inducted [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions created as above and in Canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ~~++++~~ secrecy, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication latae sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined piece of business or case, as often as required (toties quoties), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication, mentioned above, is not extended. There must be an

avoidance, moreover, by those who are set over those involved in this cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a percy or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping the ~~secret~~ must be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subjection to a censure, unless by chance toward these same pesons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis?) [of such] by act. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-86-82 and 1680 respectively.

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TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. "According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1941, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office; and the confessor must, burdened seriously in conscience, to warn the penitent of this duty." (Canon 904).

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. "The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368; § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by

letter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

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20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

22. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solicitation. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presenced to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunication reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance, ++11++be omitted. Thus, if the oath cannot be taken upon the holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interviewer (the recipient of the denunciation) and then

confirmed and signed by the person who is denunciating in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denunouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated) and on a day convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promotor of justice who must declare in writing whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promotor of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, § 1).

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

TO ALL PATRIARCHES, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES "EVEN OF THE ORIENTAL RITE"

CONFIDENTIAL

INSTRUCTION

ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

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INSTRUCTION

On the manner of proceeding in cases of the crime of solicitation

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; It is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents ++6++ remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1569).

3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the meanwhile by the prescription of law or from approved constitutions (Canon 198, § 1); ~~(This norm does not apply)~~, however, to the vicar general, except from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not [commit such cases] on an habitual basis or for the entire group of these cases, but must delegate as often as needed (toties quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon ~~law~~ law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which Canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) (can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (toties quoties). Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless by chance even if not cited he is still present [at the process], the acts must be considered [totally] invalid. But, if, however,

he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses inducted [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in Canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ~~1174~~ secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication latae sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined piece of business or case, as often as required (locies quoties), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication, mentioned above, is not extended. There must be an

avoidance, moreover, by those who are set over those involved in this cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a party or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping the secret must be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subjection to a censure, unless by chance toward these same pesons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis?) [of such] by act. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82 and 1680 respectively.

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TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. "According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1741, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office; and the confessor must, burdened seriously in conscience, to warn the penitent of this duty." (Canon 904).

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. "The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by

latter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

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20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

21. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solicitation. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunication reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance, ++11++ be omitted. Thus, if the oath cannot be taken upon the Holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interviewer (the recipient of the denunciation) and then

confirmed and signed by the person who is denunciating in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denunouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated) and on a day convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promoter of justice who must declare in writing, whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, § 1).

TITLE NUMBER TWO

THE PROCESS

Chapter I - The Inquisition

29. When the knowledge concerning the crime of solicitation is known first through the denunciations, a special inquisition must be pursued "so that it may become clear whether and on what foundation the imputation rests" (Canon 1939, § 1); and this by the fact of even more so, since a crime of this type, as has already been stated above, is usually done in secret, and direct testimonies concerning [solicitation], especially from the hurt party, can only rarely be obtained.

Once the inquisition is open, and if the denounced priest is a religious, the Ordinary can prevent him from being transferred before the conclusion of the process.

For the most part, there are three areas which such an inquisition must cover, and they are:

a) the past history of the denounced person;
b) the consistency of the denunciation;
c) other persons solicited by the same confessor or, however conscious of the crime, whether any of them, as not rarely happens, have been persuaded [to make the denunciation] by those denouncing.

30. Therefore, as to what pertains to the first letter (a), the Ordinary at the same time as he has accepted some denunciation of the crime of solicitation, if the one denounced, whether from the secular clergy or is a regular (cfr. n. 4), with residence in his territory, should try to find out from the archives whether other accusations against him are on record, even of a different type; and, if by chance he had previously been living in other territories, he should seek, even from the respective Ordinaries, and, if [he is a] religious, also from the regular superiors, whether they have anything which can aggravate the situation in any way. But he will accept these documents, referring to them in the Acts as accumulated together whether for a judgment, by reason of content [continentia] or association of causes [connexio] (cfr. Canon 1567), and thus all the matters will be brought forward together; ++13++or for the establishment and consideration of an aggravating circumstance of recidivism according to the sense of Canon 2208.

31. If the whole matter concerns a denounced person who does not have residence in his territory, the Ordinary should transmit all the acts to the Ordinary of the one who has been denounced, or, if he does not know who this might be, [he will transmit all the acts] to the Supreme Holy Congregation of the Holy Office, reserving the right, in the meanwhile, to deny to the denounced priest the faculty of exercising the ecclesiastical ministries in his own diocese or of revoking them already by chance conceded to him, in the event that he approaches [the Ordinary for these faculties] or returns [to the diocese of the Ordinary].

32. As to what pertains to the second letter (b), the importance of each denunciation, of their qualities and of the circumstances must be weighed seriously and accurately so that it is evident how they themselves merit belief. It is not sufficient that [this be done] in any way whatsoever, but it is necessary that this become known by means of an established and a judicial form; this customarily is signified in the Tribunal of the Holy Office by the phrase "diligentias peragere" [to undertake all the required formalities].

33. In order to arrive at this purpose [of undertaking all the required formalities], as soon as the Ordinary shall have accepted any denunciation of the crime of solicitation, either personally or through a priest, he will summon, either personally or through a priest specially delegated to do so, two witnesses (he summons them separately and with appropriate circumspection)and with appropriate circumspection) two witnesses, in so far as it is possible, from the ranks of the ecclesiastics. But it is far better, above any exception, to summon persons, who are familiar with both the one denounced and the one denouncing. These persons, with the notary present (cfr. n. 9), who is to put the interrogations and responses in writing, [are put] under the sanctity of an oath to tell the truth and to observe its secret nature, accompanied by the threat, if it seems necessary, of excommunication reserved to the Ordinary of the place or to the Holy See (cfr. n. 13). He will interrogate them (Formula G), concerning the life, morals and public reputation both of the one denounced and of the one denouncing. [They will be asked] whether they think that the one denouncing is worthy of credence; or whether, on the other hand, that person is capable of lying, of calumniating and of perjuring himself; and whether these persons know whether there has ever been any case of hatred, grudge or reason for enmity between the one denouncing and the denounced person.

34. If the denunciations are many in number, there is nothing to prevent the same [character] witnesses to be used for all or [to use different] witnesses, always being careful to have a double testimony as to the denounced and any denouncer.

35. If two witnesses cannot be found where each individual knows both the denounced and the denouncer, or if they cannot be interrogated at the same time without the danger of scandal ++14++ or without detriment to the good name concerning him, then arrangements to be made, so that two persons, by means of a divided (dimidiatae) (testimony), namely, interrogate two witnesses only about the denounced and another two only about the individual denouncers. In this case, however, it will be necessary to inquire elsewhere as to whether hatred, enmity or any other human disaffection against the denunciated [priest] was the case.

36. If not even the divided efforts cannot be pursued, or because capable witnesses cannot be found or because scandal or detriment has to be feared and rightly so, there is the possibility of substituting, cautiously, however, and prudently, [for the witnesses] with extrajudicial information about the denounced and the ones denouncing and their mutual personal relationships, with [all of this] put into writing; or [the same results can come about] also through supportive proofs which corroborate or weaken the accusation.

37. This [article], then, pertains to the third letter (c). If in the denunciations, which happens not rarely, some persons are influenced; perhaps also solicited, or others who can [simply] bring forward testimony concerning for some type of reasons. All of these people must be examined severally (that is, separately) according to the judiciary formula [below.] (Formula I). First of all, they must be interrogated through general matters, and then, by degrees, as the matter evolves, arriving at the particulars, whether and how they had really been solicited, or did they know or hear that other persons had been solicited (Instruction of the Holy Office, February 20, 1867, n. 9).

38. The greatest circumspection must be used in inviting these persons to this interview; for it will not always be opportune to bring them to a public place such as the chancery, especially if these are girls who are being subjected to the examination, married women, or those who are domestics. If those to be examined live either in monasteries, in hospitals or in pious homes for girls, then, the particular [persons] should be summoned with great diligence and on different days according to circumstances (Instruction of the Holy Office, July 20, 1890).

39. What was said above about the way to receive the denunciations, will also be applied, changing what has to be changed (mutatis mutandis), to the examination of persons who have been brought forward.

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40. [If the examination of these persons, who corroborate each other by positive evidence, and because of which examinations there exists [therefore] either an arraigned priest or another person weighed down (with some accusations), then the denunciations that are true and strictly speaking denunciations and all the rest of the information about these [denunciations] are pursued regarding the qualification of the crime, regarding the resumption of the preceding acts and of the resumption of the efforts to be taken in accordance with what is prescribed above.

41. Once, however, all these matters are taken care of, the Ordinary is to communicate the Acts to the promoter of justice, who will see now whether all the procedures [actions] have been performed correctly or not. And, if he thinks that there is nothing against their acceptance, he should declare the inquisitorial process closed.

Chapter II : Canonical Directives and the Admonition of the Accused.

42. When the inquisitorial process has been closed, the Ordinary, having heard the promoter of justice, should proceed as follows, namely:

a) if it is evident that the denunciation totally lacks a foundation, he should order this to be declared in the Acts, and the documents of the accusation should be destroyed;

b) if the indications of the crime are vague and indeterminate or uncertain, he should order that the Acts be put into the archives, to be taken up again if something else happens in the future;

c) if, however, there are indications of a crime serious enough but not yet sufficient to institute an accusatorial process, as especially in the

case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but were not corroborated by any or insufficient proofs (cfr. n. 36), or even many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula H) the first or second [time?], paternally, seriously or most seriously according to the norm of Canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation is laid upon [the accused]; the Acts, as above, should be kept in the archives and in meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2):

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters [which are prescribed for this trial].

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43. The admonition, concerning which treatment is made in the preceding number with the letter (c), is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cfr. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

44. If, after the first admonition, other accusations against the same accused take place concerning solicitations, preceding the admonition itself, the Ordinary should see, according to his own choice and conscience, whether the first admonition should be considered sufficient or whether he should proceed to a new admonition or even to further measures (Ibidem, § 6).

45. It is the right of the Promoter of Justice to appeal and to have recourse for a accused against the canonical prescriptions of this kind to the Holy Congregation of the Holy Office within ten ten days from thetheir dissemination or intimation. In this case, the Acts of the case willhave to be transmitted to the same Holy Congregation according to the prepprescription of Canon 1890.

46. These actions, however, even if put into effect, do not extextinguish the penal action. and therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III – The decrees for the accused persons

47. When once there is a sufficiency to institute an accusation, as was said above in number 42 (d), arguments should be made openly, and the Ordinary, having heard the promoter of justice and having observed everything, in so far as the peculiar nature of these cases allows, which is stated concerning the citation and denunciation of judicial acts in Book IV, Title VI, Chapter II, of the code, shall issue a decree (Formula O) concerning the accused in the presence of the Ordinary, or before a judge delegated by himself (cfr. n. 5), asking [him] for crimes introduced and brought against him, which in the forum of the Holy Office are said in

unclassical parlance "Reum constitutis subiicere" [to subject the accused to an indictment]; and he will take care to bring this information to the accused himself in accordance with canonical principles.

48. The judge should paternally and gently exhort the accused, who has now been cited, when he appears, and before the indictments are formally begun, to confession, and, when he has consented to these exhortations, the judge, having summoned the notary or ~~notaries~~, if he has found it more opportune (cfr. n. 9) without his intervention, can receive the confession.

49. In this case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (See below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

50. If, however, on the other hand, the accused has denied the crime, or has made a confession that is not substantially integral, or even has summarily refused the decision in view of his confession, the judge, with the notary present, should read him the decree by which he declares, concerning which paragraph 47 speaks; and the deliberations are then opened.

51. The trial opened, the judge can, having heard the Promoter of Justice according to the mind of Canon 1956, suspend the accused respondent either from exercising any sacred ministry at all or only from hearing the sacramental confessions of the faithful up until the time of the judgment. If, however, by chance he thinks that [the accused] can impose fear upon the witnesses or secretly instigate them [to thwart the trial] or in any way impede the course of justice, he can also, having also heard the promoter of justice, order that he go to a predefined location and remain there under special vigilance (Canon 1957). And, on the other hand, [however], each decree of this type is not given a remedy in law (Canon 1958).

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, having cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him be not revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the surge of speech slips out which seems to savor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been inconsiderately [put into the Acts], he should order, as soon as he notices it, to be completely deleted. In every way the judge is to remember that it is never right for him to bind the accused by an oath to tell the truth (cfr. Canon 1744).

53. The indictment of the accused having been completed in all matters and the Acts having been seen and approved by the Promoter of Justice, the judge is to issue a decree concerning the conclusion of the case (Canon 860), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings] to the Ordinary.

54. If it happens, however, that the accused remains contumacious, or, for some grave reasons the indictments cannot be pursued in the diocesan Curia, the Ordinary, saving to himself the right of suspending the accused *a divinis*, should defer the entire case to the Holy Office.

Chapter IV - The Discussion of the Case, the Definitive Decision, and the Appeal

55. The Ordinary, having received the Acts, unless he wishes himself to proceed to the definitive decision, should delegate the judge (cfr. n. 5), another one, in so far as it can be done, different from the one who conducted the inquisition or the indictment (cfr. Canon 1941, § 3). The judge, however, whoever he is, whether the Ordinary or his delegate, should designate, according to his prudent decision a space of time for the defender to prepare a defense and to tender this in a double copy, one copy to be given to the judge himself and the other copy to the Promotor of Justice (cfr. Canons 1862-63-64). However, the promoter of justice, within a time period likewise previously established by the judge, should tender in writing his own inquiry (requisitoriam), as they now call it.

56. Still, a congruent time having been interposed (Canon 1870), the judge, according to his conscience informed from the Acts and from the proofs (Canon 1869), will pronounce a definitive decision, either a condemnatory decision, if he is certain of the crime, an acquittal, if he is certain of his innocence; or an abandonment of the charges, if he is invincibly doubtful because of the lack of proofs.

57. The decision is rendered according to the respective formulas connected to this Instruction and will have been to put in writing, with the addition of an executory decree (Canon 1918). First of all, the Promotor of Justice having been notified beforehand, the decision must be solemnly made known to the accused, who has been cited for this by the judge who is presiding at the Tribunal, with the notary present. If, however, the accused, rejecting the citation, has not appeared, the intimation of the decision should be made through letter, having obtained exact testimony of its reception through the public post office.

58. Both the accused, if he thinks that he has been [wrongly created], and the promoter of justice have the right of appealing from this decision to the Supreme Tribunal of the Holy Office, according to the prescription of Canon 1879 and following within ten days from the solemn notification of the same; and the appeal of this type has the effect of suspending the decision [suspensive], but not so, if it is given (Cfr. n. 51) for a suspension from the hearing ++19++of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an authencic copy or the original itself of all the acts of the case to the Holy Office, as quickly as it can be done, adding information as necessary or as he has judged to be opportune (Canon 1890).

60. As for the copyist, then, or notary, as sometimes must occur, let those duties prescribed by Canons 1892-97 be observed to the last detail.

However, what pertains to the execution of the decision, those prescriptions should also be observed, according to the nature of these cases, as is found in Canons 1920-24.

++20++

TITLE NUMBER THREE

PENALTIES

61. "He who has committed the crime of solicitation..., should be suspended from the celebration of Mass and from the hearing of sacramental confessions or even, according to the gravity of the delict, should be declared incapable of accepting them. He should be deprived of all benefices and dignities, of his active and passive voice, and be declared incapable for all these [honors and capacities], and in the more grievous cases also be subjected to reduction [to the lay state]. Thus states the Code in Canon 2368, § 1.

62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the mind of Canon 2218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one's eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religious vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

63. To the greatest penalty of degradation, there can be added for a religious who is accused the reduction to the status of a lay-brother. This is only then imposed when, having weighed everything, it evidently appears that the accused, immersed in the depths of malice in the abuse of his sacred ministry, combined with the grave scandal that is harmful to the faithful and their souls, exists to such a degree of foolhardiness and habit, so that there is no hope, humanly speaking, or almost no hope, of his amendment that is evident any more.

64. On top of the penalties properly imposed, in order to obtain the effect of these penalties more fully and securely, there will be supplementary sanctions in cases of this type, namely:

++21++

a) Upon all accused persons judicially convicted there should be interposed congruous, to the degree of the faults, and salutary penances, not in substitution for the penalties properly speaking in the sense of Canon 2312, § 1, but as a complement [to them], and among these (cfr. Canon 2313) especially spiritual exercises for some days in some religious house to be performed with a suspension, during these times, from the celebration of Mass.

b) Upon the accused convicted who has confessed, moreover, there should be imposed an abjuration, according to the different cases, if there is a light or a strong suspicion of heresy into which because of the nature of the crime soliciting priests fall into, or even of formal heresy if by chance the crime of solicitation has been joined to false dogma.

c) Those who are in danger of falling back [into their former ways], and therefore of becoming greater recidivists should be submitted to particular vigilance (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place (Canon 2302).

e) Then, when concerning the absolution of an accomplice, as this is outlined in the Constitution Sacramentum Poenitentiae, there is no indication at all in the external forum, and, therefore, of the sacramental seal, there can be reason to add at the end of the condemnatory sentence an admonition to the accused that, if he has by chance absolved his accomplice, he should quiet his conscience by having recourse to the Sacred Penitentiary.

65. According to the norm of Canon 2236, § 3, all of these penalties, as they have been applied once by the judge ex officio, cannot be remitted except by the Holy See through the Supreme and Sacred Congregation of the Holy Office.

TITLE IV

OFFICIAL COMMUNICATIONS

66. Whenever an Ordinary immediately accepts a denunciation of the crime of solicitation, he should not omit telling this to the HOly Office. And if by chance he treats of a priest whecehr secular or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should send to the Holy Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

67. Any Ordinary who ahs proceeded correctly against some priest who is soliciting, should not omit informing the Holy Congregation of the Holy Office, and, if it is a matter in which a religious is involved, also the General Superior concerning the outcome of the case.

If any priests condemned of the crime of solicitation, or even only admonished, should transfer his residenct to another territory, the Ordinary a quo should immediately warn the Ordinary ad quem of the things that preceded taht person and of his juridical status.

69. If any priest suspended in a case of solicitation from hearing sacramental confessions but not from sacred preaching happens to go to another territory to preach, the Ordinary of this territory should be reminded by the prelate of the accused, whether secular or religious, that he cannot be utilized for hearing sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since they concern the common good of the church to the greatest degree, the precept of doing these things obliges under serious sin [sub gravi].

TITLE V

THE WORST CRIME

71. By the name of the worst crime is understood at this point a signification of any obscene external deed, gravely sinful, in any perpetrated by a claric or attempc with a person of his own sex.

72. Those things that have been stated concerning the crime of solicitation up to this point are also valid, changing only those things necessary to be changed by their very nature, for the worst crime, if someone by chance in the presence of the Ordinary of the place, concerning whom (which may God prevent) happens to be accused, having accepted the obligation of the denunciation from the positive law of the Church, unless

perhaps it has been joined with the crime of solicitation in sacramental confession. In decreeing penalties, however, against delinquents of this type, besides those which are found spoken of above, and theóy should also be kept before one's eyes (Canon 2359, § 2).

73. To have the worst crime, for the penal effects, one must do the equivalent of the following: any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex or with brute animals (bestiality).

74. Against accused clerics for these crimes, if they are exempt religious, and unless there takes place at the same time the crime of solicitation, even the regular superior can proceed, according to the holy canons and their proper constitutions, either in an administrative or a judicial manner. However, they must communicate the judicial decision pronounced as well as the adminsitrative decision in the more serious cases to the Supreme Congregation of the Holy Office.

++24++

FROM THE AUDIENCE OF THE HOLY FATHER, MARCH 16, 1962

Our Most Holy Father John XXIII, in an audience granted to the most eminent Cardinal Secretary of the Holy Office on March 16, 1962, deigned to approve and confirm this instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.

At Rome, from the Office of the Sacred Congregation, March 16,. 1962.

A. Cardinal Ottaviani

Place of the seal

++25++

APPENDIX

FORMULAS TO BE USED ACCORDING TO THE CIRCUMSTANCE
(Omitting other matters which are found in various places among the authors)

++27++

FORMULA A

THE FORMULA FOR TAKING AN OATH TO EXERCISE ONE'S OFFICE FAITHFULLY AND TO OBSERVE THE SECRET OF THE HOLY OFFICE

In the name of the Lord.

I, ...appearing before....and touching the most holy Gospels of God placed before me, swear and promise to exercise my duty faithfully....Likewise, under the pain of excommunication late sententiae ipso facto incurred without any declaration, from which outside of the moment of death, I can be absolved by no one except by the Holy Father, excluding even the Cardinal of the Penitentiary, and, under other most serious penalities, at the disposition of the Supreme Pontiff to be inflicted upon me in the case of transgression, I promise sacredly, vow and swear, to observe inviolably the secret in all matters and details which will take place in exercising the aforesaid duty, excepting precisely those matters at the end and at the completion of this negotiation [or of these negotiations] which can be legitimately published. Further, I shall observe this secret absolutely and in every way with all who have no legitimate part in the treatment of this same matter [or, who are not constricted by the same sworn bond]; nor [will I ever], directly or indirectly, by means of a nod, or of a word, by writing, or in any other way and under whatever type of pretext, even for the most urgent and most serious cause [even] for the purpose of a greater good, commit anything against this fidelity to the secret, unless a particular faculty or dispensation has been expressly given to me by the Supreme Pontiff.

++28++

FORMULA B

Formula of Renunciation (Abjuration)

I (name, family name, etc. of the one abjuring, which, if he is a religious, he should add his name, etc. which he used in the world) the son of (name of the father), being ... years of age, and personally brought to trial [arraigned], and, having genuflected before you (name, family name, qualities, etc. of the person who is to receive the abjuration), and having before me and touching with my hand the most holy Gospels and knowing that no one can be saved unless he believes what the Holy Catholic and Apostolic Roman Church holds, believes, preaches, professes and teaches, I confess and I am sorry that I have erred seriously against [that church] through the abuse and profanation of the sacrament of penance [and through the profession and doctrine of false dogma].

Now, sorrowful and penitent for the aforesaid [errors and heresies, persuaded about their falsity and of the truth of the Holy Catholic faith], I abjure all the same [errors I made] with a sincere heart and a real faith and I detest [in the same way in general all other errors and heresies contrary to the Holy Catholic and Apostolic Roman Church] and at the same time humbly accept and promise faithfully to implement all the penances given to me by R.P.D. [The reverend dignitary?]...that have already been imposed or will be disposed; and if I have not stood firmly in some matter despise these promises and oaths of mine (May God prevent this) I subject myself to all the penalties and castigations which have been stated and promulgated by the sacred canons and other general constitutions against delinquents [who have acted] in this way. Thus, may God help me and these Holy Gospels of His, which I touch with my hands.

I...the aforesaid have abjured, sworn, promised and obligated myself as above, and in testimony [of my good faith] in this matter I have signed with my hand this written promise of my abjuration ++29++which I have related orally with words (here is noted the place in which the abjuration has been made).

On this ...day of the month of...in the year...

Signature

After the absolution has been imparted, the one who received the abjuration and gave the absolution will put his signature here in the way it is noted in Formula C, which follows.

++30++ FORMULA C

The Formula of Absolution

Once the penitent, kneeling on both knees and having first touched the Holy Gospels of God, has read and signed the formula of abjuration, [the bishop or his delegate] absolves him, wearing at least the purple stole; and, while sitting, will recite the psalm Miserere or De Profundis with the Gloria Patri.

Then, standing, he will say:

Kyrie, eleison, Christe eleison, Kyrie, eleison.
Pater noster, secretly up to
And lead us not into temptation.
But deliver us from evil.
Save your people, Lord,
My God, they are hoping in you.
Lord, hear my prayer.
And let my cry come unto you.
The Lord be with you.
And with your spirit.

Let us pray

God, of whom it is proper always to have mercy and to treat with forbearance, we supplicantly beseech you, that the compassion of your holiness absolve with clemency this servant of yours whom the shackle of excommunication binds. Through Christ our Lord. Amen.

Then, again sitting down, he should absolve the penitent still kneeling before him with these words:

By the Apostolic authority which I exercise in this matter, I absolve you from the bond of excommunication, which you [perhaps] have incurred, and I restore you ++31++to the holy sacraments of the church, to the communion and unity of the faithful, in the Name of the Father + and of the Son, and of the Holy Spirit. Amen.

With these acts, the one who has imparted the absolution should impose the salutary penances (for the most part [a penance] of reciting determined prayers, of performing some pious pilgrimage, of accomplishing other works of piety, of observing a particular fast, or of dispensing alms in pious causes, etc.), and finally, then, the formula of abjuration and he signs below in this way:

[In the execution of the orders of R.P.D. (the reverend superior) (the name, etc. of the one delegating him)] the aforesaid (name, etc., of the penitent) was administered by myself [the delegate] the abjuration concerning (e.g. formal, or grave or light) ... and the salutary penances in the usual form of the church, these on the day and year given above.

So be it. I (the signature of the person absolving the other)

(The delegate will transmit the formula [evidently this means the document itself] directly to him from whom he has received his delegation together with the instruction, and other letters also received, if he has any, keeping nothing at all for himself).

++32++ FORMULA D

The Formula of Delegation to Receive a Denunciation

The ... day of the month of ... in the year ...

We...delegate with these letters...to receive [without the intervention of the notary], under the secret of the Holy Office and according to the attached instruction, the denunciation which the named person intends to make.

L. S. The signature of the Ordinary of the place who is delegating

(Formula E is connected to the letter).

The Manner of Receiving the Denunciation Pertaining Particularly to Solicitation

[Note 1.- Whatever words are included within the brackets are valid in the case in which the denunciation is received by the delegate, or, respectively, without the intervention of a notary.]

If the the delegate, however, having signified a serious reason, cannot observe this manner of receiving the denunciation, he should make recourse for some instruction from whom he has received the delegation.]

The notary, if he is present, or he who is to receive the denunciation will begin with these words or in words similar to these:

On the...day of the month of...in the year...

On my own accord I personally appeared before the undersigned (there should be written the name, the family name, etc. of that person who is to receive the [denunciation], who, if the notary is not present, should write: before me the undersigned) taking place in (here there are noted the place and the diocese where the person who is to receive the action [that is, the denunciation] lives) [Delegated specially only for this action by R.P.D. [The reverend person delegating?]..., as [will be seen] from his letter directed [to me] and given under the date. (Let there be expressed on what day the letter itself was written) applying to the present situation] N.N.(there should be written the name, family name, the name of the father, the country of origin [that is, nationality], age, situation [no doubt the type of work the person does] and the home address of the person denouncing; and if this person is a religious, also the name the person was called by in the world) to whom, having made an oath to speak the truth, which he took having touched the Holy Gospels of God (which he must touch with his hand, even a priest) it was explained as below, that is:

This person denouncing in ordinary language [he must declare that he knows that this faculty was obtained from the ordinary of the place to receive without the intervention of the notary what he is about to relate to exonerate his conscience, and therefore because he cannot present himself to the Most Reverend Bishop concerning the just causes; then] he must continue to narrate, in words, however, discrete and contracted [brief] what pertains to the solicitations made to him or what +334+were the words, the writings, or the acts, accurately describing the place, time, occasion, times and singular circumstances, and whether in the act of confession either before or after the sacramental absolution these things took place. He must identify the confessional seat and the soliciting confessor himself, and in so far as he either does not know his name and family name or has forgotten it, he shall describe accurately the person of that man, noting distinctly all his characteristics, so that he might be recognized. He should note who receives the denunciation, that he should avoid interrogating the denunciating person whether he gave consent to the obscene deed in any way or refused, since the witness is not bound to manifest his defects; nay, the one denouncing is expressly advised that he is not bound to manifest consent and perchance he gave to both these words written as they are, they are

narrated, and, in so far as possible, in the same words of the one denouncing, what follows here, nor is anything more required.

The interrogation: Whether he knows or heard it said, that said N.N. (naming the person), the confessor, solicited other penitents to obscene things?

He responds: (If the response was affirmative, he will seek the name and family name of the persons and the source (cause?) of the knowledge).

The interrogation: Concerning the good name of the aforesaid confessor N.N. with you yourself as with others?

He responds:...

The interrogation: Whether he made the declarations from hate or from love, and from enmity or other general reasons, etc.

He responds: Correct (if he will say that he had denounced in order to exonerate his own conscience.)

If more than one month had passed since the solicitation, moreover, there should be added:

The Interrogation: Why then did you delay the denouncing of the aforesaid matters to your Ordinary and the exoneration of your conscience?

He responds:

All of these matters having been absolved, there should read to the denouncing person everything which was given in writing, or, having given a just reason in writing, a just cause in writing, the instrument should be given to him so that he may read it in the presence of him who receives the denunciation; all of these matters proved and accepted, together with the corrections, additions and erasures, if there are some, ~~if~~ he is invited to write his signature below, and, having given an account of his taking an oath to observe the secret, he should be dismissed.

All of these matters will be described in these words:

Having these matters and having accepted them, the one denouncing having been dismissed has sworn to observe the secret, again touching the Holy Gospels of God (he swears an oath upon the Gospel again); and in confirmation of what has been testified by word he writes his signature (or, if he cannot write: since he cannot write, as he asserted; (let the cause be noted), he made the sign of the cross).

After the one denouncing here has signed or made the sign of the cross, the notary should sign, if he is present, in this way:

These are the Acts signed by myself, the notary (and if he has been assumed only for this act: assumed only for this act).

Finally, he signs who receives the denunciation.
L. X S.

If, however, the notary was not present, then the one who receives the denunciation signs in this way:

These Acts are signed by myself, N.N. [specially delegated only for this act by R.F.D. (the reverend delegating person) N.N.].

[The delegate then delivers the entire act directly to him from whom he has received the delegation together with the instruction and the letters received, keeping nothing for himself].

++36++ FORMULA F

Formula of Delegation to Undertake the Investigation

A) TO UNDERTAKE THE COMPLETE INVESTIGATION

The...day...of the month of...in the year....

We...ask you that you will take the customary diligence in pursuing [this investigation] according to the affixed instruction about a false denunciation made by (for example, a woman or women).....
against the priest.....by interrogating [them] separately, formally and under oath to tell the truth and observe the secret, two witnesses, in so far as is possible from the ecclesiastical body, but more important than anything else [to interview somebody], who knows well both the denounced person and the one denouncing (or, if the denouncing are many in number, one and all denouncers). If you cannot find only two witnesses who know together the one denounced and each and every one denouncing, you will call many, as many, namely, as it will be fitting so that there will be a double testimony as to the denunciated and each one denouncing. An authentic copy of the Acts, however, you shall transmit to us directly and in a safe way, together with the instruction and these letters, retaining nothing for yourself.

L.S. The Signature of the Ordinary of the place, the one delegating

(Formula G is joined to the letter)

B) TO UNDERTAKE A PARTIAL INVESTIGATION

On the...day of the month of... in the year....

We...ask you to undertake the investigation according to the affixed instruction.....++37++by interrogating [them] separately, formally and under an oath to speak the truth and of observing the secret, two witnesses, in so far as is possible, from the group of ecclesiastics, as greater than any exception, who (e.g. the woman or women) know [them] more closely.

You will transmit an authentic copy, however, of the acts to us directly and in a safe way, together with the instruction and this letter, keeping nothing for yourself.

Signature of the delegating Ordinary of the place

L.S.

(To the letter is joined formula H)

++38++

FORMULA C

Way of Undertaking the Entire Investigation (Note 1)

[Note: Whatever is included between the brackets is valid in the case in which the work is done by a delegate.]

On the...day of the month of...in the year of....

Having been summoned, this person personally came into the presence of myself, the undersigned, (let there be written the place and diocese where he is located) [for this act only specially delegated by R.P.D.... as [is evident] from the letters of the same person delegating directed and given to me on this date...(there should be expressed on what day the letter was written) binding to the present position].

N...N...(the name, family name and qualities of the Respondent witness) who, having reported his taking his oath to tell the truth, which he gave (even if a priest), having touched the holy Gospels of God, was by myself:

1. The Interrogation: whether he knew the priest N.. N... (name, family name and qualities of the person denunciated).

He responded:....(let there be written the language that the witnesses use and his response).

2. The Interrogation: what is the lifestyle of this priest, what are his morals, what is the opinion of people [about him]?

He responds:....

3. The Interrogation: Whether he knew N...N... (name, family name, and qualities of the one denouncing, or, if there are many, of each one of them).

He responds:...

4. The Interrogation: What is his (each one of them) life-style, morals, and his opinion among the people?

++39++

He responds:...

5. The Interrogation: Whether he thought that he or she is worthy of faith or capable, on the other hand, of lying, calumniating in court and even of perjury?

He responds:...

6. The Interrogation: Whether he knows whether perhaps between him and the aforesaid priest there ever existed any reason for hate or enmity?

He responds:...

Then, have duly read the work and brought him to take the oath of observing the secret, which he took as above, he is dismissed and, before he goes away, signs in confirmation of what has been stated (or, if he cannot write, when he asserted that he cannot write (let the reason be noted), he makes the sign of the cross).

After the witness has signed here or made the sign of the cross, he signs that he received the testimony in this way:

These acts are signed by myself, N.N., [specially delegated only for this act].

L.X S.

[The delegate then directly transmits the act to him from whom he has received delegation together with the instruction and the letter he received, keeping nothing at all with himself].

++40++

FORMULA 4

The Way of Undertaking Partial Investigations (Note 1)

(Note 1. Anything included in brackets is valid in the case where the investigation is done by a delegate).

On the...day of the month of...in the year...

Having been called personally there appeared before me the undersigned (let there be written the name, family name, etc., of the person who is to do the activity) taking place in (let there be noted the place and diocese where he is to be found) [specially delegated only for this act by R.P.D....., as [can be seen] in the letter of that same person directed and given to me on this date (let there be expressed on what exact day the letter was written) attached to the present document. N...N...(name, family name and qualities of the respondent witness) who, having been brought to take the oath to tell the truth, which he does (even a priest) having touched God's holy Gospels, performed this for me.

1. Interrogation: whether he knew (for example, the woman) N...N...? (name, family name and qualities of the indicated person).
He responded:....(this should be written in the same language the witnesses uses for his response).

2. The Interrogation: what is his lifestyle, what are his morals, what is his reputation among the people?
He responded:...

3. Interrogation: Whether he thinks that he [or she] is worthy of credence or on the other hand thinks that he or she is capable of lying, calumniating in court and even of committing perjury?
He responded:...

4. The Interrogation: Whether he knows whether perhaps between him or her and the priest there exists or has existed a cause for hate or enmity?
He responded:...

Then, the act duly read to the witness, having sought his taking an oath to observe the secret, which he does as above, the witness will be dismissed, ++41++ and before he leaves, signs as a confirmation of what has preceded (or, if he cannot write: when he cannot write, as he asserted (let the cause be noted), he made the sign of the cross).

After the witness signed here or made the sign of the cross he who received the testimony signed himself in this way:

These are acts done through me N...N... [especially delegated only for this act].

L.X.S.

[Then the delegate will transmit the act directly to him from whom he received the delegation together with the instruction and letter keeping nothing for himself].

FORMULA I

Way of Conducting an Examination Through Generalities

Note: Whatever appears within the brackets is valid in the case where the examination is by the delegate, or respectively, without the intervention of a notary.

If the delegate, however, having given a grave reason, cannot observe this way of administering an examination, he should recur to him from whom he received the delegation for [further] instructions.

The notary, if he is present, otherwise, he who is to undertake the examination will begin the procedures in these or in similar words:

On the...day of the month of...in the year,..

By force of the decree of R.P.D. [The Most Reverend Bishop] (let there be written the name, etc. of the Ordinary of the place) given on the date of ..... having been summoned there appeared before the undersigned (let there be written down the name, the family name, etc. of the person who is to receive the act, and who, if the notary is not present, will write) in the presence of myself the undersigned), taking place in (let there be noted the place and diocese where he is to bound who is to receive the action) [especially delegated only for this action by R.P.D....., as appears from his letter directed to me and given to me on the date (let there be expressed on what precise day the letter was written), this person, N.N. (here there should be written the name, family name, father's name, homeland, age, condition and address of the person summoned; and, if he is a religious, also the name by which this person is known in the world), having been brought to take an oath to tell the truth, which he does touching God's holy Gospels (which he must touch with his hand), was:

Asked: Whether he knows or imagines the reason for his being called for the present examination?

He responded: ...(let there be written his response in that language which the summoned person uses).

Asked:...For how many years have you been approaching the sacrament of penance?

He responded:...

Asked: Whether he always went to receive the sacrament of penance from the one and same confessor ++43++ or whether from many priests: moreover, whether he always went to receive the sacrament of penance in the one and same church?

He responded: ...

Asked: Whether from each of the priests to whom this person confessed he received holy admonitions and opportune instructions, which gave edification to the person being examined, and kept him from evil.

He responded:...

If the response was affirmative, that is, if he says that he had always been directed well, then he will be interrogated in the following manner:

Asked: Whether he knows or remembers if at any time it was said or heard that a certain confessor had not acted in such a holy and honest manner toward penitents, so that murmurs or even contemptible words against the confessor had been proferred: for example, had the person being examined heard similar things from one or from many penitents, and over the past year or over four or three months?

He responded:...

If after this interrogation and commentary the person being examined continues to deny, let the action be concluded with the usual formula, which appears at the bottom of this instruction.

But if there had appeared to be something against any confessor, according to those things concerning which he is being asked, then he will be interrogated further as follows:

Asked: That he tell the name, family name, office, and age of the confessor, and the place or seat of his confession; or whether he was a secular or a religious priest, etc.

He responded:...

Asked: That he tell, in order, sincerely and clearly, using, however, discrete and constricted words, all of those things less than honorible which he had heard in the sacramental confession either before or after or on the occasion of confession: whether there had been something performed with him less than honest by nods, touches or action, etc., by the priest.

He responds:...

At this point, the judge solicitously will take care that the description is in the same words which the confessor used, the obscene words, the seductions, the invitations to meet in some place for an immoral purpose, and all the other things which constitute the crime of solicitation, using the vernacular language for the answers which are to be sedulously and truthfully recorded++++ and, in so far as possible, with the same words in which they were offered; he should add the temperament of the person examined, if he notices that he seems impeded by too much fear or bashfulness from telling the truth, assuring him that everything will be kept under an inviolable secret. Then he should ask him the time from which the solicitations began, how long they perdured, how often they were repeated, in what words or acts smacking of an immoral purpose they had been expressed. He will diligent avoid asking about the consent of the person himself being examined with regard to the solicitation, and, even more, he should advise him expressly that he is not bound to manifest whether by chance he gave consent. Likewise, he will avoid any interrogation which he give evidence of a desire to know the sins of that person.

Asked: Whether he knows or heard it said that the aforesaid confessor had solicited other penitents toward obscenities; and if affirmative, he should name them (and he will help give the name, family name, etc., or at least the better indications by which the other solicited persons can be detected).

He responded:...

Asked: Whether the aforesaid person being examined, had given testimony out of a love for jussice and truth, or rather from another motive of enmity or of hate, etc.?

He responded:...

With all of this taken care of, there should be read to the person being examined everything that has been put down in writing, or, for a just cause expressed in the notes, the instrument [that is, the document upon which the notary has written the answers] should be given to him so that this person may read it to himself in the presence of the one who accepted the examination; then, everything that has been approved and accepted by that person, together with the corrections, additions and erasures, if there are any, he should be invited to sign and led to take an oath to observe the secret, and then he should be dismissed. All of these matters shall be described in this words:

The accused, having received and accepted all these matters, was dismissed, having sworn to observe the secret, once again touching God's holy gospels (He will swear again on the Gospel book) and, in attestation of what he had stated, he signed it (or, if he cannot write; when he asserted that he could not write (let the cause be noted), he made the sign of the cross).

After the person being examined has signed here or has made the sign of the cross [on the document], the notary will sign, if he is present, in this way:

These acts are signed by myself, N.N., Notary (and if he has been authorized only for this action/ authorized only for this action).
L.K S.

Finally, he who been administered the examination will sign it. If, however, the notary was not present, then the one who accepted the examination will sign in this way:

These acts are signed by myself, N.N., [specially delegated for this act only by R.P.D., N.N.].

[The delegate will then transmit the action [documentation for the lawsuit] directly to him from whom he received his delegation together with the instruction and the accepted letter, keeping nothing at all for himself].

++46++

FORMULA L

FORMULA OF THE PROPOSAL TO BE MADE BY THE PROMOTER OF JUSTICE; IEE COMPLETE INQUISITION

Having made a brief summary and inquiry about the reasons of law and fact, the conclusion comes about through the promoter of justice, for example, as followed, however, according to the circumstances:

Having considered everything, I think it must be decided that the priest ...be warned (simply or correctly) - or - let the case be constituted in the Curia, that is, the diocesan Curia, and let the case be undertaken according to law (meanwhile, however...and here there are added the canonical opportune provisions, if there are some that seem to need to be proposed to the promoter).

On the ... day of the month of ... in the year ....
The signature of the Promotor of Justice

++47++

FORMULA M

FORMULA OF THE DECREE TO CONSTITUTE A PENAL REMEDY

We (name, and so on, qualities, etc., of the Ordinary of the place), having weighed the actions against the priest, N. N. (our diocese, abbacy, prelacure, etc.) about whom there is reported the crime of solicitatioc, we decree that the aforesaid priest, N.N. : be admonished (paternally, gravely, etc. according to the diversity of cases) under the secret of the Holy Office.

If some resolution has to be added, and there is added:

And according to the resolution, the resolution is that...

These are the acts of... (the address of the Ordinary of the place) on the...day of the month...of the year...
L. S.

Signature of the Ordinary of the Place
Signature of the Notary

++48++

FORMULA N

The Method For Warning About the Crime of Solicitation

Concerning those who have been denounced once or twice concerning the horrible crime of solicitation for the most part, having taken the opportune efforts, it is decreed that: they should be warned (simply or correctly) under the secret of the Holy Office. The person to whom belongs or is assigned the duty of imparting an admonition of this type, will summon the denounced priest, with the proper circumspection, and he is to impress upon him with serious words, more or less according to the circumstances and the tenor of the decision, but in a paternal and fatherly way, avoiding lest in any way, whether directly or indirectly, he reveal the ones denouncing him, in these words: "It has come to the ears of the Ecclesiastical authority that he, within the sacred tribunal of penance, not always acted as was befitting prudence and holiness, so that not without merit it must be feared lest he, with a rash effort, attempted to convert the sacrament itself of reconciliation...and the ruin of souls. It is therefore greatly to his interest that he carefully avoid these things in the future, lest the ecclesiastical authority be compelled to proceed to more serious matters

Let there be observed, moreover, the secret of the Holy Office regarding all the matter and with everyone to the greatest extent.

... if the admonition is done through letter, the method of admonishing should be done in this way.

[The delegate, however, is to give this admonition, at an opportune time, informs him from whom he receives his delegation of the results, at the same time transmitting to him all documents, if he has any, and not keeping anything for himself.]

++49++

The Form of the Decree for the Arraignment

The formulas proposed here are not, as is evident, definitive: they can and must be varied according to the different circumstances. They are proposed therefore as an example.

A) TO INDICT SIMPLY

The Reverend... to be indicted in the diocesan Curia about all the matters deduced against him and there should be a case according to law.

These are the Acts [signed at] (the address of the Ordinary of the place)

On the ... day of the month of... in the year of...

Signature of the Ordinary of the place

Signature of the notary

B) TO INDICT, HAVING ADDED CANONICAL PROVISOS

The Reverend...is to be indicted in the diocesan Curia about all the matters brought up against him and let there be a trial according to law. Meanwhile, however (for example, let him remain suspended from the celebration of Mass, or of exercising the sacred ministries and spiritual offices; he should leave this place... and go to that place... where he should remain under special vigilance, etc.).

These acts are signed (as above) on the ... day of the month of... in the year...

L.S.

Signature of the Ordinary of the Place

Signature of the Notary

++50++

FORMULA P

Way of Indicting

N.B., according to the norm of article 52 he is not to bind the accused to make an oath to tell the truth.

The notary will begin the action:

"On the ... day of the month of ... in the year ...

Having been summoned, The Reverend N.N. personally appeared before the undersigned (let there be written the name, family name, etc. of that person who is doing the indicting) [especially delegated for this action], who was:

Interrogated about his name, family name, parents, homeland, age, condition, etc.

He answered:.. (The Notary will write in the native language, and, in so far as he can, in the same words which the accused uses, his answers.)

Interrogated: Whether he knows or perhaps imagined the reason of his having been summoned?

He answered:...(and it will be continued in this way up until the end, noting down the single questions and his answers to them)."

If the answer according to this interrogation has been affirmative, the judge will invite the accused to explain everything separately and sincerely; otherwise, he will admonish him gravely, in order that, having been stricken by his own conscience, he would say whether perhaps he felt that he was burdened by any crime. And, if he then should respond affirmatively that he, as above, will invite him to confess his own fault with appropriate humility and sincerity, expressing the names of those who were delinquent with him and the words or facts and other circumstances of the matters which constitute the matter and individuality of the impetrated crimes.

And because it is difficult for him to be able to remember everything from the beginning, the judge will be able to put aside the space of two or three days, during which the accused person can diligently examine in prayer and tears his own conscience, giving him the option of giving his confession in writing as well, which in the following indictment ++51++the judge will formally receive, or, if it is given in writing, he will accept from his hands the notebook in which it is contained and will give it to the notary who will make a note of the matter, for example, in this way: The accused gave [me] a notebook [containing] his confession, as he asserted, having done it in writing, which he began...(he will note the first words of the document), and finished with...(he will note the last words), and which I, accepting it, sign with the letter A (he marks the page with this or another letter of the alphabet) and I have put it into the Acts." This method must be observed always as often as any document of any type received from the accused has to be inserted into the Acts.

After these, the directing judge will compare the confession that has been made either verbally or in writing with the denunciations existing in the Acts, and, if he shall find in it nothing that is omitted or left out, having omitted the affirmations, he shall proceed to the last questions; if, however, he finds anything in these which the accused either did not confess at all or lacked integrity in his confession, he will only make mention of it, as will be stated below.

If, however, the matter still remains negative against the accused, the judge will interrogate him further whether he knows against what delicts the supreme tribunal is proceeding; if he does not know, he will enumerate the crimes of this type (heresy, solication to grave matter, the worst crime [of

pediastry], the violation of the seal, etc.) Then he will ask him whether he impetrated any of these crimes: if he responds affirmatively, he will invite him to a spontaneous confession, as before; otherwise, he will read to him the decree by which a mandate has been issued that he be indicted. Then he will order him to relate the story of his own life and career; where he was born, where he has been educated, whether he was promoted to any academic grades or other signs of honor, where he lives, what offices and duties he had been assigned and other matters of a similar nature. Finally, he will ask of him whether he has any enemies, who they are and what is the cause of their enmity.

Having premised these general questions, the judge, before he addresses the single denunciations with the summoned accused, he will ask him about the particulars of the persons, places, and circumstances of the times brought out in the denunciation and what can demonstrate its probable truth or falsity: For example, where the place of the confessional is in the church or the rooms in the home of the priest; whether he receives the penitants before or after confession at home so that ++52++ he may impart counsel; whether he put books at their disposal, etc.; whether this took place that he would speak a long time with a woman at home or in the sacristy after confession and this with closed doors, whether it took place on such and such a day and in such a town or city, etc.

Then the judge will state to the accused -- always keeping secret the name of the one denouncing him -- each denunciation. But he will not, indeed, do so in a global or combined manner. He will bring up each and every denunciation distinctly in parts by reading them to the accused so that he first presents the whole denunciation before the accused and then singly in sections such as has been revealed in each denunciation.

The judge will begin from the less serious words and deeds and slowly proceed to the more serious; nor will he omit proving also some saying or deed that is not criminal, if there is something borne out by the denouncers, so that, once the accused has admitted that, if perhaps then the accused is tainted, he can be shown that the criminal words or deeds have been so joined that the public authority of the church cannot consider some of these criminal words or deeds as true and others as false. These words and deeds will be brought forth to confirm each of the denunciations, and, should there be any, those the earnest efforts [diligentiae]," favorable to the one denouncing and not favorable to the one being denounced; "Information" that is not favorable to him should not be thrown up against him. 'information', which is not held to be favorable to him.

By reason of association [connexio] or concent [continentia], the judge will also bring up to the accused the crimes not pertaining to the Holy Office, for which the accused has been denounced and for which he has not yet gone into judgment.

Simultaneously, the counter arguments upon which the accused perhaps has relied, whether [based] upon subterfuges, evasions and meaningless responses, must be proved.

The declarations of all the denunciations having been completed, if there are indeed more denunciations and the accused remains negative, the

judge should not omit to declare to the same accused that, not in conformity with his denials there stand more denunciations in number, distinct in time and reported by different persons, who, from reliable testimony, are of good name, in every way worthy of credence; they are incapable of calumniating or of committing perjury; they are indeed unknown to each other, and hence conspiracy is impossible. Nor has enmity or any other human pathological state been adduced as the reason to accuse [this priest]. It is only in order to satisfy the ineluctable obligation that they have taken the counsel of their own conscience.

++53++

These things having been brought up, the judge will interrogate the accused as to what he himself feels about the sixth precept of the decalogue and the sacrament of penance; whether he thinks it is licit for the confessor to act in such a way with penitents, so that, from certain documents (or, if he has confessed, from his own confession) it was proved that he had himself acted [in this way], whether he perhaps thinks that all [his actions were] in no way sinful; whether he was familiar with the Apostolic Constitution of s.m. Benedict XIV, which begins: "The sacrament of penance", and with the penalties which this Constitution and the holy canons threaten against the confessors in the sacred ministry who have abused their sacred ministry to the ruin of souls; and finally whether he can offer anything to exonerate himself.

After this, the judge will ask him whether he should continue this process here and now as being legitimate or on the other hand does the accused have an exception to make against it; whether he would be content to be assisted by a defender ex officio [from the tribunal] or whether he would wish to name his own defender for himself and, if he insists on some exception, whether he wants perhaps to have the examination of the denunciators repeated.

If he gives an affirmative answer to this last question, or, if in some way he has some [fact] to offer in his own defence because of which the witnesses must be heard (as, moreover, if a serious and sometimes unexpected difficulty comes up), the arraignment should be suspended. It should be reconvened after the denouncing persons have been examined once more or the witnesses have been heard. From these persons the judge will elicit new depositions, and, having formally made the [second] inquisition, formerly begins anew the arraignment.

The attestations of the denunciations having been taken care of, the text of the denunciations must be given to the promoter of justice, who will scrutinize it and declare whether he has any notes to make about it or whether there are new statements or new steps that ought to be taken.

The arraignment will not be concluded by the judge, unless there has first been an express consent by the promoter of justice.

At the end of each session there shall be read to the accused everything that has been presented and in writing for is read to the accused by the notary, and, once the accused has approved and accepted these statements, together with any corrections, additions and erasures, if there are any, he will be invited to write his signature; and, having been gravely warned

about keeping the secret, the accused will be dismissed. The notary will describe all of this in these words: "After having received and accepted all of this, the accused, before being dismissed, was warned about keeping the secret and before he was to leave, he was to sign in confirmation of what had been stated."

++54++

After the accused respondent has signed, the notary will sign in this way: "These Acts are signed by myself, N.N., notary (and if he has been authorized solely for this act: authorized only for this act)". Then the indicting judge will sign.

Since, however, there is a need for not only one single arraignment session to bring the many matters to their successful completion, but for many sessions, each one of these sessions should be opened and closed in the same way. At each session, at the bottom of every page, there should be the signatures of the accused, the notary and the judge, and, at the end of each session the judge will cite the accused, indicating the date for the following session which the notary will note in this way: "Having been informed of and having accepted all of these matters, the accused has now been cited for the ... day of the month of... to appear again, and he was dismissed after having been admonished, etc." as above. However, in the following session, the first question will be: Whether to those things which were treated in the preceding sessons the accused has anything to add, remove or correct on his own", and, after his answer has been transcribed, the sessions will then be continued, from that point at which the previous interrogation ended.

N.B. — It would be superfluous to note that the judge, before he comes to the indictment, must accurately subject the whole informative process to his examination, —obviously all the denunciations both informal and formal and also of the material not pertaining to the Holy Office, his examinations about the morals and the veracity of the ones denouncing, and the investigations and information about the life, morals and good name of the one denounced, plus love letters perhaps written by him, etc. — so that the same judge has at hand all the elements with which to weaken the denials of the accused, and with which to rebut his arbitrary affirmations. From the partial concessions of the accused he can force him to admit more matters.

++55++ FORMULA Q

The Formula for a Petition by the Promoter of Justice

A) IN THE CASE OF PROPOSING AN ADJOURNMENT

Once there is premised a brief summary and inquiry about the reasons of law and fact, there is this conclusion; for example

Having taken everything into consideration, I think it should be decided that the Reverend .... be dismissed with a grave admonition, the process remaining in force. And for the same reason and purpose. The purpose is (for example) that he be watched most diligently: that he be kept from any familiarity with women, also using ecclesiastical censures, and, if anything

obscene (or, if anything not in keeping with the sacardotal state, etc.) is observed in his life-style, then he will be brought to the tribunal immediately.

On the...day of the month of...in the year...

Signature of the Promoter of Justice

B) IN THE CASE OF PROPOSING A CONDEMNATION

What has been premised above, etc.

...I think that it should be decreed that, having imposed congruent (or grave) and salutary penances, among which there would be spiritual exercises for ...days to be done in a religious house, during which he will remain suspended from the celebration of the Mass, the Reverend... should be dismissed with (here there should be expressed according to the prescription of Canon 2368 § 1 and also the supplementary sanctions which seem to need to be inflicted). If he has by chance absolved his accomplice, he should heal his conscience by a recourse to the Sacred Penitentiary.

On the ... day of the month of ... in the year ...

Signature of the Promoter of Justice

C) IN THE CASE OF PROPOSING ABSOLUTION

...I think it should be decreed: that the innocence of the charged person is evident from the Acts; and therefore the Reverend... should be dismissed once he has been absolved.

++56++

FORMULA R

The Manner of Rendering a Condemnatory Sentence in Cases where the Accused Remains Negative

We (There should be noted the name, family name, qualities, etc., of the Judge-Ordinary or the one delegated).

Since ...(the name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, there should also be added the name he used in the world) was not afraid to abuse the sacrament of penance by words and acts concerning which there is treatment in the Pontifical Constitutions and especially in the Constitution of Benedict XIV, which first words are Sacramentum Poenitentiae, by saying and doing these things ...(here, summarily, and in prudent and discreet words, there should be told how, how often, etc. the accused committed the fault);

And, since, because of all these matters he has been denounced to our tribunal, he has been duly cited on this day (let there be noted the day and month of citation), with a proper process having been constituted against him, he has now been indicted on these days (state on which days); however, he remains negative. Nevertheless he has been convicted of the matter.

Therefore, although he has affirmed that he feels that he has acted correctly concerning the faith and Catholic doctrine (having supposed, evidently that the matter was truly so), and the defender for the court action was not remiss in his duty of promoting and sustaining the proper defenses for the accused;

Nevertheless, having correctly and seriously weighed everything, we the Judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given), from the acts and proofs, believe and are convinced that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blesed and ever virgin Mary the Mother of God and of our Lord Jesus Christ, we issue this our definitive sentence which we, seated for the tribunal, issue, with these pages, in the cause which has been brought before us between D.....(name, family name, etc. of the Promoter of Justice) the promoter ++57++ of justice at this tribunal and ...(name, family name, etc. of the accused, as above), we say, decree and declare and hold that...(the name, family name, etc. of the accused is repeated), because of those matters of which he has been convicted, has been judged guilty of the crime of solicitation toward obscene matters (and of false dogma) and therefore has merited the censures and penalties which have been stated, legislated and promulgated against such delinquents.

Lest, therefore, the above mentioned errors and faults remain unpunished, and in order that the accused will hasten to live in the future more cautiously and be an example to others, we will therefore condemn him...(there should be added the dispositve part of the decision.)

Likewise we impose upon him these salutary penances...(and let it be said what penances are imposed).

And thus we say, discern, declare and order and definitively believe and we do intend and wish to order its execution, as we order concerning the fact in this way and with that form which by law we can and must (decree), at the same time mandating for this purpose with the present letter that the accused on this date.... will be cited to hear the reading and conveyance of this our decision.

Thus we pronounce (and the act should be closed with an indication of the place and day in which it is to be published).

L.X S.

Signature of the Judge the Ordinary or of his delegate

Signature of the notary

++58++

FORMULA S

Manner of Delivering a Condemnatory Sentence in Cases Where the Accused has Confessed His Crimes

We (Let there be noted the name, family name, qualities, etc., of the judge-Ordinary or his delegate).

Since...(name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, let there be added also the name by which he is known in the world) was not afraid to abuse the sacrament of penance by words and actions concerning which treatment was given in Pontifical Constitutions and especially in the Constitution of Benedict XIV, whose opening words are SACRAMENTUM POENITENTIAE, saying and doing these things...(here in a summary fashion and with prudent and discrete words, it should be indicated how, how often, etc. the accused has been at fault).

Since, because he has been denounced for all these matters to our tribunal, and a regular process has been set up at this tribunal against him and he was duly cited on this date (here should be noted the day, and the month of the citation), he was arraigned on these days (let it be said on what days); he confessed this and this (here should be summarized his confession).

Although, therefore, he has affirmed that he felt that he was correct in matters of faith and Catholic doctrine (and with the supposition, evidently, that this is truly the case), and his defending advocate, in keeping with his duty, was not remiss in his promotion and sustaining the due defences.

Nevertheless, having weighed everything correctly and seriously, we the judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given) from the acts and proofs think and retain that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blessed and ever virgin Mary, the Mother of God and of our Lord Jesus Christ, with this definitive sentence which we publish seated here for the tribunal on this public record in the case which was processed in our presence between D...(name, family name, etc. of the Promoter of Justice) the Promoter of Justice ~~(59)~~ in this tribunal and,... (name, family name, etc. of the accused, as above), we say, decide, declare and believe that ... (name, family name, etc. of the accused is repeated), because of those things which he has confessed, has been judged guilty of the crime of solicitation to obscene matters (and of false dogma), and, moreover, that he has merited the censures and penalties which have been put forth, stated and promulgated against such delinquents by the holy canons.

Lest the aforesaid errors and faults remain without penalty, and in order that the accused should hasten to live more cautiously in the future, and be an example to others, we condemn him in this way ...(here there should be added the dispositve part of the sentence).

Likewise for salutary penances, we impose... (here are indicated the penances which are imposed).

Because, however, the accused has spontaneously confessed the aforesaid errors and faults and he humbly asked forgiveness for them, we wish, moreover, to absolve him from any excommunication he perhaps incurred, as long as he first given evidence that, with a sincere heart and faith that

are real he first abjures those errors and detests his faults; thus we ordain by this our sentence that he act in accordance with the manner and form stated by us.

And thus we say, decree, declare, order and definitively believe and intend and wish to command to execution, as concerning the fact, we order in a better way and according to that form which we can and must use by law, at the same time ordaining with the present letter that the accused on this day...will be cited to hear the reading and being informed of this our sentence.

Thus we pronounce (and the act should be closed with an indication of the place and day on which it was made known).
L. X S.

Signature of the Judge-Ordinary or his Delegate
Signature of the Notary

++60++

FORMULA T

Manner of Declaring Solemnly about the Promulgation and Intimation of the Sentence in the Cases of Solicitation

The notary should begin the act with these words:

By force of the decree of this date (let the day be noted on which the sentence was given) given by...(name, family name, etc. of the judge), in the presence of the same person at (the location ought to be noted), with the notary present, N.N. appeared personally (name, family name, father's name, age, condition, etc. of the accused, and, be was a religious, there should also be added the name which he used in the world), to whom by the aforesaid judge seated for the tribunal there were read the following matters:

Here the document is read completely word for word by which the sentence has been given.

Then there is added:

On the...day of the month of... in the year... with these writings there has been promulgated the aforesaid sentence through the above mentioned person (name, etc. of the judge) seated for the tribunal (let there be said in what place), and by his reading in a high and intelligible voice, to the present person (the name, etc. of the accused) listening to him and not contradicting; (if he had confessed, there should be added: being willing, genuflecting before the judge, touching the holy Gospels of God placed before him, he abjured the aforesaid errors [and heresies and generally all the other errors and heresies contrary to the Holy, Catholic and Apostolic Roman Church], as in the schedule of his abjuration, by which he undertook his abjuration, still kneeling, was absolved in the customary form of the Church from the sentence of excommunication and was reconciled to the Holy Mother the Church, having undertaken prayers and usual and customary ceremonies) -- and there having been enjoined upon him salutary penances

contained in said sentence. Having received all these things, he was dismissed, sworn to observe the secrecy at the touch of the ~~+++holy~~ Gospels and previously, in confirmation of what was presented before, of his and my signature.

Signature of the Accused

These Acts have been signed by myself, N.N. the notary (and if he has been authorized only for this act: authorized only for this Acc).

Finally, the judge signs.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

The Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

ANSWER

Bishop of Charleston, a Corporation Sole (incorrectly identified in the Complaint as "The Diocese of Charleston, a Corporation Sole), and the Bishop of the Diocese of Charleston, in his official capacity (the "Diocese"), answer Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
PARTIES AND JURISDICTION

1. The Diocese admits only that, upon information, John Doe is a resident of Charleston County and that his identity has been disclosed. The Diocese is without sufficient knowledge or information to form a belief as to all remaining allegations contained in Paragraph 1 and, on that basis, denies same.

2. By way of answer to the allegations contained in Paragraph 2, the Diocese admits only that "Bishop of Charleston, a Corporation Sole" was created by Act of the General Assembly on December 13, 1880, and that it does business in the name of the Roman Catholic Diocese of Charleston. Its administrative offices are located at 901 Orange Grove Road in Charleston. The administrative offices have some supervisory authority over the operations of

the ministries of the Church, though Canon Law prescribes that responsibility. All remaining allegations contained in Paragraph 2 are denied.

3. The Diocese is without sufficient knowledge or information regarding Plaintiff's allegations of the Bishop's "official capacity" and on that basis denies same. The allocation of power within a hierarchical church and the ecclesiastical status of each Bishop of Charleston are entirely governed by Canon Law. As such, the allegations of Paragraph 3 are denied.

FACTUAL SUMMARY

4. The Diocese admits that Catholic parishes and schools are located throughout South Carolina and that the Diocese owns certain real property and other assets. The Diocese admits that Sacred Heart Catholic Church is located in Charleston. Sacred Heart School was closed in around 1989. In 1991, the Diocese opened a new school on the peninsula named Charleston Catholic School. Any remaining allegations contained in Paragraph 4 are denied. Any remaining allegations contained in Paragraph 4 are denied.

5. Denied as pleaded.

6. The Diocese denies that Catholic schools are for-profit commercial enterprises and avers that the Internal Revenue Service has confirmed the charitable status of each parish and school since 1946. The Diocese admits, upon information and belief, that schools often charge different rates of tuition for children of members of the parish, non-parishioners, and non-Catholics. All remaining allegations contained Paragraph 6 are denied.

7. Upon information and belief, Chris Hartnett and Hal Brooks were teachers at Sacred Heart School during the 1970-1971 school year. All remaining allegations contained in Paragraph 7 are denied.

8. The Diocese admits only that, upon information and belief, Sacred Heart School employed Hartnett and Brooks at teachers during the 1970-1971 school year. All remaining allegations contained in Paragraph 8 are denied.

9. The Diocese is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 9 and, on that basis, denies same.

10. The Diocese is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 10 and, on that basis, denies same.

11. The Diocese is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 11 and, on that basis, denies same.

12. The Diocese is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 12 and, on that basis, denies same.

13. Denied.

14. Denied.

15. Denied.

16. The Diocese is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 16 and, on that basis, denies same.

17. Denied as pleaded.

18. The Diocese denies the allegations contained in Paragraph 18. *Crimen sollicitationis* was a canonical proclamation, the interpretation of which would require an expert on Canon Law, and expert testimony regarding the translation of a Latin document to English. The document attached to the Complaint lacks any evidentiary predicate and its attachment is improper. Further, a civil court is absolutely prohibited from attempting to interpret matters of Church law lest it run afoul of both the Free Exercise and Establishment clauses of the First

Amendment as incorporated to the States under the Fourteenth Amendment. Finally, Plaintiff's unsupported interpretation of the meaning of *Crimen sollicitationis*, as set forth in the following paragraphs, is entirely incorrect.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

FOR A FIRST CAUSE OF ACTION
(OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

29. By way of answer to Paragraph 29, the Diocese incorporates by reference Paragraphs 1 through 28 above as if restated fully herein.

30. Denied.

31. Denied.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS)

32. By way of answer to Paragraph 32, the Diocese incorporates by reference Paragraphs 1 through 31 above as if restated fully herein.

33. The Diocese is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 33 and, on that basis, denies same.

34. The Diocese is without sufficient knowledge and information to form a belief as to the allegations contained in Paragraph 34 and subparagraphs (a) and (e), and, on that basis denies same. The Diocese denies the allegations contained in subparagraphs (b) through (d) and (f) through (p).

35. Denied.

FOR A THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

36. By way of answer to Paragraph 36, the Diocese incorporates by reference Paragraphs 1 through 35 above as if restated fully herein.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

FOR A FOURTH CAUSE OF ACTION
(FRAUDULENT CONCEALMENT)

41. By way of answer to Paragraph 41, the Diocese incorporates by reference Paragraphs 1 through 40 above as if restated fully herein.

42. Denied.

43. Denied.

44. Denied.

FOR A FIFTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

45. By way of answer to Paragraph 45, the Diocese incorporates by reference Paragraphs 1 through 44 above as if restated fully herein.

46. Denied.

FOR A SIXTH CAUSE OF ACTION
(NEGLIGENT RETENTION OR SUPERVISION)

47. By way of answer to Paragraph 47, the Diocese incorporates by reference Paragraphs 1 through 46 above as if restated fully herein.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

FOR A SEVENTH CAUSE OF ACTION
(BREACH OF CONTRACT)

56. By way of answer to Paragraph 56, the Diocese incorporates by reference Paragraphs 1 through 55 above as if restated fully herein.

57. Denied.

58. Denied as pleaded.

59. Denied.

60. Denied.

FOR AN EIGHTH CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

61. By way of answer to Paragraph 61, the Diocese incorporates by reference Paragraphs 1 through 60 above as if restated fully herein.

62. Denied.

63. Denied as pleaded.

64. Denied.

65. Denied.

66. Denied.

PRAYER FOR RELIEF

The Diocese denies Plaintiff's unnumbered paragraph beginning with WHEREFORE and denies that Plaintiff is entitled to any relief whatsoever.

FOR A SECOND DEFENSE

Plaintiff has failed to state a cause of action for which relief may be granted.

FOR A THIRD DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations or statute of repose.

FOR A FOURTH DEFENSE

Plaintiff's claims are barred by the doctrines of *res judicata*, collateral estoppel, or the settlement of the class action brought on behalf of all victims of sexual abuse by the Diocese in 2007.

FOR A FIFTH DEFENSE

Plaintiff's claims, or any of them, are barred by the Free Exercise Clause and the Establishment Clause of the First Amendment to the Constitution as incorporated under the Fourteenth Amendment.

FOR A SIXTH DEFENSE

Plaintiff's claims for punitive damages violate both the Fifth and Fourteenth Amendments of the United States Constitution and Section III of the South Carolina Constitution in that the jury's discretion to award punitive damages in any amount which it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

FOR A SEVENTH DEFENSE

Plaintiff is not entitled to recover punitive damages because the Diocese did not act with malice or reckless indifference to the rights of others.

FOR AN EIGHTH DEFENSE

The Diocese submits that the injuries and damages for which Plaintiff seeks recovery were due to, and proximately caused by, the intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault of a third party or parties other than the Diocese. Such intervening negligence, recklessness, willfulness, wantonness, criminal acts, and fault are the sole cause of the injuries and damages for which Plaintiff seeks recovery, and, therefore, Plaintiff may not recover against the Diocese.

FOR A NINTH DEFENSE

The Diocese is not liable for the actions of any agent who acted outside the scope of his/her authority.

FOR A TENTH DEFENSE

Plaintiff's claims are barred under the doctrines of waiver, estoppel or laches.

FOR AN ELEVENTH DEFENSE

Plaintiff's claims are barred or limited under South Carolina Charitable Immunity Doctrine or his damages, which are denied, are limited by the statutory caps on liability for charitable entities.

FOR A TWELFTH DEFENSE

To the extent Plaintiff seeks a double recovery for any alleged single wrong, he must elect his remedy.

FOR A THIRTEENTH DEFENSE

The Diocese denies of any conduct on its part was the proximate cause of the Plaintiff's claimed injuries and damages, which injuries and damages are specifically denied.

FOR A FOURTEENTH DEFENSE

Plaintiff has failed to state a cause of action for conspiracy and has failed to comply with the mandate of Rule 9(g). As such, his Fifth Cause of Action must be dismissed.

FOR A FIFTEENTH DEFENSE

Plaintiff's contract-based claims must fail based upon the lack of any actionable contract with these Defendants.

FOR A SIXTEENTH DEFENSE

Plaintiff has failed to plead fraud with the specificity required under Rule 9(b).

FOR A SEVENTEENTH DEFENSE

All allegations not specifically admitted are denied.

FOR A EIGHTEENTH DEFENSE

Plaintiff's contract-based claims are barred for lack of privity of contract.

FOR A NINETEENTH DEFENSE

Suit against the "Bishop of Charleston, in his official capacity" is redundant and improper, and that party is due to be dismissed.

FOR A TWENTIETH DEFENSE

Discovery is just beginning in this case. The Diocese specifically reserves the right to assert additional defenses, including counter claims, cross claims, and third party claims, as may become available or apparent.

RELIEF REQUESTED

WHEREFORE, Defendant prays for the dismissal of the Complaint with prejudice in its entirety for an award of attorney's fees, expenses, and costs and for such other and further relief as may be just and appropriate under the circumstances.

TURNER, PADGET, GRAHAM & LANEY, P.A.

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ATTORNEYS FOR DEFENDANTS

March 19, 2019

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

The Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that this 19th day of March, 2019, a copy of the ***Answer*** has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

Lawrence E. Richter, Jr.
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorneys for Plaintiff

April D. Hager

April D. Hager

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF BERKELEY) CASE NO. 2018-CP-10-03929
2018-CP-10-04206
2018-CP-10-01120

MOTION HEARING

December 12, 2019

BEFORE: The Honorable Bentley H. Price

John Doe V. The Bishop of Charleston, et al.,

Richard Roe V. The Bishop of Charleston, et al.,

John Doe 432 V. The Bishop of Charleston, et al.,

APPEARANCES:

Lawrence E. Richter, Jr.,
Attorney for the Plaintiffs
Also: Larkin W. Hegler

Richard S. Dukes, Jr.,
Attorney for the Defendants

Official Court Reporter,
Cynthia D. Weaver

P-R-O-C-E-E-D-I-N-G-S

THE COURT: All right.

So let's talk first about -- let's go in order essentially -- what's going on with this John Doe case?

You indicated previously that there may or may not have been some resolution at mediation, but what is y'alls position as to the Doe case?

MR. RICHTER: Judge, Lawrence Richter for the Plaintiff in this matter -- these matters.

The John Doe case, not the John Doe 432 case, the John Doe case was mediated, the mediator was called Folkens from Florence, last Tuesday. After a lot of work, a resolution was made on certain terms and that was written and executed by the parties. I don't mind talking -- I don't -- not the dollar terms -- I'm not suggesting that, but I'm glad -- I don't mind talking about the whole thing, we don't stand on privilege about it at all. I don't know what my friend's attitude about it is.

THE COURT: Well, what's your position?

That y'all aren't close to a resolution?

MR. DUKES: No, we're not.

THE COURT: Okay.

MR. DUKES: They made -- they made essentially a time demand within policy limits. They -- they made it irrevocable for two weeks. We signed that, that it was

irrevocable, and the insurance carrier has not agreed to pay the policy limits to Mr. Richter's client.

THE COURT: Okay.

So what at mediation -- well, I see what you're saying, it was -- after mediation you said a demand was filed.

MR. RICHTER: That's not correct.

That's absolutely incorrect.

THE COURT: All right.

Well, then, tell me.

MR. RICHTER: It's as incorrect as him standing up a moment ago saying that's news to me.

THE COURT: Okay. Well, tell me.

MR. RICHTER: We negotiated the whole thing. We utilized a very competent mediator to do that. The terms of a settlement were agreed upon. We have a number of these cases. They have coverage, the Diocese has coverage, which will apply to at least some of these cases.

There is, as I understand it -- if theres's not, there will be, I think there is now -- some discord between the carrier and the insured as to whether this is a single occurrence limit that is set in their policy or whether it is an occurrence cap for however many occurrences there are.

I'm not in that legal fight, certainly not yet, but we've got a copy of the policy we can make available if

you want to see it, it says "per occurrence -- X-number of dollars per occurrence."

Counsel and I have discussed this and Counsel has made it clear to me that he reads it like I do, and it says "per occurrence". They need -- they say they want the benefit of that, and I understand.

In an effort to accommodate the Diocese, and to move these things along, we came down to the occurrence limitation and agreed to accept that amount.

Why? What does that do?

Well, for -- for -- for our Plaintiff, it lets him get to some end of this and try to, now, utilize his life in another way, peacefully.

Anyway, for the Diocese, if we agree to settle at or within the limits and the carrier refuses to do that, then the carrier may be liable for any excess amounts that are recovered in the face of their refusal. That's all pleasing to the -- to the Diocese. And we've discussed this.

MR. DUKES: And -- and just so you'll know, Judge, I can't get in between the carrier and the insured.

THE COURT: Okay.

MR. RICHTER: We have discussed all of that and that is pleasing to the Diocese.

As -- I'm not so pleased about the dollars

involved here, but I've got a client, and he's got a life, and I've got to respect that, and so we did. We agreed to take the clear covered limitation amount for this -- this case.

To put that heat now on the carrier and insulate the Diocese, or at least provide for the Diocese a claim that, well, now you, Mr. Carrier, are in our stead for all -- for any recoveries that are made, whether they're many times outside the coverage or not. That's the background for it.

We engaged Karl -- Karl Folkens to come from Florence, he is as good a mediator as I've ever worked with anywhere in the country, not just here in South Carolina. And I think -- I can't speak for Counsel, he may disagree with that, but he worked real hard and we got to this point.

Them saying, then, they sent a lawyer down for the carrier who attended the mediation and that lawyer wanted to got back as -- to see whoever there is to be seen at their home office in New Jersey, or wherever their home office was, I think it's New Jersey -- in any event, to accomplish that they said they needed some time. They wanted 14 days to accomplish that. And, assuming that they recognize the stakes as having been raised on them, the same way we recognize the stakes as having been raised on them, they were fund by the last day of the year 30th -- 30th day, I

think -- 30th, by December 30th -- and the case is over.

And that's what we signed off on. All of us signed off on that.

THE COURT: All right.

Well, then let's do this.

Let's don't waste time messing with John Doe then, that's going to be fight between you, I think, and the carrier and the carrier's attorney.

So let's -- if you have to file a motion ---

MR. DUKES: Your Honor, no one agreed to pay.

THE COURT: But I'm saying -- my point is, then, do we really want to go over all of these motions for John Doe if he thinks, in fact, he's going to have to file a motion to enforce some type of agreement?

MR. DUKES: Even if he files a motion to enforce the agreement, they ain't paying.

THE COURT: Okay.

MR. DUKES: They haven't agreed to it.

THE COURT: All right.

MR. DUKES: There's an offer on the table. At this point I ---

THE COURT: Now, have you been involved in the conversations that he's alleging that he had with the carrier's attorneys?

MR. DUKES: Yeah, I was sitting there.

THE COURT: Okay. Go ahead.

MR. DUKES: They made it -- they made a demand. It was left open for 14 days. They wouldn't revoke it during those 14 days. CHUBB has not accepted that offer or that demanded yet. The offer that was made -- the offer that is on the table from the -- from the carrier is significantly less. So ---

MR. RICHTER: I don't have any offers.

MR. DUKES: --- negotiations may still be open, but it hadn't settled and we need to hear these motions.

THE COURT: All right. Let's go.

MR. RICHTER: Judge, just so that the record can be complete ---

THE COURT: Sure.

MR. RICHTER: --- on this point.

On Friday of last week, I wrote by email -- we have it here, I can read it all out to you if you'd like to hear it all -- I wrote to the opposing counsel to say, I'm trying to figure my workload out and divide out what -- what we've got to do, assuming he's doing the same thing with his workload. "What is your understanding about the John Doe thing?" Because there was much that went on. They had to get another lawyer in and he couldn't stand between this one and that one. The check comes from the insurance carrier, the client is the Diocese, as you know.

In any event, he wrote back and said, I don't know but I'll send an email and put a call in to the key person, the lawyer who came from New Jersey.

I wrote again Monday and said, I didn't hear back from you. What is your understanding or position or desire -- because I don't remember what word I used, but I've got the email here -- status -- and I never got a reply -- never even got a reply from that.

MR. DUKES: Except that for when we talked on the phone. And I told him I'd put in a call. I sent emails. I haven't heard back from them. So at present CHUBB has not accepted that offer.

THE COURT: And CHUBB is?

MR. DUKES: The insurance carrier.

THE COURT: Okay. Who represents CHUBB?

MR. DUKES: Nobody yet.

THE COURT: Okay. Well, I didn't know who they were referring to.

MR. RICHTER: I didn't call CHUBB.

MR. DUKES: It was in-house counsel ---

THE COURT: Oh, in-house counsel.

MR. DUKES: --- who came to the mediation as CHUBB's representative.

THE COURT: Okay. All right. So we have...

MR. DUKES: No settlement.

THE COURT: No settlement.

MR. RICHTER: Judge, if I could make a suggestion, please?

THE COURT: Okay.

MR. RICHTER: A phone call to CHUBB would take five minutes. I don't think I'm authorized to be making that call. I understood that that person was there, a lawyer, but holding herself out as an adjustor in the matter and had to go back up whatever their corporate line is.

They insisted that we give them some time to do that, and that was fine with me, the resolution is more important than anything else. The time runs on Tuesday of next week. I'm prepared to hear every single motion that is pending. I'm just telling you that your time is being played with, and I don't want to be in any part of playing with it. I made the disclosure. But I'm going to do whatever you tell us to do.

It doesn't seem like it is much of an imposition to get the CHUBB people on the phone to say, "Look do we need to do this work or do we not?" That's all I'm saying.

THE COURT: All right.

MR. DUKES: I'll call them. I called yesterday, they didn't answer. I'll call again. But I have not received any communication from the insurance carrier that the demand is acceptable to them and that they will pay

policy limits on this case. So it hasn't settled. Motions are right for hearing, we should hear them.

THE COURT: What about Richard -- all right, let's -- let's ---

MR. DUKES: I mean, I'll go call them if you want me too.

THE COURT: What do you think your -- what do you think it's worth?

MR. DUKES: Um.

THE COURT: Five minutes?

MR. DUKES: Sure. I'll call.

THE COURT: Well, sure. If it saves us an hour to try five minutes, just say, "The Judge is sitting on the bench and wants to know where your heads at?"

MR. DUKES: I'll do exactly that, if you'll give me a moment.

THE COURT: Sure. Absolutely. Take your time.

(WHEREUPON, a pause in the proceedings was held, 10:18 to 10:23 a.m.)

THE COURT: All right. So what y'all -- what are we going to do? He said that he called, he's waiting on an email, so he'll periodically check his phone. But there is -- the most work is in the Roe case that seems to have the most motions.

MR. RICHTER: Judge, we have a suggestion about

how not for us to get bogged down, how to knock out blocks of these motions, if you don't mind me saying it, then, it's your hearing ---

THE COURT: All right.

MR. RICHTER: --- you'll do, obviously, what you'll think is best.

One of the areas of motion concern is that it has to do with four depositions, Mr. Dukes has instructed the witnesses not to answer certain questions.

THE COURT: All right.

MR. RICHTER: So he, then, pursuant to the requirements of the Rule, moved, for the protection of this court, as to those -- we, of course, want to go forward with the depositions. Those are very brief, in the sense, that, let's say, they're four questions in deposition one, two questions in deposition two, that kind of thing.

I think we can zip right through that. All of that will be over. And if we have to go forward, we can march off and reconvene after the depositions.

THE COURT: All right.

MR. RICHTER: After that, we can tell you what we think is the best approach for the other things.

THE COURT: All right. You want to go line by line on those?

MR. DUKES: On the deposition -- on the

instruction -- you know, I think -- I think -- we've got a number of summary judgment motions. The -- the Doe case is the oldest. Those were the motions that were filed first.

None of the depositions took place in the Doe case. Summary judgment would, albeit the need to rule on any of those motions, if Your Honor were to grant any of them. But I'll proceed however Your Honor wants.

THE COURT: So -- and you're talking about the original John Doe?

MR. DUKES: That's correct.

THE COURT: All right. All right.

So in the original John Doe there's the Plaintiff's motion for limited collateral review, which seems to be the first one filed.

Plaintiff's motion for protective order and to quash the subpoenas.

Defendant's motion for summary judgment as to charitable immunity.

Defendant's motion for summary judgment as to evidence of repressed memory.

Defendant's motion for summary judgment effective 2007 class action to be read.

All right.

Summary judgment to conspiracy, fraud, breach of fiduciary duty, motion to quash the deposition subpoena by

non-party Elizabeth Hartnett Diamond, and Dawes Cookes' motion for protective order of Mary Louisa Storen.

All right.

So, essentially, it's a lot motions for summary judgment as to certain causes of action; is that correct? Well, a bunch of causes of action, really, is what it is.

MR. DUKES: Well, actually, the charitable immunity attacks the entire complaint.

THE COURT: Okay.

MR. DUKES: The summary judgment and, actually it's a motion for summary judgment on the statute of limitations, and that there's no admissible evidence regarding repressed memory syndrome.

THE COURT: Okay.

MR. DUKES: That would -- that would undermine or dismiss the entire complaint.

THE COURT: Okay.

MR. DUKES: The motion for summary judgment on the res judicata effect of the class action would effect the entire complaint. And, then, the remainder of the summary judgment motions attack some -- individual causes of action or groups of causes of action.

THE COURT: Right. Okay.

I thought that I'd already ruled on the charitable immunity and the -- what was the other one you just said?

MR. DUKES: The class action?

THE COURT: Yeah.

MR. DUKES: We filed a 12(b)(6) motion.

Judge Brown ruled on those. And Judge Brown said, "I acknowledge that you're going to bring these up on summary judgment". So after discovery closed, in compliance with the scheduling order, we filed the suppositive motions.

THE COURT: Got it. I see it -- yeah, because I was about to say -- I think, that's the one he took, like, six months to rule on something, crazy.

MR. RICHTER: Yes, sir.

THE COURT: And I was like, "How did that happen"?

MR. RICHTER: I've got those orders, Judge, if I could just...

THE COURT: That's fine. I remember it. I mean, I assume I'm saying it correctly, because I thought the Judge had already been ruled on at some juncture.

But your -- it was denied, you got the discovery, we're inside -- the discovery is closed and now your bringing it back up under summary judgment?

MR. DUKES: Right.

THE COURT: Let's start with that.

MR. RICHTER: The orders I'm looking at, Judge, don't say anything about I acknowledged that you're going to bring ---

THE COURT: That's all right. He still has the right to bring it back up after discovery.

MR. RICHTER: Well, I'm not -- I'm not arguing -- I'm just arguing about being candid with this Court, that's all.

THE COURT: Okay.

MR. DUKES: Well, I mean, I got the email from Judge Brown, which I've shown you before.

THE COURT: I trust you. Let's just go ahead and hear it. All right.

Yes, sir, Mr. Dukes.

MR. DUKES: Let's start, Your Honor, with the motion for summary judgment on charitable immunity.

THE COURT: All right. Let's start there.

MR. DUKES: This -- this case -- the John Doe case -- let's -- we'll confine it to one case at a time, although the arguments will be similar for Richard Roe.

THE COURT: All right.

MR. DUKES: John Doe was a student at Sacred Heart School in 1970. Sacred Heart School is part of the Diocese and the Diocese gets, through the IRS's procedure, a group letter ruling that's given to the entire Catholic Church in America saying you're a charitable entity.

They refer to the Official Catholic Directory, which is a -- we've attached it as an exhibit to the -- to

the motion, but it lists all the entities that are under the Diocese. And, under the IRS's ruling, those entities have their own charitable status. Sacred Heart School is one of those entities and it's listed as a charity. There is no evidence that the Diocese is not a charity.

There's no ---

MR. RICHTER: Well, we stipulate that the Diocese is a charity. All of these entities enjoy a charitable status pursuant to 501(c)(3), is what they are.

THE COURT: All right.

MR. DUKES: Charitable immunity was in effect at the time of the tort that occurred -- that is alleged to have occurred -- in this case. Common law charitable immunity was in effect in this State until 1981.

And I'll point, Your Honor, to a number of decisions by other Judges in this Circuit. Granted, they're not binding on you, but I think they are persuasive.

In 2017 Judge Nicholson granted summary judgment on charitable immunity in 11 cases pending against the Diocese, in which Mr. Richter was a defendant. He held that there was no genuine issue of material fact that the Diocese and its entities were charities, and that charitable immunity insulated them from liability, because the events alleged occurred prior to 1981.

Judge Jefferson's order in 2003, which we attached

as an exhibit, goes through a very detailed analysis of the law of charitable -- charitable immunity in this State as it's evolved.

Ultimately, and interestingly, Judge Jefferson's case involved abuse of student at Sacred Heart School in about 1960, I think, by a coach named Eddie Fisher.

Eddie Fisher was a -- probably one of the worst child molesters we've seen in Charleston County, ever.

He molested children at Sacred Heart.

He went on to molest children at Porter-Goud.

This lawsuit that was filed in 2002, Judge Jefferson granted summery judgment in 2003, based upon charitable immunity, that the Diocese and its entities, including Sacred Heart School, were charities. That charitable immunity was effect at the time of the alleged tort. And that -- and that the Diocese was entitled to judgment as a matter of law. That case was not appealed. But I assert that Judge Jefferson was exactly correct in her ruling on that.

Judge Jefferson went through a very detailed analysis of how the Courts had found charitable immunity to be in effect, including the 1966 case of Doe -- I believe it was Decker v. the Diocese of Charleston -- when the Supreme Court acknowledged that the Diocese and its entities are charitable entities and they are entitled to immunity.

Excuse me, I've got a tickle in my throat, Your Honor.

THE COURT: All right. And you said that that was the law in the State until 1981; is that correct?

MR. DUKES: That's correct.

THE COURT: And when did the alleged abuse as to John Doe occur?

MR. DUKES: 1970.

THE COURT: 1970. All right. Go on.

MR. DUKES: Well, during the 1970 and '71 school year.

THE COURT: '70 and '71. Okay.

MR. DUKES: Judge, in the Doe case that Judge Jefferson ruled on in her order, they had other causes of action. I think they had a breach of fiduciary duty claim and a breach of contract claim. And she said, you know, "At its heart, this is a negligence claim. There's no evidence that the Diocese intended for Eddie Fisher to harm this particular Plaintiff."

And the same is true here. In fact, the Plaintiff testified about -- because I asked him, "Do you think anybody intended for Hartnett and Brooks to harm you?" And he said, "My heart says no. I've never known any bad, bad people in the church. But I would rather not had to remember this and sit here and talk about it like that".

But he said -- he doesn't have any evidence that anybody intended for him to be harmed. So at its heart, this case is a negligence supervision case and charitable immunity bars that claim.

I urge, Your Honor, to follow Judge Jefferson's lead, as well as Judge Nicholson and Judge Young, all of whom have -- who have ruled in favor of the Diocese on charitable immunity, and to follow that.

If Mr. Richter wants to appeal it, which I'm sure they will, we can test the law that Judge Jefferson and Judge Nicholson and Judge Young have applied, and determine whether the charitable immunity does, in fact, continue to apply to a church.

THE COURT: And none of those three cases were ever appealed?

MR. DUKES: No, sir.

THE COURT: I seem to be the most appealed Judge in the State of South Carolina, currently, so we'll just keep -- I'll -- I don't get it, but we'll just keep down that road, I guess. Everybody tells me they'll appeal me.

MR. DUKES: Judge, you know, to your credit, you're not afraid to rule.

THE COURT: Correct.

MR. DUKES: And, in ruling, that's what the Court of Appeals is up there for.

THE COURT: Well, my exact quote to everybody is, "It's my job to make a decision, it's the Court of Appeals to make it right." That's what I tell everybody. So I make decisions and they can figure it out up there.

MR. RICHTER: Pay doesn't change.

THE COURT: No. Judge McDonald sits next to me, she preceded me from that, and I keep getting paid the same, even though she's cleaning up all of my work. They ain't docking my pay yet, so. All right.

Would you like to respond on that one?

MR. RICHTER: I need to ---

THE COURT: Okay.

MR. RICHTER: --- for a few reasons, Your Honor.

I'm holding in my hand, Judge Nicholson's order, which was just quoted to you as saying charitable immunity, you know, didn't exist. And this is Judge Nicholson's order. I think there were 10 or 11 -- I don't remember how many of these individual cases -- this -- this one is 193, which is the case that we have cited to you before -- some of us have cited to you. I don't remember who, because of a similarity with the current circumstances.

THE COURT: Yeah, I've talked to Judge Nicholson even about that order previously. And that was actually about the hearing that he was going to schedule pursuant to the repressed memory, and he was going to -- because back

then, he wanted to talk to some doctors and kind of move forward, but he dismissed it, so he never had the hearing.

MR. DUKES: That's right.

THE COURT: And I called him and asked him about that and he said, I never had the hearing because I dismissed the case, and now you're stuck with it, so, good luck to you. And that's how we ended the conversation.

MR. RICHTER: Here -- here's what Judge Nicholson says, he identifies the parties who's before him.

"Having considered -- having considered the Diocese to pan this motion to memorandum of law and having heard all arguments, the Court finds that no genuine issue of material fact exists in that case. And the Defendants are entitled judgment as a matter of law." that's the extent of what -- what he finds in the matter. I wasn't there for the an argument, and I didn't -- I don't know who argued what or who said what, but that's the extent of what Judge Nicholson said.

More than that, these Circuit Court orders -- there's a great quote about everybody's got an opinion -- everybody's got a nose, and everybody's got an opinion -- these Circuit Court orders don't have any -- whatever it says -- don't have any controlling authority in this matter or any other Circuit Court trial matter.

So, as to charitable immunity, there are a

plethora of cases across South Carolina, and every other state in the nation, that all say, as does the quote from Mr. John Doe, that Counsel -- I don't know whether that quote is accurate, because I don't have it before me -- what he said to you just now was, even the Plaintiff says, "I don't know anybody -- any bad people -- I think is what he said -- who intent -- would intentionally harm me", or words to that effect. But that was in the quote that he gave you, ostensibly the quote, from Mr. John Doe a while ago.

Okay. Let's assume that John Doe said that. That's what he thinks. The intent was not to harm. The intent was to satisfy the inappropriate desires of the perpetrators in this case. There are lots of -- even if that were the -- those were the limit of the facts, and they're not, that speaks only to an intentional act.

Counsel is on a perilous line about what he wants to do about the coverage that's available to the Diocese. An intentional act will certainly do something about that, if that's what he's seeking to accomplish, he's getting farther down that line. But our position is that there are -- not to mention even inferences, all of which we are entitled to.

I can go over testimony, I'm glad to do it. His argument is -- is that this is like old -- old dog bite law. You get one free rape, just like you get one free dog bite,

there's no liability for the first free rape of a child.

And then he tells you that Eddie Fisher was raping them 10 years before, at the same school, before John Doe got raped.

My point, Judge, is that you don't get a free molestation. You don't get to have 10 years worth of that activity by Eddie Fisher; and then pass him along to Sacred Heart School to Bishop England High School, which the Diocese did. And then pass him along to Bishop England High School to Porter-Gaud, where he continued his nefarious acts. And, finally, with no warning from this Diocese, no warning, but a recommendation of what a stellar fellow Eddie Fisher was.

Ultimately, he found himself before Judge Gerald Smoak, who put him in prison where he made a list of 42 of his victims, all he could remember by that time, handwritten in his own handwriting.

In any event, we think the school has, and the Diocese, have duties to their students, their parishioners, all of that. And we think that the law of charitable immunity applies when you act like a charity. It applies to charitable undertakings.

There's a case in which a lady fell down in the cathedral -- I want to say her name is Eiserhardt -- fell down in the cathedral coming back from receiving communion

in the middle of a mass. And the -- our Appellate Court -- that is the charitable function, that's what they do.

There's another one where the lady fell down in the parking lot, where they were billing to park in a parking lot, a commercial enterprise. That, of course, was not that sort of thing.

Here, we know they increased the price of text books. They have different levels of tuition rates. All of this is established by testimony. And that they engaged in gambling activities. They have engaged in -- they produced to us, for example, a letter from Father Manning, who was, in those days, a pastor of Sacred Heart. Of course they denied they engaged in any gambling activities.

THE COURT: I'm not worried about that.

MR. RICHTER: Okay. I'm simply saying he admits it and shows it in his letter. He solicits participation in the gambling activity. That's our position.

THE COURT: All right.

MR. DUKES: Judge, if I may?

THE COURT: Sure.

MR. DUKES: The IRS deals with charities that engage in games of chance. Your price of purchase for a raffle ticket or for a bingo card is not tax deductible, and the prize winnings are taxable income. That's how they deal with it. It doesn't effect the charitable status. There

are only two things that can undermine the status of a charity: If they distribute profits to a shareholder; or if they get involved in a political campaign.

And there's only one entity that can revoke the charitable status of a charity, that's the Internal Revenue Service. And there's a procedure, there's a Federal Law that says a church tax inquiry can only be initiated by the Secretary of the Treasury or some equivalently or high-placed officer of the Treasury Department. And it can only be done for the previous three years -- I think that -- I think it is three years.

There is no provision that allows a state to overturn the determinations of the Federal Government. South Carolina fought that battle and it didn't turn out well.

As Judge Jefferson and Judge Nicholson and Judge Young and Judge Harrington have all recognized, at one time or another, the Catholic Church is a charity. They're entitled to the law of charitable immunity as it stood at the time of the sexual -- alleged sexual abuse in 1970. At that time charitable -- charities enjoyed immunity from tort. For that reason this case -- summary judgment is due to be granted.

The Plaintiff has not come forward with any admissible evidence contrary to that charitable status. And

so there's no genuine issue of material fact. And, as we pointed out in our brief, and in the exhibits of a number of orders of other Judges in the Circuit, we're entitled to judgment as a matter of law. Thank you.

THE COURT: All right.

Let's move to Defendant's motion for summary judgment as to the evidence of repressed memory.

MR. DUKES: This is an alternative, Your Honor, it would also affect all of the claims brought by Plaintiff Doe.

THE COURT: Well, this is the one that I think Judge Nicholson was contemplating back around eight years ago or so.

MR. DUKES: Right.

He -- he -- we had asked him to conduct a limited collateral review and hearing and bringing -- bring in experts and have three days of testimony on -- on repressed memory syndrome.

I want to first point out, and this is simply to preserve my record. The Moriarty V. Garden Sanctuary Church of God case, the only case discussing repressed memory syndrome that's reported in this State. It hadn't been cited since -- well, it's been cited for other purposes, and in -- in one unpublished decision that Mr. Richter is familiar with, I think, another abuse victim got his claims

dismissed on the statute of limitations, because he couldn't prove repressed memory.

MR. RICHTER: I'm sorry, but I don't know anything about that. I don't recall anything about that.

MR. DUKES: I thought I saw your name listed in the counsel of record on that. It's an unreported case.

MR. RICHTER: I don't remember that.

MR. DUKES: Okay. We have moved for summary judgment on the statute of limitations. Obviously, this event took place in 1970 when Mr. Doe was 13 years old. The statute would have begun to -- begin to run on his 18th birthday, which it was May of 1975. The age of majority changed by statute effective February of 1975. So it was no longer 21, it became 18 in February of 1975. Mr. Doe turned 18 in May 1975. He would have had three years, so until 1978 to initiate his claim. So the statute has long since run.

The Moriarty case, which was -- I started down this road -- but it was incorrectly decided. And let me tell you why, briefly, but this is to preserve my record.

Judge Ralph King Anderson issued the opinion in the Court of Appeals. And he did a lengthy discussion of various psychological and psychiatric studies about repressed memory syndrome, which was, in 1999, that was a kind of a hot theory among psychologists.

Now, Judge Anderson acknowledged that there were significant debates about whether repressed memory syndrome was valid; whether it exists at all; whether the brain -- whether the psyche can -- one scholar described it as, "Can the psyche act as a hobgoblin to grab a memory and bury it in a lockbox until you're emotionally prepared to deal with it?"

There is no agreement, whatsoever, among psychiatrists and psychologists over the validity of repressed -- of the theory of repressed memory syndrome.

As one of our experts puts it in his report, and we have put -- all of our experts have submitted affidavits, which are in the court file and we emailed them to y'all -- Dr. Jim Hudson said that -- that repressed memory syndrome in the 20 years since the Moriarty case in 1999, has come to be completely disregarded by scientists.

You cannot conduct any sort of neuropsychiatric test to validate whether a memory has been repressed or whether the recalled memory is correct. It is impossible to determine the truth of that. And this is important, because the Moriarty case says that the Plaintiff, at summary judgment, has the burden of coming forward with expert testimony to establish the fact of repressed memory.

Now, late yesterday we filed a brief about Rule 702 and the admissibility of testimony regarding

repressed memory syndrome. And my associate, who wrote it, and I'm going to pay associate a compliment, he wrote a very good memo on this.

Here's the problem with the testimony regarding repressed memory syndrome. It's not generally accepted among the psychological and psychiatric community. Everybody recognizes that. The Plaintiff's expert agreed. The Defense experts say the same. Plaintiff's treating, social worker agrees that it's not generally accepted.

The theory is just -- to use a term, it's junk science. There is no scientific basis for the theory. And since 1999, up until now, more and more daggers have been thrown into the heart of repressed memory syndrome. And many states, who, in 1999, accepted testimony regarding repressed memory syndrome, now no longer do. Including those are Minnesota and Ohio, I know for a fact.

So, as Judge Anderson stated, the Trial Courts are required to conduct a Rule 702 analysis of the admissibility of expert testimony, and if the Plaintiff cannot present expert testimony on repressed memory syndrome, then the Plaintiff is prohibited from testifying that he forgot and then remembered.

So that Rule 702 analysis that Judge Anderson says you have to conduct is critical to this. And as we briefed, it is inadmissible. There's no -- under Rule 702, there's

no evidence that the testimony regarding this theory is reliable, and an unreliable testimony regarding an unreliable theory cannot be helpful to a jury.

This Court has a gatekeeper function to keep out junk science, or as Professor Hudson from Harvard testified, that repressed memory syndrome is psychological fantasy. It is -- it is rank speculation. And there's no -- there's no reputable study to establish how the brain might do it. And there's no -- you can't, with an MRI, determine where a memory went.

What Professor Hudson tells us in his affidavit is that most of the self-reporting by people who claim to have suffered from repressed memory is more likely than not the process of, he calls it 'simple forgetfulness', which could include, by the way, somebody deciding I'm not going to deal with this anymore. I'm not going to think about it. I'm going to put it out of my mind and not let it overwhelm me.

That's not repressed memory. That doesn't toll with the statute of limitations. As both the Court of Appeals and the Supreme Court assert, or have told us in Moriarty, even if you accept that Moriarty is -- can stand the test of subsequent science. The Moriarty case tells us that both the Supreme Court and Court of Appeals were immensely concerned about the horrid possibility of false memories or memories that can be altered. It's very easy to

alter people's memories. Just from common experience, we all know -- we don't remember things that certainly happened that other people remember we did. We do remember things that didn't happen.

You know, I use the example of the millions of people who say they remember being at Woodstock, who, they weren't there, because people who were there said, "If you remember it, you weren't there." And we misremember things all the time.

One of our experts, professor Elizabeth Loftus from the University of California, Irvine, is one of the world's leading scholars of memory and how it works. And she's done a number of studies, hundreds of studies, about how false memories can be implanted and she does it in harmless ways.

One of her studies involved broccoli, and she had parents tell their adult children, "Don't you remember when you were six and you ate broccoli and you threw up".

And after that, several months after that they would go back and ask the adult children, who had been told that they threw up after eating broccoli, and almost all of them said, "You know I don't like broccoli, I can't stand it." They implanted a false memory into the adult's mind.

Memory is incredibly malleable. And as Dr. Loftus says in her affidavit, "Memory is not like a VCR" -- back

when everybody knew what VCRs are -- "memory is not an exact recall of it, like an encyclopedia recall. Instead it's in bits and pieces and some of it's correct, and some of it isn't. It can be influenced by all sorts of things. Drug use" -- and Mr. Doe has a history of drug use -- "can dramatically effect memory. All sorts of other factors, stress, troubles in your life, can effect how you remember things."

And so that's why the Court of Appeals and the Supreme Court were so careful about acknowledging repressed memory syndrome as a method of tolling the statute of limitations.

That's why they say you have to have independently verifiable evidence of the abuse. And they give us eight factors to look at none of which are present in the Doe case. And you have to have expert testimony regarding the repressed memory.

The Plaintiffs cannot come forward with any evidence on any of these issues. And failing to satisfy the requirements of Moriarty -- the State -- the Court cannot apply tolling of the statute of limitations based upon repressed memory syndrome. Thank you.

THE COURT: All right. Yes, sir.

MR. RICHTER: A few things, Your Honor.

There's, at some point, going to come a time, I

believe, when Your Honor is going to say, Not enough, it's a two-way street, you can't have it the way Mr. Dukes' view throughout this litigation has sought to have it. And, that is, to create the facts in any way you want them, to state them to the Court in a way that is misleading, untrue and not serving of justice.

MR. DUKES: Your Honor, I object. Mr. Richter is calling me a liar.

THE COURT: Mr. Richter, we have been down that road before, and I asked you the last time to not attack Mr. Dukes. And I even said I am making it a part of the record that I understand that you are very emotional about the Diocese, and I even said that you don't even like the Diocese, I believe, I said I'll make that part of the record. But let's keep to the Oath of Civility on this.

Mr. Dukes has the right to represent his client and to put his case on the record forward.

So I don't want to attack Mr. Dukes in any way.

MR. RICHTER: Thank you.

There are no affidavits. There are no expert witnesses that the Diocese has. None can partake one iota in these proceedings. Why?

Because we have rules. And I'll contrast this with the Constitution, a moment ago when Mr. Dukes was arguing about charitable status, the Constitution of the

State of South Carolina says you can't gamble, it's against -- it's against ---

THE COURT: I want to talk about the repressed memory. We've already discussed the 501(3)(c) status and all of that stuff. Let's just stick to the repressed memory.

MR. RICHTER: I'm just trying to draw a parallel, Judge.

THE COURT: All right.

MR. RICHTER: What I meant to make clear, I thought -- I meant to say that, if I didn't.

Here we're talking about rules. The rules throughout this litigation have been absolutely ignored by the Diocese.

MR. DUKES: I object to that, Your Honor.

THE COURT: All right.

MR. RICHTER: For example, Rule 33 deals with interrogatories to parties. That's where you list who your witnesses, are among other things.

In Rule 33, in the '19 book, if that's what you've got, if you'll turn to Page 312, you'll see it. The second paragraph states the following: Each interrogatory shall be answered separately and fully in writing under oath. Then it goes on and says many other things. But there's a mandatory requirement that interrogatories must be responded

to under oath.

The Diocese, of course, didn't do that and doesn't do that. And, by so doing says, the rule doesn't apply to us for some reason. Having not complied with the rule, the naming of their witnesses is defective. So they have no witnesses that they say they have.

In addition to that, the record needs to show and Your Honor needs to be aware, and I think you probably are, but let me -- let me make clear that we received the copies of the affidavits that Counsel has been relying on here on the 10th, which was two days ago, at 4:55 p.m.

Now, that's when the Diocese, through their Counsel, decided strategically to utilize the information that they had been sitting on for many days. Because if you go and look at the signature dates on these affidavits you'll see that Loftus -- one of their purported witnesses -- signed on October the 30th of '19 -- I can't read this -- Applewhite, again, 34 days before. Another one, Hudson 30 -- I'm sorry, 11 days before. And some of the -- some of the affidavits, that of a fellow named Harold -- well, that was timely filed.

Sumner, Barker and Shahid were filed in April. Now, those were made in April. They were filed October the 30th, for these motions, they were used previously. And they're -- this is in the Doe case only that I'm speaking to

you about.

Now, clearly we haven't even had time to read all of the affidavits, much less digest them, much less respond to them. But the rules anticipate that, because the rules anticipate, as promulgated under the auspices of two branches of government, our Supreme Court and our Legislature, contemplate that everybody will be treated equally when they come before a Bar of Justice, as the one behind which Your Honor sits now.

And Rule 7 -- I'm sorry Rule 6, specifically provides as follows -- this is Page 288, of the '19 Rules, if you want to follow what I'm quoting, "When a motion is to be supported by affidavits" -- these motions that we're talking about now -- "The affidavit shall be served with the motion." Well, they weren't. And accepted as otherwise provided. We, then, the opposing party, whoever it would be, can file as well. And you have to do that two days before hearing time, and then they can be reply affidavits after that.

Here there were no affidavits filed with the motions.

MR. DUKES: That's incorrect.

MR. RICHTER: If that's incorrect then I certainly stand to be corrected. Our records don't show that any affidavits were filed with the motions. As you can see the

filing dates of the affidavits themselves are 12/10 of '19; Loftus, Hudson, Shelby and Applewhite, December 10, '19.

That is on a document bearing the signature Richard Dukes, which says Notice of Filing Supplemental Reply Affidavits, et cetera, and no reply affidavits, I don't know what he's replying to. He didn't file affidavits with these motions as we recall them. Again, that's easy enough, there will be a stamped copy of what filed at the time of the motion.

And we're entitled -- we're entitled to rely on the rules, Judge, and we insist upon the rules. There's a history that you don't -- and I understand you don't need me or want me to go through the recitation of it again -- but this is not first inning in this case. And we've been around the block on a lot of that.

So that's our position as to his affidavits. We have three experts who have been deposed already. Let me see if I can say this right. In the first, I think is Ms. Whalen, W-H-A-L-E-N, in Greenville. And Dr. Crenshaw in Atlanta ---

MR. DUKES: She was in the Roe case.

MR. RICHTER: Well, whatever she's in, she's identified as a witness in these cases.

MR. DUKES: Not in -- not in Doe.

MR. RICHTER: Counsel is making my argument for me

about how you need to be bound by the rules and by what you say in your responses to interrogatories -- and other medical experts, as well. Plus Dr. Duffy, who the latter two are psyche -- Dr. Duffy is a doctor of psychology, I want to say. Crenshaw is a doctor, as well. And the first person whose name I mentioned, Whalen, is in Greenville, South Carolina. I don't remember her -- the title of her advanced degrees -- she is the person that was chosen by the Diocese for John Doe to go see to be counseled.

Now, is she to be criticized? I don't know, if you refer somebody or you can stop from criticizing them, I don't know. All of those are all new issues that are going to be flushed out. But to say to you that theres's no testimony in these cases, is just absolutely incorrect.

For better or worse, Your Honor, you've got Moriarty. You got it from the Court of Appeals and you got it from the Supreme Court of South Carolina. So you got it. There it is. That's the law of South Carolina. It may not be the law of the two states that this gentleman, my opposing counsel cited. Honestly, I don't know, but it's the law in South Carolina.

And he is seeking relief that he's not entitled to Number 1. And that is impermissible and the record requires that he not be granted, Number 2.

That's our position, Judge.

THE COURT: All right.

MR. DUKES: Judge, if I may respond, briefly.

In support of the summary judgment motions that we filed, we submitted the affidavits of Peter Shahid and John Barker. So we supported the motion for summary judgment with an affidavit.

Rule 6, that part that Mr. Richter didn't read to you says, "Additional or opposing affidavits may be served not later than two days before the hearing, unless the Court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences."

We served those affidavits on Tuesday, two days before the hearing.

THE COURT: All right.

MR. DUKES: That does not impact the Rule 702 admissibility analysis that the Court is required to -- under Moriarty the Court is required to conduct regarding any testimony. And by the way, the Plaintiff has not sought to introduce any testimony or any evidence to rebut the summary judgment motion that is supported by the law and affidavits, they haven't come forward with anything on the record today.

There's no admissible evidence to negate to show that there's a genuine issue of material fact regarding the

statute of limitations. There's no admissible evidence to support the Moriarty Factors -- both that -- the objectively verifiable evidence.

Here's what the Supreme Court said, "The Plaintiff has to come forward with at summary judgment either an admission by the abuser" -- we don't have that here.

In fact, Hal Brooks, one of the teachers, and we submitted his affidavit in support of these motions, denies it.

A criminal conviction. There was no criminal conviction of either Hal Brooks or Chris Hartnett at any time.

A documented medical history of childhood sexual abuse. Mr. Doe said he didn't go to a doctor, didn't tell anybody about it.

Contemporaneous records or written statements of the abuser, such as diaries or letters. There's no evidence of that.

Photographs or recordings of the abuse, that doesn't exist.

An objective eyewitnesses' account, the Plaintiff has not come forward with any of that.

Evidence that the abuser had sexually abused others, that doesn't exist in this case.

Proof of a chain of facts or circumstances having

sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred. There's none of that.

They haven't come forward with any admissible evidence to satisfy either, the required Moriarty Factors that the abuse occurred. And they haven't come forward with expert testimony. There's nothing in the record from the Plaintiffs establishing expert testimony that Mr. Doe repressed his memory.

For that reason repressed memory syndrome cannot be used to toll the statute of limitations and the Diocese is entitled to summary judgment based on the statute.

THE COURT: All right.

MR. RICHTER: Your Honor, if you'll look at Rule 56, I don't have it open before me, but if you'll look at it my recollection is that is begins by saying -- and all the case law says this, based on the record of the case, and it specifically recites through: Pleadings, depositions, written discovery, all of those things. And I can find the language, if you don't recall that, what I'm reciting to you.

Here, three experts that we have, have testified this is repressed memory, in their depositions. He took the depositions. And he represents to you that they didn't say that. We gave them reports, written reports.

Dr. Duffy, for example, written report where she says "This is clearly repressed memory." I'm quoting her words, as if I remember her words exactly, I don't. But, substantively, she said this is one of those cases. So did Claudia Crenshaw. So did Ms. Whalen up in Greenville, who testified this occurred.

How about John Doe? He specifically identifies the perpetrators. The abuse coordinator, Louisa Storen for the Diocese, and the Diocese has never told this to John Doe, who is a victim of Chris Hartnett. That lady wrote, Chris Hartnett died of AIDS. Wrote it in a letter to the Monsignor in 2016. And they never had the courtesy, if nothing else, of telling the claimant against the Diocese, who claimed sex abuse by that man who died of AIDS, you might want to get yourself checked because this guy died of AIDS. And they knew it.

That's not the issue here, but my point is, I don't remember the language that he is arguing here where he says, "why it says in the case in Moriarty, for summary judgment purposes, the claimant has to show the following things." Maybe that -- maybe that's an accurate quote of the language, I just don't remember it, I don't have the case in my hand, I don't have it before me. He's got it right there, and if it says that, I'll ask him to share it with me, and, I guess, with us, with all of us.

There's more to this than just standing up and saying, Oh, we're pure as the driven snow, pure as the driven snow. And you'll see, as we go through all of these cases, plenty, plenty about this. Like the letter of Father Manning about the gambling. There are other church writings, which we've now found, albeit redacted in some cases, which we have now found, whereby, they acknowledge that there are 32 complaints against one of the perpetrators over time, where three Bishops, by writing, memorialized knowledge of this perpetrator undertaking his activities over many years.

And, independently, Hartnett's sister is the one who doesn't -- the perpetrator here, doesn't in Doe -- is the one who's trying to run from deposition. That's not before you right now, I realize, but that would be another day to get to all of that.

In any event, the idea that there are no issues of contested fact simply escapes me. And I represent to Your Honor we adopt all of the depositions, all of the written discovery, we rely on all of that as part of our -- our argument here.

But, primarily, or at least initially, we go back to our reliance on the rules as we are entitled to do. And they didn't comply with those rules, and there's a penalty for that. Thank you.

THE COURT: All right. Mr. Dukes, is your motion for summary judgment as to the class action, does that -- would that dispose of the entire complaint, as well?

MR. DUKES: Yes, sir.

THE COURT: All right. So let's hear that one.

MR. DUKES: This one's relatively simple.

THE COURT: Okay.

MR. DUKES: When a class action settled and a judgment is entered that judgment has res judicata effect on all persons who were members of the class as defined.

In the class action it applied to all victims of sexual abuse who were born before August of 1980 -- Mr. Doe was born in 1957 -- and who were abused by employees or agents of the Diocese. So it is without question that Mr. Doe falls within the definition of the class.

It is our position that All meant All. And Peter Shahid testifies to that in his affidavit, that we meant to include all victims, including repressed memory syndrome Plaintiffs.

And, as you recall from when we had the hearing on the motion to disqualify Mr. Richter, that Mr. Shahid testified that he and Mr. Richter discussed whether the class action settlement would apply to repressed memory claimants. And Mr. Richter assured him that it would. And that affidavit is in the record.

Judge Nicholson was planning to conduct an evidentiary hearing back in 2017 to determine whether a repressed memory plaintiff would be bound by the class action settlement.

Now, initially we submit that Judge Nicholson was incorrect in that. That you don't look to whether any particular class member could have received the notice. You only look to whether class counsel took steps that were reasonably calculated to reach all the class. And we contend that Mr. Richter did his job right in that case.

He published notice of the class settlement in 11 South Carolina newspapers. The little newspaper that's published by the Catholic Church. Just as Judge Goodstein ordered him to do and they did exactly as she said. For that reason, due process should bind Mr. Doe to the class action settlement and is claim is barred.

Even if you assume that there is a repressed memory syndrome exception to the law of res judicata -- let's just assume that for a second, I'm not conceding it -- there is no evidence before you.

Opposing Counsel's argument doesn't count. He has to come forward with admissible evidence to say that there is a genuine issue of fact for trial. He has not done so. All you've got before you -- the only record in this case, the only things that the Court of Appeals would consider is

the evidence that's in the court record.

Mr. Richter doesn't get to just say, Well, Judge, so-and-so said. That isn't evidence for the Court to consider on summary judgment. But let's assume that there is a repressed memory syndrome exception to res judicata for class actions.

Now, remember the Moriarty case only dealt with the statute limitations in the discovery rule. It didn't deal with all things just that discrete issue. But the Plaintiff has not come forward with any admissible evidence to satisfy the Moriarty Factors.

And I'll read from the Supreme Court's decision in Moriarty, "A repressed memory Plaintiff may assert the Discovery Rule contained in 15-3-535. However, the Plaintiff must present, both at summary judgment stage and at trial, objectively verifiable evidence to corroborate a repressed memory claim in order to use the discovery rule. Such corroborating evidence may consist of direct or circumstantial evidence. The Plaintiff must use expert testimony to establish the abuse and the fact of the repressed memories."

There is no evidence in the record before you to satisfy that burden at summary judgment. On top of that, we have briefed the issue we submitted yesterday, that the experts proffered by the Plaintiff, and in this case,

Claudia Crenshaw treats Richard Roe. She was designated in Richard Roe, she's not an expert witness in this case, but she's a nurse, and I don't think her testimony would be admissible in a Court in South Carolina, anyway. But that's not an issue in the Doe case.

We have argued, and we do argue, that the testimony of Ms. Whalen, who is a clinical social worker, she's not a doctor, she cannot testify regarding repressed memory syndrome. And, by the way, as we pointed out in our brief, she's done no research on repressed memory. She said she remembers reading an article several years ago -- an article several years ago. She's never written anything about repressed memory syndrome. She's made no diagnosis of repressed memory syndrome. The clinical diagnosis is absent in her records. She's a therapist. She talks to the guy. She's helping him, too. She's a good therapist. But she's not qualified to render an opinion, even had she done so, but there's no record before you of that.

Sally Duffy, who is a PhD in psychology, is likewise, not qualified to render an opinion regarding repressed memory syndrome. She's never written anything. She's never published anything. She's never participated in a study of repressed memory syndrome. The proffered experts are not qualified to render the opinion they have to render.

THE COURT: Well, I think we're getting outside

the class action.

MR. DUKES: Well, but, what Mr. Richter's position is, is that repressed memory syndrome also negates the res judicata effect of a class action settlement.

THE COURT: Got it.

MR. DUKES: So it -- but the repressed memory syndrome flows between both the statute of limitations and the class action.

THE COURT: All right.

MR. DUKES: In neither of those legal issues is there any evidence before the -- any admissible evidence before the Court to satisfy the Moriarty Factors, and the Diocese is entitled to summary judgment.

THE COURT: All right.

MR. RICHTER: Can I respond to that?

THE COURT: Yes. And let's keep it to the effect of the class in 2007, where his position is All equals All, and repressed memory does not get outside of the res judicata effect.

MR. RICHTER: I will keep it to that issue.

THE COURT: All right.

MR. RICHTER: As to that issue, he said that Shahid's affidavit said that Richter -- and he called my name -- said to him, "Oh, yeah that's covered and that it's in Shahid's affidavit." I'm looking at Shahid's affidavit,

I represent to this Court, it is not in that affidavit. That is a misstatement. It's unavoidable for me, to the extent that's an attack on opposing Counsel, I don't mean it as an attack on opposing Counsel, I mean it as a pursuit of truth, I so argue that. But if I'm reading the affidavit wrong, I invite my friend to show you the language.

Now, imagine this, Judge, if somebody, a woman, this comatose child, that's early in the child's life, three years old, suffers some injury or some malady that renders that child comatose, she's put in a facility and stays there. And this -- I'm sorry to say, and I know that y'all have read the same things and seen the same reports over the years as I have -- sadly this, from time to time, this kind of thing happens.

So this lady is now confined to an institution, comatose, for as long as she lives. And she lives. And she becomes an adult. And while there a staff member sexually molested her, a male staff member, and he impregnates her and she has a child.

She doesn't know she's had intercourse. She doesn't know she's been impregnated. She doesn't know she's had a child. Time goes on. A class action comes along for people who have been impregnated by a worker -- this institution, let's say, or whatever group of institutions -- but this lady doesn't know anything.

Then one day -- the class action passes by 10 or 12 years, and one day she wakes up and she has now become restored to her full function and full utilization of her faculties, and she learns or recalls that she has been so molested. Make it even more exaggerated, it was filmed somehow, there was surveillance film may exist.

Under Mr. Dukes' argument, that lady's got no remedy for the institution allowing this fellow who has raped, let's say, 15 others, no remedy for that. The problem is she didn't know. And worse than that, couldn't know. And that's exactly what these cases are.

I would like to incorporate all of the depositions that have been taken in these cases as part of -- as part of our records in support of our argument that, again, all the authorities that you'll read talk about the use of those in all the pleadings in the matter.

And I'd like to remind the Court that this is a -- this is a summary judgment proceeding. Any inference, any scintilla of evidence, the opposing party, us, are entitled to it. He's -- opposing Counsel is critical of us for not having filed affidavits in response to the affidavits that he filed on Tuesday afternoon at 4:55 for a hearing commencing on Thursday morning at 9:30, thereabouts.

That's our position, Judge. It's a summary judgment motion. Thank you.

THE COURT: All right. So what I'm going to do is, is I'm going to take those three under advisement, because, obviously, that disposes of the case. So if I, in fact, bring any of those, then that's it. If I deny any of them, I then later want to take up each separate cause of action. I don't think it's probably prudent and a good utilization of our time to go through each one of those at this point.

So there are a couple of the duplicative motions throughout all three of them. One of which is Dawes Cooke's motion for protective order of Mary Louisa Storen.

What is that?

MR. RICHTER: She is the coordinator person, the victim's advocate person for the Diocese. She is the person who John Doe was directed to contact, as is typical in these cases, she is the contact person. She coordinates, then he calls her, she drove to Greenville the next day, and met with him for hours, came back, reported to officials at the Diocese what it was, and recommended to him that he go to Whalen for professional care, and he did.

Now, every -- every aspect of this case is fraught with new roadways and new problems. And I hate to have to reveal everything about our case on these incremental stages, but I get forced to.

She didn't reveal -- I'm not suggesting it made a

difference, maybe it doesn't make any difference -- but she didn't reveal to this person, Doe, who needed care -- she didn't reveal that Whalen, the expert's husband was, for the past, I think, 18 years, and is a Deacon of the Roman Catholic Church, ordained.

THE COURT: Well, what are we -- I'm getting lost.

One, where's Dawes Cooke?

But, two, what, in fact, are you trying -- are they trying to illicit that is being blocked?

I guess, is the question.

MR. DUKES: Judge, Dawes is an attorney.

THE COURT: Well, I know Dawes. I mean, I'm just saying.

MR. DUKES: He represent Louisa Storen.

THE COURT: Okay.

MR. DUKES: He instructed her not to answer a question and filed a motion for a protective order.

THE COURT: Oh, so we don't even need to hear that, because he needs to argue that.

MR. DUKES: He needs to argue that.

THE COURT: Okay. Well, there we go.

So that one is done. That one takes care of Dawes's deal. So Dawes is just going to have to come at some point.

MR. RICHTER: And, Judge, I'll tell you frankly,

and I'm not authorized to speak for Dawes, but I know he'll agree with this, I think that you, me and Dawes can get on the telephone and in two minutes take care of that matter.

THE COURT: Well, just do that. We'll just get everybody on the phone.

MR. DUKES: That's fine.

THE COURT: And then for Doe, is the motion to quash deposition subpoena by non- party Elizabeth Hartnett Diamond. Whose motion is that?

MR. DUKES: That is Robert Sumner filed that motion, I think. And remember, he's in a mediation out of town today and the correspondence between Robert and Julie yesterday confirmed that he didn't have to come today.

THE COURT: All right. We'll deal with Robert later. All right. Oh, that's right.

MR. DUKES: That's also something that can be handled over the phone.

MR. RICHTER: That cannot be handled over the phone, Your Honor.

MR. DUKES: Why it can't ---

THE COURT: Motion to quash subpoena deposition by non-party Elizabeth Hartnett Diamond.

MR. RICHTER: She is the sister of the perpetrator in the Doe case.

THE COURT: Is that the one that I continued

whenever I left town?

MR. RICHTER: That's right. That's exactly right. Your memory is correct.

THE COURT: All right. We'll deal with that. Well, that takes care of Doe. All right. So...

MR. RICHTER: Well, Judge, there's a lot about Doe that's not yet taken care of.

THE COURT: Yeah, but I'm not taking up any of the motions for summary judgment as to any of those specific causes of action.

MR. RICHTER: I understand that, but we have motions you granted -- you granted our motions to compel. But your orders -- you issued two orders that said Plaintiff's Motion to Compel is granted. Those -- those orders have been disregarded and we need -- we need those enforced so that we can get that material to work it with.

THE COURT: Well, what's the -- what's that motion? Well, it's not on here.

MR. DUKES: Judge?

THE COURT: It would be a motion to compel, is what it would be.

MR. RICHTER: That's right.

MR. DUKES: If I may point out to the Court, in September, and it is in the transcript, I don't have the transcript with me, but I'll read it to you, if you need me

to, I'll get it and read it to you.

Your Honor said to me -- in the big court room right over there -- "Mr. Dukes, you did exactly what I instructed you to do and I thank you for that." and we handed up a notebook of all our discovery responses for you and for Julie to look at.

Mr. Richter says I've disregarded it. Your Honor said that I did exactly what you instructed us to do.

THE COURT: All right. I'm confused.

MR. RICHTER: I think I can help.

THE COURT: All right.

MR. RICHTER: Help you understand it.

As to a certain thing that Your Honor was referencing, you said, "You did it, Mr. Dukes."

THE COURT: What has he not done? Let's just go to each specific thing that you allege that is still being withheld.

MR. RICHTER: We sought, for example -- like, I'll give you a clear example, the Diocese published a list of either 41 or 42, what they call credibly abused -- credibly accused sex abusers; priests.

Now, we, in our discovery request, asked for a lot of things including the records on those 41 people, because I'm interested in finding patterns of conduct; witnesses to how the Diocese covered these things up; treating experts,

who I might be able to utilize the benefits of, for my clients who could use some comfort in life, and many other -- other things.

So that was just disregarded, they refused to do it. Just refused to do it.

THE COURT: All right. So let's stop.

MR. RICHTER: I made a motion to compel. You ordered that you granted my motion to compel.

THE COURT: All right.

MR. DUKES: No, sir. You instructed us to respond to their discovery.

THE COURT: Okay.

MR. DUKES: Because, remember, we had objected to the discovery and didn't answer any of them, because the discovery was served on the Ecclesiastical Office of Bishop. And we contended that that wasn't a proper party and that's up on appeal now. And you instructed us to go ahead and answer, so we did. And Your Honor said you did exactly what I ordered you to do, and we had a long discussion in July about we'd have to do a line-by-line analysis of the discovery request and our objections and you'd rule on those.

Mr. Richter has not filed a motion to compel after we served discovery responses on him.

THE COURT: Okay.

MR. DUKES: But, even if we didn't, we responded to discovery as you directed. You said -- you said in Court that we did exactly what you told us to do, and we have to do another round of analysis, I suppose, of our objections.

THE COURT: Okay. All right.

MR. RICHTER: Can I respond, please?

THE COURT: Well, I understand what he's saying. He responded because I ordered him to. And he still says it's certain -- and I had ruled, I remember that certain things weren't privileged, I think was what I ended up saying, is that anything that is attorney/client privilege don't disclose and then I said ---

MR. RICHTER: That's right.

THE COURT: --- hand over everything else.

MR. DUKES: And that was in a discrete group of documents.

THE COURT: Right.

MR. DUKES: And we appealed that order.

THE COURT: Right.

MR. DUKES: And that's still up on appeal.

THE COURT: All right.

MR. DUKES: We filed a motion for a rehearing the other day.

THE COURT: Okay.

MR. RICHTER: Those orders have been -- those

appeals have been ruled on and the Court of Appeals has dismissed -- I've got two orders in -- not, two orders in my hand, I've got two docket sheets in my hand, and Ms. Larkin has just highlighted.

MR. DUKES: Judge, we filed a motion for rehearing.

THE COURT: That's right. So, look, I actually won one, halfway.

MR. DUKES: We have just filed a motion for rehearing with the Court of Appeals. The remittitur has not come back to the Court, so you don't have jurisdiction over it.

THE COURT: Well, I understand. But let's do this, I think to make it more efficient, have you -- have you, Mr. Richter, filed a motion to compel as to each specific discovery response that has not been, I guess, satisfactorily responded to or no?

MR. RICHTER: I did initially do that, yes, when they refused to produce these things. Those you heard in July.

THE COURT: Well, let's condense that down again and refile it. And then let's go line by line and determine what, in fact, you're entitled to and I'll get it to you. Because it's not before me today. And, I mean, I don't want to go line by line right now, obviously, even if the Court

of Appeals hasn't come back as to the rehearing. So let's do it, I think that's the best uses of our time.

So just file a motion to compel as to what you believe that the Diocese is withholding, and I'll determine whether, in fact, it's discoverable or not. All right.

MR. RICHTER: Please. And I'll do that, Your Honor ---

THE COURT: All right.

MR. RICHTER: -- thank you for your instruction.

But let me urge upon your attention, it's difficult for me to say, "Here's what they're not giving me," because if I knew what they had, in some instances, you know I could ---

THE COURT: Well, that's in every case, because the trucking company isn't going to give over everything. I mean, they're going -- you ask for something, you get it. You don't ask for it and you don't know it exists, that's just the say these cases go. You don't know it exists. You don't get to just say send me everything that's going to hurt your case.

So -- but let's go line by line on that and we'll readdress those later on. All right.

So, I'm just -- that's it for Doe. All right. We'll deal with Dawes and Robert later.

So what is the next set of motions? I assume this

has to do with what you all indicated earlier in the Roe case about some deposition questions that were objected to; is that correct?

MR. DUKES: That's right.

MR. RICHTER: That's correct. That's a 10-minute undertaking, I think you can knock out all four in 10 minutes.

THE COURT: Let's do it in 10 minutes.

MR. RICHTER: It's their motion.

THE COURT: All right.

MR. DUKES: Judge, in each of the cases -- in each of the depositions, Mr. Richter asked questions about either litigation strategy, I think one of the questions -- and I don't have the motions in front of me -- well, I might.

THE COURT: Madam Court Reporter, do you need a break?

COURT REPORTER: No, I'm still good.

THE COURT: Okay. We'll go for 10 minutes and see where we end up.

MR. DUKES: Mr. Richter -- I do have the motion in front of me. He asked -- I'm looking at, let's see, this is Bishop Guglielmone's deposition.

THE COURT: Okay.

MR. DUKES: And he asks, "And would you tell me, please, as to these causes of action, do you claim that

South Carolina law provides you with these various defenses?" And I instructed him not to answer that question.

THE COURT: Okay.

MR. DUKES: Because it goes into attorney/client privilege.

THE COURT: Okay.

MR. DUKES: "Do you know that you don't have the right to make the determination in these civil -- civil proceedings?" And I asked -- and I instructed him not to answer that question, it goes into my legal advice.

THE COURT: Okay.

MR. DUKES: He asked, "Why have you not given me the files that I requested concerning the priest, who I have requested those files and or agents, as you corrected me a few moments ago, why have you not given me those files?" And I instructed the witness not to answer based upon the attorney/client privilege.

He asked the question, "I've never been given anything that I requested relating to finances. Maybe you can answer some of those questions to clear it up. But do you realize that, in the face of a subpoena, you've refused to do that?" And I instructed him not to answer based upon the attorney/client privilege.

Mr. Richter asked, "Why the Diocese did not answer

each discovery question" -- that was when the discovery was pending to the Ecclesiastical Office of Bishop, which you subsequently ordered us to respond to -- and he said, "Can you tell me why?" And I instructed him not to answer based on attorney/client privilege.

He asked, "Why is it that you say you're not required to answer that particular interrogatory?" And I instructed him not to answer based on the attorney/client privilege.

"Do you claim that anything what we've done in this litigation, in any way, seeks to abridge the free practice of your faith?" And I instructed him not to answer that question based on the attorney/client privilege.

Those were the questions propounded to Bishop Guglielmone that we instructed him not to answer.

THE COURT: All right. I got it on all of them but the last question. I didn't get that one. I didn't understand that one.

MR. DUKES: Mr. Richter asked, "Do you claim that anything we've done in this litigation in any way seeks to abridge your free practice of the faith?"

And I'm not quite sure what Mr. Richter was getting at there, but I think he's trying to intrude on internal deliberations of the Bishop and his advisers, including me, and I instructed him not to answer that based

on attorney/client privilege.

THE COURT: I'm not sure what the question means, I guess, that's where I'm confused, but that's fine. All right.

So, I wasn't writing fast enough in the first two, but I wrote down, Why did you not give over the files? Why did you not give over the finances? Why did you not respond to all of my discovery responses? And why did you not respond to all the interrogatories? I got all those.

All right. And what was the first one? I forgot it.

MR. RICHTER: I think the first -- yeah, the first one is, "Do you agree that the civil -- do you claim that civil law is where you get these various defenses?"

THE COURT: That's right. The first two ones were about the defenses of the case. All right.

Mr. Richter, what would you like to tell me?

MR. RICHTER: Well, as to the civil law question, let me just start with that, since we just said it.

Part of what we have gone through in this case is these people dancing with, "Oh, that's Canon Law." Canon Law provides that a minor who is -- is a person under 18. Well, we had -- so they rely on Canon Law from time to time throughout this matter trying to distinguish, are you bound by civil law or not? Well, yeah, we're bound by civil law.

Why do I want to know that? Did you report these abuses? Take the guy that you got 32 complaints about, did you report him 32 times?

I know the answer to that. The answer is, No, we moved him around from place to place. We didn't report it at all. Three separate Bishops took part in moving him around from place to place. But I want him to -- I want him to answer that.

And the Bishop -- I want to say the Bishop, some of the priests would propose -- and I think the Bishop, I don't, without looking, I don't want to say to you to a certainty, Mr. Dukes might remember -- they've all agreed that, you know, when the light is red, you got to stop, that's civil law. And we, the church, the priests, we're bound by the civil law of South Carolina.

That's why they say they quit gambling in the schools and in the parishes and so forth because the civil law, the Constitution of South Carolina prohibits it.

MR. DUKES: I think you're little wrong on the testimony on that issue.

MR. RICHTER: On the issue of gambling?

MR. DUKES: Uh-huh. Remember, one of the older priests that you knew said that one of Bishop Unterkoefler's FBI buddies told him that the Mafia was involved in bingo games and he ordered everybody to stop doing it.

MR. RICHTER: I don't remember, to be honest with you.

THE COURT: The Catholic Church used to gamble?

MR. RICHTER: Imagine that. I went to school for 12 years.

THE COURT: All right. So what is -- I mean, to be honest with you, just to expedite this, Mr. Dukes, I agree with you. I mean, asking him about why he didn't produce the files, why he didn't produce all of your finances, that would, unfortunately, he would have to say because my attorney has instructed me to do X, Y and Z, or X, Y and Z, or whatever the case may be.

But I do believe that he would say, because, of course, you are his counsel and you do have to guide him, and to be quite honest with you, you're -- you're essentially some part of the gatekeeper as to the discovery that is responded to.

So, yes, I think you would have to say, "Well, because so-and-so told me not to, or so-and-so told me to do that," that would be between you all, too.

But what about the -- I mean, can the guy answer, "Don't you agree that you're bound by civil law?"

MR. DUKES: He answered that question.

THE COURT: Huh?

MR. DUKES: He answered that question.

THE COURT: What did he answer?

MR. DUKES: Yes.

THE COURT: Okay. Well, there you go. All taken care of.

MR. RICHTER: Civil law is behind us now, that's great.

THE COURT: All right. And so the other ones, I'll agree, that he's not going to answer anything that has to do with about the discovery process or anything along those lines. I think that, unfortunately, goes to he'd have to say why he did or did not or why he is or is not.

So I'll say that those are privileged under the attorney/client privilege.

MR. RICHTER: Well, Judge, if I can ---

THE COURT: You can make your record however you want. Sure.

MR. RICHTER: --- just make a comment and make a record about that, please.

As to the, you know, why you want to ask him why he didn't produce those documents that we asked for -- let's say the documents are about the 41 priests that they identified as sex abusers -- he may say because they burned up. He may say we had a flood and they were all -- he may say I produced them in some other case, and they kept them, they never gave me my documents back. I don't know what he

might say about that.

THE COURT: Put it in a request to admit and see what they say.

MR. RICHTER: Okay.

THE COURT: All right.

Is that -- did that ---

MR. RICHTER: I put in a request for production. I'll put it -- I'll put it in a request to admit.

MR. DUKES: And, again, Judge, you ordered us to respond to the discovery, we objected ---

THE COURT: We're going to go through all of that again. We're going to get to that.

MR. DUKES: --- we objected to that ---

THE COURT: Right.

MR. DUKES: --- and stated grounds for it. We didn't just say it's overly broad and undue burdensome, and all that jazz. We stated why we objected to it. This deposition took place before Your Honor had ordered us to respond to discovery.

THE COURT: Oh, okay. All right. I didn't get that.

MR. DUKES: Because Your Honor told me, "Tell the Bishop he's sitting for a deposition or I'm taking his passport."

THE COURT: Right.

MR. DUKES: So we made that happen.

MR. RICHTER: That's right.

THE COURT: Well, I didn't realize that, it was long ago, as well.

MR. RICHTER: The problem is a little broader than that. The last thing that he had -- you raised a question, Judge, about this last instruction that Mr. Dukes referenced, "Do you claim that anything that we've done in this litigation in any way seeks to abridge the free practice of your faith?"

That relates a number of times throughout the litigation. They've said, "Oh, well, this is a religious freedom that the church enjoys. They've got a right to do this, they've a right to do that."

They got a right not to name the members of the Sex Abuse Advisory Board appointed by the Bishop, and dealing, obviously, with sex abuse.

Well, they got a lot of information. The Sex Abuse Advisory Board didn't name a priest as a credibly accused sexual offender. And I represented the victim. And I got, from the Diocese, hundreds of thousands of dollars in settlement of that case during the class matter for that victim.

I gave the affidavit to the Diocese. They gave the check to me. I guess they don't go around paying

hundreds of thousands of dollars for people they say are not credibly accused sex abusers. They did it in that case. I've got all of those documents.

Now, this board, I asked who -- the names -- I went before the board, took a victim before the board. I knew many of the people -- not many of the people, several of the people, I guess, I should say -- on the board, there had been some turnover now in membership. But there was no -- you know, there was no secret about it. We all shook hands and introduced ourselves.

They now say -- the Bishop says -- again, we think flaunting the requirements of the law and the rules of the civil procedure under which we are proceeding -- the Bishop says -- I asked him -- I asked him about the membership of the Sexual Abuse Board, he says -- the question is specifically:

"Q. Are you able to recall any of those names at this time?

A. I could recall some of them.

Q. The membership names?

A. Yes, I can recall.

Q. Would you state those, please?

A. I don't feel like that would be appropriate."

Well, we think it would be appropriate.

The Bishop says, "It's not."

Mr. Dukes says, "I object to the form of that question."

MR. DUKES: But I didn't instruct him not to answer that, he just said I'm not going to answer.

MR. RICHTER: I won't give you half of a statement of fact. I promise you every word that comes out of my mouth is fact based and documentable.

The witness says, "I don't feel that would be appropriate, because in many cases we have indicated to members of the board that their membership on the board would be kept confidential. And that was agreement we had, and so I'm not going to release the name."

The Bishop refuses to answer the question because he told somebody who he was going to appoint to some board that he wouldn't tell their name.

Now, that doesn't have anything to do with my claimant at all. I questioned him about it. He unilaterally refuses to answer. I don't think he's got the right. I don't think Mr. Dukes has the right to let him not answer a legitimate question.

THE COURT: What is Mr. Dukes' responsibility in that?

MR. RICHTER: The rule actually -- and I'll have to find it -- I don't -- I don't remember whether it's in the rules concerning depositions or whether it's in the

ethical rules about you not allowing your client to abuse that process in that way. But I'll look it up and I'll be glad to tell you what I find.

THE COURT: Sure.

I mean, here's the thing, I mean, you asking a -- my -- I agree with Mr. Dukes to the extent that he said that he objected to the form, but didn't instruct him not answer it.

So here's what I tell everybody, You can ask the question, but you're stuck with the answer.

So what do you -- what do you claim that can be done to force him to answer that question?

MR. RICHTER: I think you can order him to answer the question. There's nothing inappropriate about the question.

THE COURT: I don't think there's anything inappropriate with the question.

MR. RICHTER: I'm sorry, I didn't...

THE COURT: I said, I don't think anything is inappropriate with the question, he just didn't want to tell you.

MR. RICHTER: But he doesn't have the right not to do that, that's why we have a process.

THE COURT: And that's what I'm asking you, What is the course of action to get that -- to have him give you

that information?

MR. RICHTER: I think he's subject to being compelled, just like anybody else is subject to being compelled.

THE COURT: All right. So what do you ---

MR. RICHTER: I want to go back and examine him.

MR. DUKES: But there's no motion to compel that answer.

THE COURT: Well, that's what I'm saying. I mean, if you want to bring him before me and I'll make him answer it, I can do that.

MR. RICHTER: Okay. The way -- they way we got to where we are today is, Mr. Dukes makes the motion on the questions that he has instructed the Court not to answer. That doesn't set a limit for what the Court can deal with to knock problems down out of the way of the progress of the case.

THE COURT: Okay. Well, I agree. So let's talk about it. What do you want me to do? You want me to order him to answer the question? Or do you want bring him back in here? What do you want to do?

MR. RICHTER: I want to reopen the deposition and ask him these questions.

THE COURT: Sure.

MR. RICHTER: Now ---

MR. DUKES: Are you ordering that, Your Honor?
THE COURT: Yeah.
MR. DUKES: And you're ordering the Bishop to answer the question to reveal the identities of the Sexual Abuse Advisory Board?
THE COURT: I'm assuming you're going to file a motion to quash that?
MR. DUKES: Yeah. And probably will have to appeal that.
THE COURT: Okay.
MR. RICHTER: This will be another one of the pretrial appeals against -- I trust, will get dismissed, we'll see.
MR. DUKES: Actually, the Supreme Court ---
THE COURT: Well, I was going to stop at 12 anyway. So let me just go off script here for a second.
I have done everything that I can do to try to keep these cases moving. And that has always been my intent. And that was always my position whenever I discussed the scheduling order, that we weren't going to go outside of it, and we were going to stick to it, and I did the math, and actually, apparently I was supposed to have a November 15th hearing, a pretrial hearing, and then the trial was to commence 45 days thereafter.
Unfortunately, I was gone. Then that led us into

a week when I was in Aiken. And then the week was Thanksgiving. And then, of course, we're hearing it on the 12th of December, so 45 days from today is January 18th or 28th, I can't remember which one it is.

So, I don't think we're moving it in the way that we need to move it, because, I understand what Mr. Richter is saying, and I understand what you're saying, Mr. Dukes. Mr. Richter is saying, "Well, just because I didn't file a motion to compel, doesn't limit the fact that the Judge -- or that Court can still make rulings and orders." And you're saying, "Well, if you do that, then I'm just going to simply file this, and it's going to appealable, it's going to stay the case and it's going to on."

MR. DUKES: I may have to appeal it ---

THE COURT: I agree.

MR. DUKES: --- or the Bishop will say, "Just give them the names."

THE COURT: Okay. I understand that.

MR. RICHTER: All that is stayed is that single issue, if anything is stayed, that's not a general stay to the case.

MR. DUKES: Well, the other thing that's up on appeal is the presence of Bishop of the Diocese of Charleston in his official capacity. So one of the parties has appealed their very presence in this case. And I do not

believe you can set this case for trial as long -- until the remittitur comes back from the Court of Appeals.

THE COURT: What do you all need from me to continue to move forward with the discovery process of this case? And I'm not talking about Doe, I'm talking about Roe.

MR. RICHTER: I need the documents that we have asked them for. I need them to take -- maybe, to take depositions concerning those various documents.

We need the unredacted form of the matters where there are, for example -- I don't remember the document number -- but there will be a document well, let's say, the Vicar General writes to the Bishop, or something, and says, you know, These nine people we know about, or these 13 people.

We've got -- you're going to be amazed when you see all the facts, or whoever sits here, will be amazed facts to see all of the facts.

Anyway, we need that. We need compliance with discovery. We made two motions to compel, you granted them both, they were both ignored.

THE COURT: All right. Here's what I want to keep this case moving and to be somewhat -- what you'll have to understand is that, you know, you always tell me about all of these things that I'll be amazed to see, and all of the things that they're hiding, and all of that kind of stuff,

and until I think we go line by line, which, of course, I have dreaded going to have to actually do, here's what I want you to do.

I want you to file a motion to compel as to every -- everything you just -- you keep talking about these -- these eight people that were on this board, or whatever it this document is that has the nine people on it, that's fine. File a motion to compel every single one of them. And we're going to go line by line, and have to deal with the discovery issues.

So I wanted Mr. Dukes to get his summary judgment motions argued so we could at least move on past that.

So I will rule on all of the summary judgment issues in Doe.

I've held in abeyance the specific causes of action one. And in Roe we have -- I want you -- so the Defendant's motion for protective order as to the Bishop's deposition, I ruled on a part of that. But I want you to put your motion to compel, what questions that you want the Bishop to answer, and I may or may not, at that time, reconvene his deposition. Let me take a look at that when you do it.

The Dawes Cooke motion will have to be heard at a later date.

The Robert Sumner motion will have to be heard at

a later date.

What is -- just so, I guess, the John Doe 432 can kind of move forward. What is Sires motion to intervene?

What is that?

MR. DUKES: Sires is Mr. Richter's client. He was the lead Plaintiff in the class action, I think, wasn't he 53?

MR. RICHTER: Judge, Allen Sires is unfortunately saddled with certain health matters that sometimes make his actions seem a bit erratic.

In any event, he was a Plaintiff -- a claimant in the -- in the Class case and has had an ongoing battle with the Diocese. These things are not -- I represented him -- we, the group, class lawyers, represented him and all of the claimants during that period in -- 12 years ago.

His last -- my last contact with him and the last time I had seen him converse with the Diocese, was, again, many years ago. He lost access to his children, by a Family Court action. I had no involvement, I don't know anything about the matters of any of that. Mr. Sires is a troubled gentleman. And he wanted the Diocese to get his children back for him.

And Peter Shahid and I and the Bishop and a couple of Vicars General, and I don't remember who else attended a meeting with him, really to say that, you know, what they

can do is another thing. They can offer pastoral care and compensation, as they have to you already in this case, but they can't make Family Court do anything.

And that was the last I knew of Sires. He's now moved to intervene, I think --

THE COURT: Who assisted him to intervene?

MR. DUKES: He did it pro se.

THE COURT: Oh, that motion is dismissed.

All right. Defendants motion to quash subpoena or in the alternative motion for protective order.

What is that one?

MR. DUKES: Mr. Richter served a subpoena on a man named Chris Quick. Mr. Quick is my investigator. I asked him -- I hired him to investigate certain matters.

And so anything -- both -- anything I choose to have him investigate but also the results of that investigation, fall under the attorney work product doctrine and are not discoverable.

THE COURT: All right.

MR. DUKES: In addition, in the John Doe 432 case as Mr. Richter knows, I haven't asked Chris Quick to do anything in that case, yet. I may. But still he is -- he's an investigator retained by my firm and our position is anything we ask him to investigate, what we highlight as something important, is work product. And his -- what he

does investigate for us, and the results of that investigation, fall under work product. And he shouldn't be subject to that deposition.

THE COURT: All right. Mr. Richter?

MR. RICHTER: Among the things, I guess he -- did he replace Paul Buceti?

MR. DUKES: Um...

MR. RICHTER: The Diocese used to have a retired DEA agent named Paul Buceti, who was the guy who would make contacts when people made claims. And Paul looked into the matters, investigated into the matters. What I think what Mr. Dukes is saying that this guy now performs that function.

THE COURT: But does Mr. Quick work for the Diocese?

MR. DUKES: No, he works for me.

THE COURT: You pay him?

MR. RICHTER: He is a ---

MR. DUKES: That's priveledged.

THE COURT: Okay. So when he's not working for you, is he working for the Diocese?

MR. DUKES: No.

THE COURT: Okay.

MR. DUKES: He has an independent private investigating agency and he works for other people.

THE COURT: Okay. Then, no, you're not going to be able to do that one.

MR. RICHTER: I'm not going to be able to depose him?

THE COURT: No.

MR. RICHTER: Suppose his testimony, You Honor ---

THE COURT: Then you'll get to cross examine him.

MR. RICHTER: But suppose his testimony is, "Oh yeah, the Diocese has a meeting, and these six guys sit there, I sit in on these meetings, and they agree, here's how we're going to cover up child abuse." They did it about your guys, one of your clients.

THE COURT: Okay.

MR. RICHTER: One of his motions says, "These people don't conspire." We've got a lot of documents that say they do. But suppose that's his testimony? How can that be privileged? How can it be priveledged what he's got to say about that whether or not that, pursuant to a mandatory reporting statute, the Diocese complied?

Anyway, that's...

THE COURT: I mean...

MR. DUKES: Judge, Chris started working for me within the past year. So he wouldn't know anything about the past.

THE COURT: He doesn't work for the Diocese

independent of his work as the retired DEA agent. Then, no, I don't -- we're not -- I don't think he needs to be brought into this. He works for them, and it's work product, so I'm just going to rule it as that. All right.

So that leaves ---

MR. RICHTER: Can I say one more thing just for the record about this ---

THE COURT: This is your record, you can put on it however you want.

MR. RICHTER: --- 30 seconds.

THE COURT: Yes, sir.

MR. RICHTER: One of the things that the Diocese said to us in an answer to interrogatories is, "Hal Brooks is dead, as Hartnett is dead." Been dead, both of them, for many years. I think -- and I don't have the dates in front of me -- I think the day before the deadline for them to finish responding to me -- they said, "Actually we found Hal Brooks, he's alive." Who found him? This guy found him. They took an affidavit from him. He said, "I don't abuse anybody and I didn't abuse anybody."

We've done some work on Hal Brooks, too and that's another matter for the another day. But the point I'm making is, this is the guy upon whose representation they said this witness doesn't exist.

I'm concerned about that ---

MR. DUKES: That's actually not correct, Larry.

MR. RICHTER: I'm concerned about that because it was 4:55 on Tuesday afternoon when they gave us affidavits that they want us to have to deal with in a 9:30 motion.

THE COURT: Yes, sir. We're going to be together again, so we'll deal with it when we need to deal with it again. This isn't your last bite of the apple.

So get the motions to compel that you want, line itemed over to them, and you all can respond to it and let me know if we need to have a hearing. And that's what we'll do next.

I agree that I don't think that I can set this for trial. I will look into it with the pending motion that's at the Court of Appeals, and I'll certainly let you know all of my answers, probably going to be by the end of the day tomorrow. Because I need to do some research, I want to read some stuff, and I also want to reach out and contact some people. And so I will have you a decision by Thursday of next week.

MR. RICHTER: Okay.

MR. DUKES: And, Judge, I will -- as we were preparing our motion with the Court of Appeals, we have -- one of the lawyers in our firm is on the Board of the Defense Trial Attorneys and there's a case in the Supreme Court right now that they've invited briefing on immediate

appealability of discovery orders.

THE COURT: Okay.

MR. DUKES: And the Court -- the Supreme Court is considering that. I just point that out the briefing has just started. I think -- I know the Defense Trial Attorneys are going to submit a new Amicus brief. But it does have an impact on our appeal of your discovery order.

THE COURT: Okay. All right. All right.

I hope you have a wonderful weekend.

MR. DUKES: Thank you, Judge.

MR. RICHTER: Thank you, sir.

(WHEREUPON, the foregoing proceedings concluded at 12:10 p.m.)

END OF TRANSCRIPT

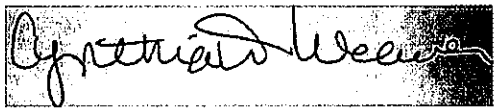
CERTIFICATE OF REPORTER

State of South Carolina)
County of Berkeley)

I, Cynthia D. Weaver, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in Motions Hearings for Berkeley County, South Carolina, on the 19th day of December, 2019

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 25, 2020



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2018-CP-10-03929
2018-CP-10-04206
2019-CP-10-01120

JOHN DOE,
Plaintiff,
vs.
THE BISHOP OF CHARLESTON, ET. AL.,
Defendants.

Transcript of Record

Date: April 6, 2020

RICHARD ROE,
Plaintiff,
vs.
THE BISHOP OF CHARLESTON, ET. AL,
Defendants.

JOHN DOE 432,
Plaintiff,
vs.
THE BISHOP OF CHARLESTON, ET. AL,
Defendants.

* * * * * * * * * * * * * * * * *

B E F O R E:

The Honorable Bentley Price

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Denise J. Lauder, RPR

Ninth Judicial Circuit

A P P E A R A N C E S

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INDEX OF EXHIBITS

(No exhibits were offered or marked for identification.)

(The following proceedings were held remotely by network conferencing April 6, 2020, Charleston County Court of Common Pleas, 9:33 a.m.)

THE CLERK: If we could have everybody state their name for the record.

MR. RICHTER: Lawrence Richter for the plaintiff.

MR. DUKES: Richard Dukes for the defendants.

THE COURT: And you have the caption and everything, don't you already, Denise?

THE COURT REPORTER: I do. Thank you, Judge.

THE COURT: All right. Guys, what we're going to do, if I'm not mistaken, we stopped with Larry was arguing his motion to reconsider, if I'm not mistaken. Am I correct?

MR. RICHTER: That's right, yes, sir.

THE COURT: So what we're going to do, we'll continue there. As you see, if you know how to mute yourself when someone is talking, make sure that you're muted. When you move papers or somebody in the background is talking or coughing, it's hard for Denise to hear you.

So if not, Julie is pretty good about

trying to hit people -- I think she's doing it right now. She'll mute you if not.

So we will just start with Mr. Richter, and if you need somebody or to pop on, I usually just do like that (indicating) and I will unmute myself.

MR. RICHTER: Thank you for convening even during these troubled times, Judge. And I have not done this before in this format, so if I duck out of the scene or something, somebody shout at me.

We are before you on Plaintiff's motion for reconsideration of your prior ruling in which you granted summary judgment to the Dioceses of Charleston on the basis of charitable immunity.

In that regard we believe that you made an -- an error of law, number one, and there are particular matters concerning the hearing which we would like to call your attention.

Let me be clear that what we are asking for is full and equal justice. I think we all agree that everybody is entitled to that, and for equal application of the rules and requirements as set down in our judicial system here in South Carolina and elsewhere.

So having said that, Judge, do you have -- is there any limitation on us? I don't want to talk so fast that you miss it, but I don't need a great amount of time, but maybe a half hour.

THE COURT: That's fine. It's actually easier for Denise to do it this way because everybody is not talking over each other and you can hear a lot better. So, yeah, take the time that you need to create the record. Not a problem.

MR. RICHTER: Okay. Thank you very much.

Good morning, Ms. Lauder. I didn't mean to not speak to you.

Judge, if we could, I would like to call to your attention the hearing that we had concerning the summary judgment motion that was made by the plaintiffs -- by the defendants.

In that regard, I would like to refresh everyone's memory -- everyone's memory, please, that -- and I don't mean to certainly go word for word over what we've been over word for word, but I would like to make this a clear and complete record, and I appreciate your indulgence in allowing me to do that.

So in this case, extraordinary periods

of time have gone by in which we have been trying to obtain responses to our discovery. To begin with, written discovery. We propounded interrogatory requests for admissions and requests for production in each of these three sort of companion cases that Your Honor has been dealing with.

I don't want to go back through that in any unnecessarily tedious way, Judge, but this has been before you. You certainly have knowledge of the disputes about discovery that have transpired along. And so I simply call that --

MR. DUKES: The defendant objects. This is not relevant to the motion for reconsider.

THE COURT: Yeah. I mean, I understand what you're saying, Mr. Dukes, and I agree to some extent; but, you know, Mr. Richter, what my e-mail was intended to do, I don't want to go back down this rabbit hole of saying that people aren't getting discovery to you and all of those sorts of things.

I just want you to argue the motion to reconsider based on the order that I signed as to charitable immunity. Okay?

MR. RICHTER: Yes, sir. Based on the

order that you signed to charitable immunity, we could not receive a fair hearing in the matter because, in part, of the lack of discovery responses which Your Honor had ordered, number one, which Your Honor had dealt with even to the point of -- I don't remember how many pages.

Rich, I think, said 2,000 or so. I don't remember how many pages, but many, many pages I'm sure you will remember having to wade through, Judge, and we still don't have a peace of what was redacted, although you ordered that it come to us unredacted.

Now, why might that matter? Because the motion that you made us go forward in and defend, a motion for summary judgment is a dispositive motion. And to do that, fundamental fairness requires that we have the benefit of the fullest ability to defend against the dispositive motion.

Part of the way we do that is by developing the case. We learn who witnesses are. We learn what writings exist. We learn all of those kinds of things, and then we have those available to us to utilize.

But in this case, although this was not

the first motion filed, Mr. Dukes was very anxious to get to a summary judgment motion, a dispositive motion, with the case in its current posture. That means with us in our current posture of ability to develop the case, including factual issues, and with our ability to defend thereby such a motion.

At the beginning of the proceeding, I called that to Your Honor's attention at the hearing, and we specifically talked -- I don't remember what witness, but we talked about a witness.

In any event, you didn't want to stop, as I had asked you to do, and let us go down the line that I was trying to interest Your Honor in, just what I'm saying now, and rather compelled us to go forward.

Now, that's number one. In addition, Rule 56 was utilized in this matter because of the nature of the proceedings. Rule 56 has specific requirements concerning time periods for filing, for example, affidavits.

And, Your Honor, we raised this to you at the hearing as well, and you granted us no relief. And, frankly, we felt like you didn't -- you didn't find yourself persuaded at all that

everybody has to live by the same rules.

Now, as to that, and I know you heard this before, I'm sorry to repeat myself, but at 4:55 on the afternoon of the --

MR. DUKES: The defendant objects.

MR. RICHTER: I'm sorry, I couldn't hear.

MR. DUKES: The defendant objects.

THE COURT: That's fine, move on.

MR. RICHTER: At 4:55 on the afternoon of I'm going to say Tuesday, I think it was December 8th -- I can't say that; I don't remember the date, but it was a Tuesday in this example I'm giving you. At 4:55 that afternoon we received four affidavits from Mr. Dukes supporting his motion.

Now those had to be dealt with of course, but it was 4:55 in the afternoon. And at 9:30 on Thursday morning we had a hearing before Your Honor scheduled. So we were caught without sufficient time, and I had expressed my opinion about the circumstances of that happening.

So I don't need to go through that anymore, but we think it's manifestly unfair for Rule 56 to have certain specific requirements,

including two days' notice, and for Your Honor then to accept statements that -- well, we filed two days before the hearing. The affidavits -- and it's in the record. I mean, all of this is in the record.

The affidavits were filed on Tuesday afternoon at 4:55 for a Thursday morning hearing at 9:30. They were voluminous, some of them, and, obviously, sent us chasing down that path.

Now, we called that to the Court's attention and Your Honor didn't grant us any relief of consideration in that regard either. So we then have to go forward, and -- and we do.

Now, I would like to -- take it out of the book, please. At the proceeding itself you entertained argument from opposing counsel that we had called no factual issue into contention. And that, we believe, is manifestly not what happened.

What happened, in fact, is a few things. Number one, Mr. Dukes on multiple occasions quoted to you and argued from the affidavits -- I'm sorry, from the depositions of the plaintiffs' various witnesses, a couple of experts, plus the plaintiff himself. Now, that is what happened.

And, again, I can cite to that specifically in the transcript from the hearing. Mr. Dukes says to you, in fact, the plaintiff testified, because I asked him, do you think anybody intended for Hartman and Brooks to harm you?

And he said, quote, my heart says no. I've never known any bad, bad people in the church, but I would rather not be here to remember this and sit here and talk about it like that.

Mr. Dukes goes on and says, but he said he doesn't have any evidence that anybody intended for him to be harmed. So at its heart this is a negligent supervision case and charitable immunity bars that claim. I'll stop quoting right there.

But that happens later on as well as to two other witnesses, Dr. Duffy, who is a psychologist, and the lady Ms. Wayland, who the dioceses sent John Doe to for treatment -- diagnosis and treatment.

That's important because there are other places which I will point out to Your Honor where we make broad statements adopting the filings. The depositions specifically I'm glad to quote that language to you, but we rely -- we

incorporate into the record and rely on -- did it twice actually in the hearing, and I would be glad to quote from the transcript to show you where that exists. But we did it twice and did so without objection.

Now, I didn't object to Mr. Dukes relying on deposition testimony because I thought he might -- that I might want to rely on deposition testimony, and I did. And he did it; Your Honor allowed him to do it. We incorporated it; he didn't object in any way whatsoever.

MR. DUKES: (Inaudible)

MR. RICHTER: I'm sorry, I didn't hear that.

MR. DUKES: I said, again, I object to this, Your Honor.

THE COURT: All right. Continue.

MR. RICHTER: Thank you. Well, I think I was saying you let it in for the defense and so we took the very same tact and we're entitled to be treated the very same way the defense was in that regard.

Now, I'm trying to pare down, Judge, because I know -- I mean, all of this you can go back and see, of course, but I don't want to go

through in detail what you've already been through in detail. So that is an important point as I referred to earlier about equal justice and equal applicability of the rules.

Now why are the rules -- why do I reference the rules as I have before? And, again, I think you are familiar with this simply by your recall. But as to the rules, we filed, well, take interrogatories, way long time ago. I don't remember the exact date, but I might can tell you in just one second.

We propounded interrogatories in September of '19 -- of 2018 -- on December 5th of '18. Those were objected to. Ultimately, some kinds of answers came in. When we subsequently propounded a second set of interrogatories in April of '19, and those were responded to in May of '19.

So from September of '18 to May of '19, we were trying to get answers. Part of this came before you. Again, I don't mean to go over plowed ground. Then they supplemented in August of '19, and in September and in October of '19 they supplemented.

Now, when they did that, they ignored the rules. Rule 33 specifically requires that the

person answering the interrogatories must do so under oath and sign them.

MR. DUKES: Again, I have to object, Your Honor.

THE COURT: All right. It's noted.

MR. RICHTER: I don't want to read the rule to you, you have it before you, Your Honor, but that's specifically what it requires. Each interrogatory shall be answered separately and in writing under oath, unless it's objected to in which event the reason for the objection shall be stated in lieu of the answer.

Now, some they object to and some they didn't object to as you have seen because you again have looked at more paper than you probably wanted to look at. My point there, Your Honor, is I don't think a litigant can ignore the rules. I've said this to you before. We are entitled to equal treatment in this and every case, every litigant is.

So I think it's really disingenuous for them to ignore the rule --

MR. DUKES: Your Honor --

THE COURT: All right. Mr. Richter, you're getting close.

MR. RICHTER: Your Honor, I understand what you're saying. I don't agree with it, but let me direct my comments accordingly. I don't know how -- I'm sorry, but my skills are lacking to tell you in any other way that a rule has been violated by the same people that want to enforce the rule.

MR. DUKES: I object, Your Honor.

THE COURT: You can say it that way. That's fine.

MR. RICHTER: Well, please consider it said.

So we also dealt with -- we also dealt with at the hearing some reliance on orders of circuit court judges in this circuit that was specifically argued to you. And -- and it was represented to you that summary judgment had been granted to charitable immunity based upon these various orders and they were commented upon and explained to you by opposing counsel.

Part of what he said is summary judgment would abate the need to rule on any of these motions if Your Honor were to grant any of them. That's the reason we were asking to be heard on all of the discovery matters so that we could have whatever we're going to have to have the

ability to defend ourselves fully.

MR. DUKES: Your Honor.

THE COURT: Okay. It's noted, but I will overrule it. That's kind of where we stopped in the hearing we had in Berkeley which got us obviously to the hearing -- you know, I made a ruling on the motion for summary judgment, and then I gave you the opportunity, which is what we're doing now, to have the motion to reconsider.

But the argument was, if you're going to go down the same road as four previous circuit judges, we don't really need to hear any of the other motions because it's dispositive, it's dispositive.

So what's your position as to that, Mr. Richter? That I didn't allow you to hear the discovery motions and therefore not be able to fully, I guess, uncover all of the discovery and summary judgment was too premature? Is that your argument.

MR. RICHTER: Yes. That's part of the argument, Your Honor, but it's more than that. It's left you in a position as you just indicated of thinking that four circuit judges have so ruled.

THE COURT: All right. Well, address

that part. Okay?

MR. RICHTER: So it's not true. It's been represented to you that Judge Young did, that Judge Nicholson did -- and I will quote it to you from the transcript how it was represented to you.

THE COURT: I read it. It was Judge Jefferson, Judge Young and Judge Nicholson. And I remember I referenced Judge Jefferson's previous order in my order. So I read them all.

MR. RICHTER: You did, that's correct. My point is, they don't -- they don't say what has been represented to you. They say -- and I think it's very significant and I would like to, for example, address Judge Nicholson's order with you just briefly.

Now, I have to find the quote. I think it's page 16, line 18. Yes.

Please let me turn the Court's attention to this language.

And, again, I'm quoting opposing counsel at the hearing.

In June of '17, Judge Nicholson granted summary judgment when charitable immunity in 11 cases pending against the diocese in which Mr. Richter was a defendant. He held that there was no

genuine issue of material fact. That the diocese and its entities were charities and that charitable immunity insulated them from liability because the events alleged occurred prior to 1981.

I've got Judge Nicholson's order in my hand, and it's a part of the record, I believe, in which he says, this matter came on before the Court on a motion for summary judgment filed by defendants, and he names everybody, based upon the common law doctrine of charitable immunity.

Having considered the diocese defendant's motion and memorandum of law and having heard oral argument from counsel on June 28th of '17, the Court finds that no genuine issue of material fact exists and that the defendants are entitled to judgment as a matter of law. That's it.

And then he says for that reason the diocese defendant's motion for summary judgment is hereby granted. Because there is no genuine issue of material fact is what Judge Nicholson says in his order.

He doesn't say anything about the last portion that was represented to you. And its entities were charities and that charitable

immunity insulated them from liability because the events alleged occurred prior to 1981.

THE COURT: I did not take that when he argued that as what Nicholson said. I took that as counsel's argument as to why I should grant summary judgment, but the quote that he gave in his order matches what was argued by Mr. Dukes. I didn't take that as a quote just for the record.

MR. RICHTER: I guess most compelling, Your Honor -- or not most compelling. That's not accurate characterization. Compelling. We propounded discovery, this is to that point we were discussing a moment ago --

MR. DUKES: Objection, Your Honor.

THE COURT: I'm sorry, what did you say, Mr. Dukes?

MR. DUKES: I just said once again I object. I'm quick on the draw on my mute button because there are people outside my window leaf-blowing.

THE COURT: That's fine. No problem. All right. Finish what you were saying, Mr. Richter. I didn't really follow it, I'm sorry.

MR. RICHTER: Thank you. What I was saying, I was talking a moment ago that we had

propounded discovery sometime coming back.

Among the things that we propounded -- among the things that we propounded was a request for production of many things, one of them being -- one of them being No. 9, all correspondence originating from the defendant diocese that references or relates in any way to Chris Hartnett prior to, during, or after his assignment by the defendant and or the Diocese to Sacred Heart School. We asked the same question about the other alleged perpetrator.

And then the next -- No. 11, all documents that pertain or relate in any way to Chris Hartnett. We were given, I think, maybe only two pages, but just a very few pages. Rich might remember how many that were purported to be Mr. -- the file on Mr. Hartnett.

Now, subsequent to all this -- to all of that discovery request, and you've seen all of this because this was -- what they produced was made available to Your Honor to rule on certain privilege issues, and you saw how much was redacted. You ruled that they had to, for the most part, give us that unredacted, but that's on appeal.

Now --

MR. DUKES: And that was in the Roe case, Your Honor. Not in this case.

THE COURT: In the appeal that you did, you indicated -- Mr. Dukes, you appealed that it was denied and you requested cert. And the last time we were together you had not gotten anything back from the Court of Appeals. Have you gotten anything back?

MR. DUKES: No, Your Honor. The petition for cert is still pending and I have a reply brief that is due on April 20th under Judge Beatty's extension of time that he granted right after Coronavirus.

THE COURT: Okay.

MR. RICHTER: The point is Louisa Storm is the person who handles this for the diocese. I think you've heard this reference perhaps a number of times previously. So I took her deposition. And you might recall Dawes Cook represents her.

So we subpoenaed her documents and took her deposition. And when she produced the documents at the deposition, she produced a letter that she had written to Bonnie Segars. I don't know her proper title; Mr. Dukes can fill that in,

but she's an important diocesan cog in these sex abuse cases.

And in that letter, among other things she says, other pertinent information include [redacted] noted that two other boys were abused by these same teachers. Their names are blank and blank. As an adult, [redacted] approached Ralph about their shared experiences. And that person, Ralph, only said, that faggot is dead.

And then she says in the next sentence, Mr. Hartnett, in fact, did die of AIDS. So this is a diocesan representative making a link between that faggot and dyeing of AIDS, same paragraph separated by one space of the space bar. That's it.

Now, we got that December -- I'm sorry, November, I think, 18th, 2019. Point being that wasn't produced to us. And I say that because you were asking awhile ago because what was I arguing. I'm arguing that we were entitled to these things and we didn't get them.

I would have, of course, interviewed those two people upon finding who they were, and I will when I find out who they are. I don't know what they will have to say, but they may have

something to say that's critical. They may, for example, have things that relate to a conspiracy claim, let's say, or a contract claim or a straight-up torts claim.

Anyway, I call that to your attention to again say this is simply another example of why going forward when we asked not to go forward was prejudicial to us. It is actually addressed to Monsignor Richard Harris, the Vicar General. It's -- the opening says, Dear Monsignor. It's a diocese document that they didn't produce to us. It's an important document that they didn't produce to us.

I don't know what a jury infers out that, but a reasonable inference may be that a reason why this lady connects this word faggot to this guy dying of AIDS. But they learned that in 2016 and never told Mr. Dow.

It's astonishing what the diocese -- well -- all of the depositions, and I'll show you in the record where I specifically said that I incorporate all of the discovery and depositions, filings, whatever, in all of these cases, the three subject cases specifically said that in the record to you without any -- without any objection.

On page 43, I represent to Your Honor we adopt all of the depositions, all of the written discovery; we rely on all of that as part of our argument here. Then I say but primarily we're relying on the rules.

And then again at another page, page 50, I again state, I would like to incorporate all of the depositions that have been taken in these cases, these plural cases, as part of our record in support of our argument that this is at the actual argument of the motion itself, and all of the pleadings, as I say, specifically in these cases.

These cases have traveled as a family and you've heard me say, I think, multiple times, Judge, I don't want to do things three times if we do it one time over and over, we've said that. I can't recall how Mr. Dukes responded when I said those things previously, but I've certainly said them to you many -- well, I say on some occasions previously.

Now, I would like to -- having gone through the order of Judge Nicholson, I would like to call to your attention that there is no order that I'm aware of from -- issued by Judge Young. I

haven't seen any. And, of course, it wouldn't have been published so there would be no way for me to find it, I guess, if there were one. But nothing presented to you; although, it was presented that he issued some.

Here, Mr. -- well, let me make a couple of points concerning Judge Jefferson's order.

I have too many papers, Judge. It's getting bigger and bigger.

Judge Jefferson -- I just had this on the table back there. I've got someone grabbing a copy of that order. I think I left it on my workroom table.

I highlighted a few things that I would like to call to your attention. And the reason I want to do that is because at least to the most important part of this matter at all, and that is what is law that controls. It's been represented to you consistently by the defendants that absolutely immunity was enjoyed by the defendants since they had a charitable 501(c)3 status.

Your order spends some time -- some very considerable time on that issue of dealing with the 501(c)3 status. I'm not sure why. I am sure why, but I don't think it's necessary because

we specifically have represented to the Court that we don't challenge that they're a 501(c)3.

They are and have been for a long time. We are not challenging. This suit is not to take from the diocese its 501(c)3. There's a method for doing that, and it's not a method that the private litigant in tort contract claims is able to effectuate.

So whatever the law was that gave any kind of protection at the relevant time to persons who were charitable entities, we understand that the law must be applied. How do we know what the law was at those times? That much is capable of certain ascertainment because we have published opinions.

By whom? Not trial judges. Because their orders don't carry any weight outside of the particular litigation that they are in. So those are not -- those are not published orders. But our appellate court orders are. And, of course, the ultimate of those is the South Carolina Supreme Court.

Now, it's unusual when -- I have it right here -- Judge Jefferson's orders are listed on this paper. I have it in my hand right now. I

would like to make a couple -- maybe four comments about that.

Judge Jefferson on page 9 of her order -- and please recall, Judge, that her order is dated January 21st of 2003. She says the doctrine of charitable immunity is a bar to claims against charities and was still in effect for other forms of negligence at all times of the events which led to the plaintiffs' cause of action.

I think charitable immunity was not abrogated until 2018 in this state as to negligence. She apparently thinks that. That's page 9 of her order.

In addition, she writes on page 16 of her order, the parties concede that the doctrine of charitable immunity would not apply to an intentional tort such as outrage.

Who are the parties? The Diocese of Charleston, in part.

The parties concede that the doctrine of charitable immunity would not apply to an intentional tort such as outrage. We've sued that cause of action and a lot of others.

Much of her order dealt with the discovery of the plaintiffs' abuse and injury, and

she found that the only possible conclusion is that the plaintiff has at all times -- has at all times knew that he was sexually abused, that the abuse was injurious to him, and that those injuries were physical and mental, and the above was caused by Fisher, who was the teacher in 1960 at Sacred Heart School who abused him. Not limited to that year, but at that time.

So Plaintiff claims she finds on page 22 is barred because he had notice of the causal relationship between the injury and the sexual incest in 1991 and 1992 and 1994. I don't know whether that word incest is just an error in transcription or whether the testimony was that Fisher was related to this victim. I just don't know that. But, clearly, Fisher -- it's undisputed that Fisher was his teacher at Sacred Heart School.

So as to her conclusion, which is found on page 25 of her order, she writes, the Court finds that Plaintiff has failed to plead a claim for which relief can be granted in that all claims against the diocese are barred by the applicable statutes of limitations.

Then she said, all claims against the diocese are therefore dismissed pursuant to

12(b)(6). That's what she says.

She goes on and concludes this conclusion section by saying there is no genuine issue as to any fact material to the diocese argument that the plaintiff claims are barred by the applicable statute of limitations; and, therefore, the Court would enter judgment as a matter of law in favor of the diocese and against the plaintiff.

Now, that happened in 2002. I think I just read you -- yes -- 2003, I'm sorry, January 21, 2003, she issued that order. She, a trial judge in that case, issued that order. But it was urged upon you that you follow Judge Jefferson's lead.

That is on page 19 of the transcript where opposing counsel says, I urge Your Honor to follow Judge Jefferson's lead as well as Judge Nicholson --

MR. DUKES: Objection, Your Honor.

THE COURT: To what?

MR. DUKES: Once again, Mr. Richter is not addressing how Your Honor erred as a matter of law in granting summary judgment.

THE COURT: Okay. I'll note it.

MR. RICHTER: I will be glad to respond to that, Judge, but I'm addressing it in that I think you did follow Judge Jefferson's Lead.

What I was quoting, page 19, line 5, quoting Mr. Dukes at the hearing. I urge you to follow Judge Jefferson's lead, as well as Judge Nicholson and Judge Young, all of whom have ruled in favor of the diocese on charitable immunity, and to follow that.

Now, the coincidence that I was referring to a moment ago when I said that -- reminded you that the date was January of 2003 of Judge Jefferson's order, the coincidence is this. All of the cases that were cited to you fail to cite -- except we did, but failed to cite all other cases. Failed to cite the most important decision in South Carolina jurisprudence concerning this issue. And that is the Jeffcoat case.

Now the Jeffcoat case was decided in 1973. It's been argued to you that it was '70, '71 at the time of the abuse of the plaintiff in the case at bar. Now it would have taken, of course, a couple of years for the Jeffcoat case to have arisen, been dealt with at the trial level, then appealed and gone through the appellate process for

the South Carolina Supreme Court to issue an opinion called Jeffcoat.

And that opinion is absolutely critically important because it is still the law today. It's never been reversed. It's never been mentioned by the defendants in this case at all. We called it to your attention and for whatever reason you did not think well apparently of our understanding or utilization of Jeffcoat.

We think it's absolutely critical in this matter, and it was issued by a unanimous South Carolina Supreme Court in 1973. So if you want to know what the law was in 1970, '71 at the time of the abuse we are dealing with here -- approximately, the abuse that we're dealing with here. If you want to know what the law was, you have a lot of things you can look to.

One of them is the unanimous opinion is still the law of the South Carolina Supreme Court. And that opinion is so valuable because it traces through the law of charitable immunity. And among -- among the things that that case does is that it specifically says charitable immunity applies to negligent acts as to charities.

That's the limit of any insulation or

benefit that a charity gets and that it applies only in the -- as to negligence even, only in the exercise of the charitable function.

You might remember a case called Decker in which a lady fell down in the Cathedral of St. John the Baptist on Broad Street stepping down from a raise about six inches altar level onto the main aisle of the church. The court held -- she was injured.

The court held she couldn't bring a claim because that was in the middle of the charitable function. I think the lady had gone to communion at mass.

I don't remember without looking again, but clearly it's undisputed she was involved in a religious service. So she couldn't recover.

Another lady however -- here's what the -- here's what was said about -- about Decker. It is alleged that April '63, plaintiff entered the Cathedral of St. John the Baptist and proceeded up the center aisle to the altar rail in order to say her prayers.

When she had finished, she turned from the altar rail and walked back to the center aisle, and at a point near the front-most pew she fell off

the platform onto the main church floor a distance of approximately six inches, seriously injuring herself.

She alleges that her injuries were proximally caused by the negligence of the respondent. It is our conclusion that the doctrine of charitable immunity should not be overruled here. Here we have a true charity, the church, engaged in conducting a religious service, its charity, and in which the plaintiff was participating at the time of her injury.

Now, Jeffcoat goes on -- this is 1973, goes on to say, well, that -- that case that I just referenced to you, and this is contained in the order -- proposed order that we sent in in this matter -- in the summary judgment hearing matter. That case contrasts with the case called Eiserhardt, which shows that clearly charitable immunity is not some universal band to recovery, a universal bar to recovery against a charity.

In Eiserhardt, a lady parked her car at the charity-owned lot, got out to go to whatever she was going to, and fell in a hole down in a defect in the parking lot and injured herself.

The court said we do not think immunity

should be extended to a situation where the activity out of which the alleged liability arose is primarily commercial in character, wholly unconnected -- wholly unconnected for which the charitable purpose for which the corporation was organized.

And this view is supported by the overwhelming weight of authority and it cites an ALR 2nd annotation.

Reviewing charitable immunity, it's not the first time that Jeffcoat revisits all of this. It's not the first time that a charity has been held accountable for its -- for its negligent activity or its intentional activity.

And in an earlier case, the primary cases that the defense has structured itself around, Judge, are from 1914 and 1916. And somehow they claim that that grants across the board absolute immunity charities in our state. Of course, the supreme court in Jeffcoat deals with that specifically and says that's just not what those cases say.

Here's some language, if you would allow me to call this to your attention, please. I would like to quote from Jeffcoat briefly more than

I would normally seek to quote. But it's -- it's sort of all incapsulating and it will save time from saying further things.

So Jeffcoat in 1973 says the following -- it's Jeffcoat v. Caine, 216 S.C. 75, 1973 case. In that instance it was a false imprisonment case.

The court reviewed the doctrine from its origins, lays it all out for the sake of the bench and the bar and the people of South Carolina. And it declares what the law is, and somehow we're the only ones that make that available to you in an opinion that comes two years -- roughly two years from the time of the abuse in this case.

So if you want to know what the law is back then, you've got to read Jeffcoat.

Among other things Jeffcoat says, the doctrine of charitable immunity was apparently first recognized in this state in Lindler v. Columbia Hospital. The action in that case was by a patient for damages alleged to have been sustained through the negligence of a nurse employed by the hospital, a charitable institution.

The court, in exempting the hospital from liability, stated the applicable rule and its basis as follows: Now, our supreme court is

quoting the prior decision.

True ground upon which to rest the exemption from liability is that it will be against public policy to hold a charitable institution responsible for the negligence of its servants selected with due care.

What did that court hold? That it would be against public policy to hold a charitable institution responsible for the negligence of its servants selected with due care. That's what the opinion was that this court, Jeffcoat, is quoting.

It goes on to say, it is evident that the court, in Lindler, did not intend to fashion a rule of complete exemption from tort liability; for it was careful to point out that the question of whether a charitable institution would be liable for negligence in the selection of its servants without due care is not before the court for consideration.

What does that make the court's common dicta?

Quoting further from Jeffcoat, the court next considered the doctrine of charitable immunity in the case of Vermillion v. Women's College of Due West. I think it's 1960 case. I'm

not positive. Plaintiff was injured when the balcony of defendant's auditorium fell during the progress of an entertainment.

That language is so gentle and succinct compared to what we've come to in our practice now.

Plaintiff was injured when the balcony of defendant's auditorium fell during the progress of an entertainment. Action was brought on the theory that the balcony fell because of the negligence in the construction. The decision in this case affirmed the holding in Lindler that charitable institutions were exempt from liability for the negligent conduct of their agents.

And, in addition, it held that such exemptions from liability for acts of their agents applied whether these be selected with or without due care. The case was remanded however for a new trial.

Subsequently, in Peden v. -- still quoting Jeffcoat -- subsequently in Peden v. Furman University, the court refused to extend the immunity doctrine so as to exempt a charitable institution for liability for trespass and nuisance arising out of the activity of a lessee. An intentional thing they did and not exempt from

liability.

Going further it says -- that's Peden v. Furman University that's being explained to us there.

The court also refused to extend immunity to the commercial activities of a charity in Eiserhardt v. the State Agricultural and Mechanical Society of South Carolina. That was an action for damages allegedly sustained as a result of stepping into a hole in the parking lot controlled and operated by the defendant.

The operation of the parking lot was a commercial venture and the court held that immunity should not be extended to a situation where the activity out of which the alleged liability arose is primarily commercial in character and wholly unconnected with the charitable purpose for which the corporation was organized, even though the commercial activity was for the purpose of increasing the fund to be used for the charity.

This is -- this is -- yeah. But just like the school. The plaintiff in this case, Judge, got kidnapped, taken to another city for the purpose other than what he and his parents had been told he was going for. He was given drugs, he was

given alcohol, he was sexually molested, raped by, sodomized by the -- by Hartnett and the other fellow as well.

And then he was taken to another place, a bar, and given to other people who also sexually transgressed him, and then he was abandoned in the bar in Columbia. I don't remember how old he was. Thirteen, I think. Maybe something like that at the time. So he hitchhiked back to Charleston and eventually he got back. That's what -- that's what he got.

Court went on to say, we applied the rule adopted in Lindler and Vermillion to exempt a church from liability for negligence in Decker -- lady fell down in church. The foregoing are the prior decisions of this Court, which are relevant to the present inquiry.

So we the Court have now in 1973 covered the waterfront in reviewing this doctrine of charitable immunity. There can be no doubt, the unanimous court writes, that the decisions in Lindler, Vermillion, and Decker contain broad, general expressions to the effect that charitable institutions are exempt from all tort liability.

However, the broad statement of a rule

of complete exemption from tort liability was unnecessary to a decision in those cases, and the rule of charitable immunity has never been extended by our decisions beyond the fact -- facts in Lindler, Vermillion and Decker.

Please let me read that again. And the rule of charitable immunity has never been extended by our decision beyond the facts of Lindler, Vermillion, and Decker. In fact, in Eiserhardt, lady fell down in the parking lot, the immunity doctrine did not exempt the charity from liability for the negligent operation of the commercial enterprise.

And in Peden -- this was the university case -- liability was placed upon the charity for trespass -- that's an intentional thing -- and the creation of a nuisance. Opposed liability for those things.

These decisions point up the fact that this Court, while adhering in the past to the rule that charitable institutions are exempt from liability for mere negligence, has in every instance refused to further extend the rule. Therefore, the application of the immunity doctrine in a case of intentional tort is not required by

precedent, nor, we conclude, by reason or justice.

A long discussion of the charitable doctrine is unnecessary the court says. It is sufficient to point out that it has been subject to much criticism in recent years by an increasing number of courts and writers as unsupportable under modern conditions.

Regardless of the public policy support, if there now be such, for a rule exempting charity from liability for simple negligence, we know of no public policy, and none has been suggested, which would require the exemption of the charity from liability for an intentional tort.

Our guy got taken to Columbia as a child. He got given drugs, he got given alcohol, he got sodomized by two teachers of Sacred Heart School, and he was given over to others in a bar and then abandoned. Now, those are intentional acts we respectfully submit, Your Honor.

So this court concludes this paragraph by saying, we refuse to so extend the charitable immunity doctrine. When? 1973; two years after the abuse that is in the case before you now.

That's why we think it's impossible to deal with this issue without dealing with Jeffcoat.

Jeffcoat is the law and we are entitled to rely on that law, and we do. It's never been mentioned, as I said earlier I think, by our opponents in the matter and it's extraordinarily important.

So I urge you, as opposed to the way Mr. Dukes urged you in our hearing that I read to you while ago, not to follow the lead of Judge Jefferson. Follow the lead of the South Carolina Supreme Court. I tell you frankly, Judge, I don't think you have any choice about it.

I think the supreme court has done what it's done unanimously, construed and declared the law for us and couldn't have more clearly said, this does not apply and never has applied to intentional acts.

I invite you to the entire opinion, Judge. It's -- I sent it and included it. The quote that I just went through, I included it in the proposed order that we submitted to you and I sent it by cite at least to your clerk and asked her if it was appropriate, to send it on to you.

This is back at the time you asked for proposed orders. So that's what we did.

Now, lastly -- or almost lastly, I would like to go back and comment about what I

consider to be ambush tactics, and that is the timing of the affidavits. This is in the record and --

MR. DUKES: And I object, Your Honor.

THE COURT: Yeah. I don't know to go down that road. I've been very patient. We've been going about an hour and 15 minutes, but that's noted for the record. And you've submitted letters and I addressed it through an e-mail.

I told you that you could make it part of the record if you wanted to, but I don't want to go back down the road.

So, Mr. Dukes, is there anything that you're going to argue or do you want to submit anything in writing? Do you have oral arguments that you want to make? What would you like to do?

MR. DUKES: I did plan to make a brief oral argument, Your Honor, and point out that Your Honor was correct in your ruling on granting summary judgment.

THE COURT: All right. Well, let's hang tight.

Mr. Richter, like I said, I don't want to go down the ambushing thing. Is there anything else that you would like to place on the record as

to the motion for reconsideration before I let Mr. Dukes go?

MR. RICHTER: Yes. There is at least one other thing, Judge.

THE COURT: All right.

MR. RICHTER: Our seventh cause of action is a cause of action for breach of contract. Your order has provided that on the basis of a charitable immunity our claim failed. Well, of course, a breach of contract is just a commercial undertaking. It doesn't have a thing in the world to do with any protection of charitable immunity.

So I just point that out as an additional reason that what I think should happen is that you should go back to square one, as I asked you essentially in the hearing -- at the beginning of the hearing itself and clear the decks as to all of these other motions which will lead us to witnesses or -- or other forms of evidence, and then reconvene the hearing on the summary judgment motion with everybody having a full opportunity to have exhausted the development of a case.

That's how it's typically handled. If you go back and read the whole thing, you'll see the push that was put on you to go forward that

day. That is what I would like to add at this time, Judge.

And I want to thank you. I didn't know we had gone that far because I slowed down because of the format. It may not be necessary to do that, but I'm sorry I'm not better adept at that.

But thank you-all for your patience in listening to what I had to say. And I would ask you to consider it all, Judge, and give us equal treatment under the law. That's all we are asking for.

THE COURT: All right. Fair enough.

If you will mute Mr. Richter.

Mr. Dukes.

MR. DUKES: Thank you, Your Honor. And I will be brief. Your Honor was correct in his ruling on granting summary judgment as was Judge Jefferson, as was Judge Nicholson. The law of charitable immunity for most of the 20th century has said a charity cannot be liable in tort for the actions of its employees, its officers, agents, its principals.

In the Vermillion v. Women's College case, and they give you a list, but it's everybody employed by the charity. After Jeffcoat, in

Crowley v. Bob Jones University, 234 S.E.2d 879, the Supreme Court -- 1977, the Supreme Court corrected the trial court's misinterpretation of Jeffcoat that the charity could be held liable for intentional tort by its employees.

And said in Crowley, only where a plaintiff can prove that the charitable organization, not its employees, committed an intentional tort will he be able to recover from the organization.

Remember, that dating back to Lindler and to Vermillion, the Supreme Court has said you can recover from the employee directly, but you can't sue the charity.

The record is complete; the diocese has established that it is, was, and always has been a charitable entity and they are entitled to charitable immunity for these cause of actions.

And I will also point out briefly that in Douglas v. Florence General Hospital, the Supreme Court said that any modification of the doctrine of charitable immunity could only be applied prospectively; otherwise, Your Honor was correct in the order that you issued and the motion for reconsideration should be denied. All right.

THE COURT: All right. Anything else?
You have to unmute Mr. Richter, Julie.
THE COURT REPORTER: I can't hear him.
THE COURT: I can't hear anybody.
THE CLERK: He's unmuted now.
THE COURT: All right. Mr. Richter.
MR. RICHTER: Thank you. Can everybody hear?
THE COURT: Yes.
MR. RICHTER: Action of the diocese, all of the conspiratorial claims, all of the claims of coverup, all that's been perpetrated by the diocese you have seen, Judge, because you had to look at the documents to rule on them. Documents which showed that three separate bishops from 1957 through the '80s and 1992 or '3, all had notice of a particular offender.
Thirty-two complaints called in about this offender to the --
MR. DUKES: That's incorrect.
MR. RICHTER: -- or written into the diocese, and all of it covered up. So did the diocese act? Yes, the diocese acted. It acted intentionally. So that's it.
Thanks again for --

THE COURT: All right.

MR. RICHTER: -- hearing, and I will -- that's it. Thanks very much.

THE COURT: All right. I appreciate you-all getting together and getting this stuff done. It's obviously a very unique time and normally, as you know, I rule pretty quickly, but there's no need to rush this.

I will take a look at the motions that were filed and all of the supportive documents and I'll make a decision fairly quickly though.

THE CLERK: Are we going to do the -- have we -- just so I can tell Lisa and Caroline, the only motion we're doing today is the motion for reconsideration. We're not doing summary judgment for any of the other cases?

THE COURT: That's correct.

All right. Ms. Lauder, if you will stay on, I want to ask you something unrelated. It's about your schedule and other stuff.

THE COURT REPORTER: Sure.

THE COURT: All right. Hope you stay safe and I will be in touch soon. If I need something I will give you a buzz. Thank you.

(These proceedings were concluded at

10:51 a.m.)

CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of April, 2020 at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder
Carol Denise Lauder
Registered Professional Reporter, CP
My Commission expires February 27, 2028

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS BASED UPON THE COMMON LAW DOCTRINE OF CHARITABLE IMMUNITY IN EFFECT AT THE TIME OF THE ALLEGED ABUSE

Defendants, Bishop of Charleston a Corporation Sole, and the incorrectly and improperly named "Bishop of the Diocese of Charleston, in his official capacity"[1] ("the Diocese") move for summary judgment as to all claims made by the above-captioned Plaintiff pursuant to Rule 56, SCRCP.

STANDARD FOR SUMMARY JUDGMENT

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim.[2] The trial court must grant the motion "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[3] "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."[4] "With respect to an issue upon

[1] As noted in the Diocese's Motion, "the Bishop of the Diocese of Charleston, in his official capacity" is not a proper party to this action.
[2] Rule 56(a), SCRCP.
[3] *Id.* Rule 56(c).
[4] Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"--that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case.'"[5] The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.[6] Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence that show there is a genuine issue of fact remaining for trial.[7]

A. Plaintiff's claims are barred under South Carolina's Common Law Doctrine of Charitable Immunity.

The Diocese of Charleston is a charitable entity, and has been since the Corporation Sole was created by the General Assembly in 1880.[8] As the South Carolina Supreme Court, the Court of Appeals, and the Circuit Courts have consistently ruled, the Diocese, its employees, agents, and officers, are all part of a charitable organization and they are entitled to absolute immunity from suit for torts and injuries that took place prior to 1981.[9]

For nearly all of the 20th Century, the law in South Carolina was that charities were absolutely immune from suit. Public policy dictated against crippling charitable organizations by making them liable for tortious or intentional conduct by any of their officers, agents, or employees.[10] The South Carolina Supreme Court reaffirmed the absolute defense of charitable

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[5] Id. (alteration in original) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).
[6] Id. (quoting Celotex, 477 U.S. at 323); see also Richardson v. State-Record Co., 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998).
[7] Baughman, 306 S.C. at 115, 410 S.E.2d at 545.
[8] *See* Affidavit of John Barker and Act of the General Assembly, December 13, 1880, attached as ***Exhibit A***.
[9] *See* i.e. *Orders of Hon. J.C. Nicholson in John Doe 193 v. Bishop of Charleston,* Civil Action 2013-CP-10-3733; *Order of Hon. Deadra Jefferson in John Doe v. The Diocese of Charleston and Jane Doe*, Civil Action 02-CP-10-0770, **Exhibit B**.
[10] *Vermillion v. Williams College of Due West*, 104 S.C. 197, 88 S.E. 649 (1916); *Lindler v. Columbia Hospital*, 81 S.C. 25, 81 S.E. 512 (1914).

immunity in *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, and again in *Decker v. Bishop of Charleston.*[11]

In 1966, the Supreme Court specifically reiterated the doctrine of absolute charitable immunity and applied it to a tort claim against the Diocese and declared the Church to be a true charity entitled to immunity from suit altogether.[12] The Court further held that a charity's immunity from suit is unaffected by the fact that the charity procured liability insurance that would cover the loss.[13] Rather, the Diocese was absolutely immune from suit in tort. The *Decker* Court affirmed the dismissal of a negligence suit on the Diocese's demurrer.

In 1981, the South Carolina Supreme Court abrogated the doctrine of charitable immunity.[14] However, the Court only did away with charitable immunity going forward – the abrogation could not be applied retrospectively.[15] Thus, a Court must apply charitable immunity as it existed at the time of the allegedly tortious activity.[16]

As late as 1979, in *Douglass v. Florence Gen'l. Hosp.*, the Supreme Court reaffirmed the doctrine of charitable immunity for torts that occurred while the doctrine remained effective.[17] Plaintiff initiated that case prior to the Supreme Court's decision in *Brown v. Anderson Cty. Hosp.*, though the case was pending when the *Brown* decision was issued. The trial court dismissed plaintiff's complaint based upon charitable immunity and determined that *Brown* applied only prospectively and could not give life to plaintiff's complaint. The Supreme Court affirmed that

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[11] *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, 235 S.C. 305, 111 S.E.2d 568 (1959) and again in *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264, 268 (1966).
[12] *Decker v. Bishop of Charleston*, at 268.
[13] *Id.* at 269.
[14] *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981).
[15] *See Hupman v. Erskine College*, 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984), *Hasell v. Medical Society of S.C.* 288 S.C. 318, 342 S.E. 594, 595 (1986) *see also Brown v. Anderson Cty. Hosp.*, 234 S.E.2d 873 (S.C. 1977) (modifying charitable immunity as to hospitals only to render them liable for heedless and reckless acts and prospectively only).
[16] *See Laughridge v. Parkinson*, 403 S.E.2d 120, 120 (1991) (holding that charitable immunity law in existence at the time of tortious conduct in 1979 must be applied).
[17] *Douglass v. Florence Gen'l. Hosp.*, 259 S.E.2d 117 (S.C. 1979),

decision because *Brown* created liability where, before, there had been none. Florence General Hospital was immune from suit for its employees' negligence, even if heedless or reckless.[18]

Charitable immunity is on par with other common law doctrines of immunity from suit and should be applied in the same fashion. Judicial officers, quasi-judicial officers, judges and prosecutors are immune from any suit for acts committed by them in the performance of their duties.[19] Guardians *ad litem* are likewise absolutely immune from suit for their official functions.[20] Government physicians are immune from suit arising from the medical care they deliver as government doctors.[21] The Recreational Use Statute, S.C. Code Ann. § 27-3-10 *et seq.*, immunizes landowners from liability to persons who have sought and obtained permission to use the property for recreational purposes.[22] Parties who are absolutely immune from suit are not subject to being haled into court and cannot be required to defend themselves at all.

Plaintiff's own allegations and his testimony establish that his alleged abuse could only have taken place sometime during the 1970-71 school year. One of the accused, Hal Brooks, testifies in his affidavit that he only taught at Sacred Heart School until December, 1970.[23] Therefore the alleged abuse, which Brooks denies, would have taken place when common law charitable immunity was absolute – thus, the Diocese is immune and all claims must be dismissed with prejudice.

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[18] *Douglass*, 259 S.E.2d at 118.
[19] *See Williams v. Condon*, 553 S.E.2d 496 (S.C. Ct. App. 2001) (dismissing claims on 12(b)(6) motion); *Hartline v. Clary*, 141 F.Supp. 151 (E.D.S.C. 1956).
[20] *Falk v. Sadler*, 533 S.E.2d 281 (S.C. Ct. App. 2000); *Fleming v. Asbill*, 483 S.E.2d 751 (S.C. 1997).
[21] *See Biser v. Med. Univ. of S.C.*, 2006 WL 7285171 (S.C. Ct. App. Feb. 8, 2006) (denying leave to amend complaint to add physicians as defendants) *and Proveneaux v. Med. Univ. of S.C.*, 482 S.E.2d 774 (S.C. 1997) (holding physician employed by medical university entitled to government immunity).
[22] *See Brooks v. Northwood Little League*, 489 S.E.2d 647 (S.C. Ct. App. 1997) (dismissing claims on 12(b)(6) motion).
[23] *See* Affidavit of Hal Brooks submitted with the Diocese's motions for summary judgment.

The Diocese is, and has been, a charity entitled to common law charitable immunity as the law established at the time of any alleged tort. It is without question that both South Carolina and federal authorities have long-determined the Diocese to be a charitable institution.[24] South Carolina law does not permit the courts of this state to substitute its judgment for the judgment of an agency.[25] Unlike the legislatively created limitation on liability for charities, immunity from suit is *not* an issue to be applied after a jury verdict. Rather, pre-1981 charitable immunity shields charities from suit altogether.

It is important to note that charitable organizations are recognized as such by the federal government – whose rules, regulations, and enforcement govern whether an organization can be considered a charity and exempt for state and federal taxes. When the General Assembly codified the common law doctrine of charitable immunity, it specifically premised charitable status on the Internal Revenue Service's determination.[26] That is a determination of the federal government that the state is required to honor by the Supremacy Clause of the Constitution. In addition, the federal code contains a specific provision regarding the procedure to review and revoke a charity's status – that can only be done by the Department of the Treasury and for very specific reasons.[27] Federal law affords no private right of action to challenge a church's charitable status.

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[24] In addition to the affidavit of John Barker establishing the Catholic Church's charitable status, the Court can take judicial notice of the *fact* that, since 1946, the federal government has recognized the United States Conference of Catholic Bishops as having a group designation as a charitable organization and has determined that all agencies and instrumentalities, and the educational, charitable, and religious institutions listed in the *Official Catholic Directory* qualify for charitable status. *See Internal Revenue Service Group Determination Letter*, attached as ***Exhibit C*** and ***Exhibit D***, Official Catholic Directory, 1971.

[25] *See e.g.* S.C. Code Ann. § 1-23-380(6).

[26] *See* S.C. Code Ann. § 33-56-20.

[27] 26 U.S.C. § 7611 contains specific restrictions on efforts to inquire into a church's tax exempt charitable status – that inquiry may only be commenced by the Secretary of the Treasury or another appropriate high-level Treasury official; the inquiry must begin within 3 years; and suit over the charitable status may only be brought by the government in the United States District Court for the District of Columbia.

CONCLUSION

As the Courts of this State have consistently and repeatedly held, Plaintiff's claims are entirely barred by the common law charitable immunity. The Diocese, and all its ministries, schools, and affiliates listed in the Official Catholic Directory are in fact charities and no amount of baseless pleading can change the Internal Revenue Service's determination – not just for the Diocese of Charleston, but for the entirety of the American church – that the Church is a charitable institution. There is no genuine issue of material fact regarding the Church's status as a charitable organization and there is no admissible evidence to the contrary. The Court must apply charitable immunity as it existed in 1971, and grant the Diocese's motion for summary judgment.

For the foregoing reasons, Plaintiff's claims must be dismissed with prejudice.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS

October 30, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CIVIL ACTION NO.: 2019-CP-10-1120
John Doe 432, Plaintiff, v. The Diocese of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, Defendants.	**AFFIDAVIT OF JOHN BARKER**

The Deponent, John Barker, who being duly sworn upon oath, hereby testifies as follows:

1. My name is John Barker. I am a resident of Charleston County, over the age of 21 and competent to testify to the following facts upon my own personal knowledge.

2. I am Chief Financial Officer of the Diocese of Charleston (the "Diocese"), and have been since 2006. The Diocese is headquartered in Charleston, South Carolina. As Chief Financial Officer, my responsibilities include, but are not limited to, being familiar with the Diocese's corporate structure, the nature of its economic activities, and its ownership and disposition of property. As Chief Financial Officer, I report to the Bishop of Charleston, who holds ecclesiastical authority over the Diocese.

3. The Diocese is a religious entity; a diocese of the Roman Catholic Church headed by a bishop. The current bishop is Most Rev. Robert E. Guglielmone, who was appointed by His Holiness, Pope Benedict XVI in 2009.

4. The Corporation Sole was created by Act of the General Assembly of South Carolina approved on December 13, 1880 (17 Stat. 321). The Corporation Sole, from its inception and through the current day was, and is, a charitable entity. The Diocese is recognized by the Internal Revenue Service as a charitable institution pursuant to Section 501(c)(3) of the Internal Revenue Code.

5. Since at least 1946, the I.R.S. has issued a Group Letter Ruling to the United States Conference of Catholic Bishops recognizing the charitable status of each Catholic diocese in the United States, including the Diocese, together with the parishes, schools, ministries, and other affiliated ministries or entities that are listed in the Official Catholic Directory for each diocese. The I.R.S. recognizes each listing in the Official Catholic Directory as having its own charitable status under Section 501(c)(3).

6. Attached to this affidavit and incorporated herein by reference as Exhibit the following: ***Exhibit A*** is a copy of the Act of the General Assembly, dated December 13, 1880, titled, "An Act in Reference to the Holding and Disposition of Property in this State for the use of the Roman Catholic Church."

FURTHER AFFIANT SAYETH NOT.

John L. Barker

Sworn to and subscribed before me this
the 1 day of April, 2019.

KELSEY SHOOTER
Notary Public-State of South Carolina
My Commission Expires
February 02, 2027

Notary Public for South Carolina

My commission expires: 2/2/2027

EXHIBIT A

AN ACT IN REFERENCE TO THE HOLDING AND DISPOSITION OF PROPERTY IN THIS STATE FOR THE USE OF THE ROMAN CATHOLIC CHURCH

BE IT ENACTED by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the Right Reverend P. N. Lynch, Doctor of Divinity, Bishop of Charleston and his successors in the Episcopal See of Charleston, according to the discipline and government of the Roman Catholic Church, be and he and they are hereby declared to be a body corporate and politic under the name of the Bishop of Charleston, and in that name to be able and capable in law to purchase, hold, possess, and enjoy in fee simple or in any lesser estate, any property, either real or personal, to be held, enjoyed, possessed, or used, for the purpose of a church, hospital, parsonage, burial ground, school-house, or any or all of said purposes, or for the erection, repair, maintenance, support or keeping up of them, or any or all of them, and to sell, alien, or otherwise dispose of the same, and by said corporate name to sue and be sued, plead and be impleaded, answer and be answered unto, in any Court in this State.

Approved December 13, 1880

[The foregoing is a copy of an Act of the General Assembly of South Carolina approved December 13, 1880, and is found in Volume XVII of the Statutes of South Carolina at page 321.]

ACTS AND JOINT RESOLUTIONS

OF THE

GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA,

PASSED AT THE

REGULAR SESSION OF 1880.

PRINTED BY ORDER OF THE GENERAL ASSEMBLY, AND DESIGNED TO FORM A PART OF THE SEVENTEENTH VOLUME OF THE STATUTES AT LARGE, COMMENCING WITH THE ACTS OF 1870.

COLUMBIA, S. C.:
JAMES WOODROW, STATE PRINTER.
1881.

A. D. 1880.

separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of a family: *Provided further*, That there shall not be an allowance of more than one thousand dollars worth of real estate and more than five hundred dollars worth of personal property to the husband and wife jointly: *Provided*, That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or the erection of improvements thereon: *Provided further*, That the yearly products of said homestead shall not be exempt from attachment, levy or sale, for the payment of obligations contracted in the production of the same. It shall be the duty of the General Assembly at their first session to enforce the provisions of this Section by suitable legislation."

Married women having separate estate entitled to exemption, if husband's estate be insufficient.

Not exempt from levy for taxes or debts for purchase or improvements thereof.

Yearly products liable for debts contracted in their production.

Approved December 13, 1880.

AN ACT IN REFERENCE TO THE HOLDING AND DISPOSITION OF PROPERTY IN THIS STATE FOR THE USE OF THE ROMAN CATHOLIC CHURCH. No. 264.

Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the Right Reverend P. N. Lynch, Doctor of Divinity, Bishop of Charleston and his successors in the Episcopal See of Charleston, according to the discipline and government of the Roman Catholic Church, be and he and they are hereby declared to be a body corporate and politic under the name of the Bishop of Charleston, and in that name to be able and capable in law to purchase, hold, possess, and enjoy in fee simple or in any lesser estate, any property, either real or personal, to be held, enjoyed, possessed, or used, for the purpose of a church, hospital, parsonage, burial ground, school-house, or any or all of said purposes, or for the erection, repair, maintenance, support or keeping up of them, or any or all of them, and to sell, alien, or otherwise dispose of the same, and by said corporate name to sue and be sued, plead and be impleaded, answer and be answered unto, in any Court in this State.

Rev. P. N. Lynch and his successors in the Episcopal See of Charleston constituted a body corporate and politic.

Can hold and alien property.

Approved December 13, 1880.

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

THIS IS TO CERTIFY THAT This and/on the attached is a true and accurate copy of Act No. 264, AN ACT IN REFERENCE TO THE HOLDING AND DISPOSITION OF PROPERTY IN THIS STATE FOR THE USE OF THE ROMAN CATHOLIC CHURCH, recorded in records of the General Assembly, Acts & Joint Resolutions, Regular Session of 1880, Title Page & pg. 321, now on deposit with South Carolina Department of Archives and History

GIVEN UNDER MY HAND AND THE SEAL OF THE ARCHIVES this NINETEENTH JULY 2007.

Paul Begley
Reference Services

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2013-CP-10-3733

John Doe 193,

v.

Plaintiff,

The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, The Bishop of Charleston, in his official Capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC,

Defendants.

ORDER GRANTING DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
(does not end the entire case)

This matter came before the Court on a Motion for Summary Judgment filed by Defendants The Bishop of Charleston, a Corporation Sole, Robert Gugliemone, The Bishop of Charleston, in his official Capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity (the "Diocese Defendants") based upon the common law Doctrine of Charitable Immunity. Having considered the Diocese Defendants' Motion and Memorandum of Law and having heard oral arguments from all counsel on June 28, 2017, the Court finds that no genuine issues of material fact exist and that Defendants are entitled to judgment as a matter of law.

For that reason, the Diocese Defendants' Motion for Summary Judgment is hereby **GRANTED** and Plaintiffs' claims against the Diocese Defendants are **DISMISSED with**

PREJUDICE. All claims against Defendants Richter, Haller, and Richter & Haller, LLC remain pending, as does the claim for Conspiracy against all Defendants.

June 5, 2017
Charleston, SC

The Hon. J.C. Nicholson, Jr.
Circuit Court Judge

2 cc's to Peter Shahid (by hand) 1-29-03

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 02-CP-10-0770
JOHN DOE,	)	
Plaintiff,	)	
vs.	)	ORDER
THE DIOCESE OF CHARLESTON, and JANE DOE,	)	
Defendants.	)	

FILED
2003 JAN 29 PM 12:07
BY _____ CLERK OF COURT

Hearing Date: September 11, 2002
Presiding Judge: Deadra L. Jefferson
Attorney for the Plaintiff: Greg Meyers
Attorneys for the Defendant: A. Peter Shahid, Jr.
James C. Geoly
Court Reporter: Stacy Sheppard

This matter came before this Court on the above date upon three Motions filed by the Defendant, The Diocese of Charleston (hereinafter referred to as the "Diocese") and one Motion filed by the Plaintiff. The Diocese, filed a Motion for Summary Judgment, Motion to Dismiss, and Motion to Strike. The Plaintiff filed a Motion to Compel Responses to Discovery. Appearing on behalf of the Defendant was A. Peter Shahid, Jr. and James C. Geoly, and appearing on behalf of the Plaintiff was Greg Meyers.

The Diocese's Motion for Summary Judgment is based upon the Doctrine of Charitable Immunity and the Motion to Dismiss is based on the Statute of Limitations and as to Count One, the Plaintiff's failure to state a claim. The Motion to Strike sought to strike several paragraphs

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from the Plaintiff's Complaint. The Motion to Compel by the Plaintiff sought the Diocese to be required to respond to their set of Interrogatories, dated March 17, 2002.

I. FACTUAL BACKGROUND

The Plaintiff, an adult male, filed his Complaint against the Defendants on February 19, 2002. He alleges that beginning in 1959/1960, while he was a minor student at a local parochial school, Sacred Heart Elementary School, owned and operated by the Diocese, he was sexually molested by Edward Fischer, a teacher employed at the school. (Fischer was indicted for numerous counts of criminal sexual related offenses in the Charleston County Court of General Sessions. Fischer pled guilty to several counts and was sentenced to a term of 20 years imprisonment. Fischer died on July 6, 2002 .) The cornerstone of the Plaintiff's causes of action is that the Diocese knew or should have known that Fischer was engaging in, or had engaged in, illegal acts of sexual misconduct with a minor student. Specifically, in the Plaintiff's First Cause of Action, Outrage, the Plaintiff states that the Diocese had a duty to warn parents of Fischer's sexual propensities, to supervise Fischer and to report Fischer's sexual misdeeds. The Complaint further alleges that the Diocese acted "intentionally" in breaching these alleged duties, and as such, the Plaintiff is entitled to recover damages against the Diocese.

The Plaintiff further alleges in his second cause of action that the Diocese breached a fiduciary or special duty to the Plaintiff arising from its alleged actual or constructive notice of Fischer's conduct in sexually molesting students. Likewise, in his third cause of action, the Plaintiff alleges that the Diocese was negligent in supervising Fischer. Finally, in the Plaintiff's fifth cause of action, he complains that the Diocese breached an assumed special duty based on its alleged failure to supervise Fischer.

The Diocese, as reflected in the Affidavit of Dennis Atwood, Chief Financial Officer, attached to the Memorandum in support of the Defendant's Motion for Summary Judgment, states that the Diocese is a charitable organization. According to the affidavit, the Diocese and Sacred Heart School was, at the time of the events alleged in the Complaint, a charitable, tax-exempt organization. All of the officers, directors, employees, and agents of the Diocese or Sacred Heart would, therefore, have been personnel of a charitable organization. All of the school's activities relevant to this case were within the scope of the school's role as a charity; none of the injuries at issue in this case arise from any for-profit or otherwise non-charitable activities on the part of the school or the Diocese. Plaintiff at oral argument conceded these factual points; and thus, there is no factual dispute as to the charitable status of the Defendant.

Plaintiff submitted two affidavits in opposition to the Diocese's Motion. The first, by "John Doe Number 2" is the affidavit of the Plaintiff. "Attachment A" to Plaintiff's affidavit is his handwritten statement provided to the Office of the Solicitor for the Ninth Judicial Circuit in 1999 after Fischer was arrested. "Attachment B" is an excerpt of the transcript from the sentencing hearing of Edward Fischer on April 23, 1999, including Plaintiff's own testimony. "Attachment C" is a letter from Plaintiff's dentist, dated December 10, 2001. In his affidavit, Plaintiff states that his statements to the Solicitor and at the sentencing hearing are true.

In both Attachment A and Attachment B, the Plaintiff provides a detailed description of Fischer's sexual abuse of him while Plaintiff was a student at Sacred Heart. Plaintiff testifies that he was born in 1947. (Attachment B at 39). He met Fischer in 1960 as a seventh grader at Sacred Heart. (Attachment B at 39-40). Fischer first sexually abused Plaintiff when he was twelve (12) years old. (Attachment B at 41). As to one particularly heinous form of abuse,

Plaintiff states, "I cannot describe in words the humiliation, the shame, the embarrassment, the degradation and the total lack of control this put me in." (Attachment A at p. 4). Plaintiff also indicates that, at one point, his mother asked him if Fischer had abused him: "She asked me if he ever did anything to me that he shouldn't? I asked why. She said because if he did, she would kill him. And my Mom probably would have. So I told her no, and I never said anything to her or anyone else about it." (Attachment A at 9). The Plaintiff elaborated on his knowledge of the above: "As time went on, Eddie [Fischer] continued to molest me and I continued to let him, never understanding why I would let him. ***I knew that it should not have been happening*** and by the time I got to Bishop England High School, I was getting a little tired of it." (Attachment at 9-10) (Emphasis Added).

Plaintiff does not claim to have ever forgotten Fischer's sexual abuse. To the contrary, he provided specific events which occurred in his daily life that served as a constant reminder of the abuse and its effect. (Attachment A at 18-19 and Attachment B, 47-48)

Plaintiff admits that in 1991, after he suffered from the abuse he checked himself into a hospital. (Attachment A at 19 and Attachment B, p. 48). Plaintiff started Alcoholics Anonymous, and at the first meeting was greeted at the door by Fischer. This "triggered" Plaintiff "into talking about what happened to [him] and the pain that [he] tried to hide and the guilt, the fear, the shame and embarrassment that [he has] endured." (Attachment A at 20). Plaintiff shared his story with a friend at AA. This friend responded by telling Plaintiff that he knew of others whom Fischer had sexually abused, but that he (the friend) had not been abused. (Attachment A at 20)

Plaintiff also identified the causal connection and sought help for his alcohol addiction on June 26, 1992 indicating that "I had had enough pain in my life and checked myself into rehab and started my journey into sobriety." (Attachment B, Partial Transcript Page 48, Lines 7-9) Plaintiff was later treated at Medical University of South Carolina, where he took part in several research studies and was diagnosed with "social phobia" and "post-traumatic stress disorder." (Attachment A at 20-21 and Attachment B, p. 48). The Plaintiff also states in attachment A that "As I got sober I started reaching out for recovery from molestation. I sought help from M.U.S.C." Plaintiff described also the treatment process, to include seeking help through the proper channels and being diagnosed with sexual phobia and later with post-traumatic stress disorder. He elaborated in his affidavit of receiving a book, The Courage to Heal, from Dr. Michael Johnson. (Also Attachment B Partial Transcript page 48, Lines 19-25) He also reflects that the incident and the effects came back to him while attending his 30th reunion for Bishop England High School. Finally, as reflected in this attachment to his affidavit, that after proper medication, at the age of forty-four, he was at ease. (Attachment B at 48-49).

Plaintiff also states that he has been diagnosed with "Generalized Anxiety Disorder" and "post-traumatic stress disorder" by Dr. Lorraine Dustan, but Plaintiff has not filed an affidavit from Dr. Dustan or attached a report from her. Plaintiff also states that he was diagnosed "as requiring extensive dental surgery costing no less than $35,000.00 for a stress-related dental condition." Plaintiff attaches a letter from Timothy Assey, D.M.D., P.A., describing his dental condition and opining that it was "most probably caused by the history of sexual abuse [Plaintiff relates]." (Attachment C)

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Plaintiff also submits an affidavit from "John Doe Number 1," who claims that he was sexually abused by Fischer at Sacred Heart. John Doe Number 1 claims that he heard the principal at Sacred Heart "cursing" Fischer and ordering him off of the property, never to return. John Doe presumed, and still presumes, "that he had been caught and that the nun's anger related to his being caught." (Affidavit of John Doe Number 1, ¶9). He also states that when he later saw Fischer between 1967-72, Fischer claimed that the principal's anger was "because he refused to wear a necktie except on Fridays for mass . . . .". (Id. ¶12).

II. STANDARD FOR SUMMARY JUDGMENT

Rule 56, South Carolina Rules of Civil Procedure, states that a party against whom a claim, counterclaim, or cross-claim is asserted or declared towards a judgment is sought, may, at any time, move, with or without supporting Affidavits, for a summary judgment in his favor as to all or any part thereof.

Furthermore, Rule 56(e) South Carolina Rules of Civil Procedure states: "When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Hunt v.

Happy Valley Ltd. Partnership, 315 S.C. 428, 434 S.B.2d 285 (S.C. App. 1993). See also: Yarborough v. Rogers, 306 S.C. 260, 411 S.E.2d 424 (1991).

III. CHARITABLE IMMUNITY

The Doctrine of Charitable Immunity was espoused in this State in the landmark case of Linder v. Columbia Hospital of Richmond County, 98 S.C. 25, 81 S.E. 512 (1914): "The rule is thus stated in 6.CYC.975, 976: 'A charitable corporation is not liable to injuries, resulting from the negligent or tortious acts of a servant, in the course of his employment, where such corporation has exercised due care in his selection. Linder, at pgs. 512- 513.

The doctrine was further developed in Vermillion v. Williams College of Due West, 104 S.C. 197, 88 S.E. 649 (1916), which stated as follows: "These differences and the facts of the two cases make no difference in the applicable law, because the exemption of public charities from liability and actions for damages for tort rests not upon the relation of the injured party to the charity, but upon grounds of public policy, which forbids the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself or of its superior officers, or agents, or of its servants or employees. The principle is that in an organized society, the rights of the individual must, in some instances, be subordinated to the public good . . that being so, what difference can it make whether the tort is out of the corporation itself or its superior officers and agents of that of its servants, liability for the one would effectually embarrass or sweep away the charity as the other. It would therefore be illogical to admit liability for one and deny it for the other." Vermillion at 650.

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In 1959, the Supreme Court decided Izerhart v. State Agricultural and Mechanical Society of South Carolina, 235 S.C. 305, 111 S.E. 2d 568 (1959), in which the Doctrine of Charitable Immunity was reaffirmed, however, the Court did not extend the Doctrine to activities outside the scope of the charitable organization's mission.

The Supreme Court again reaffirmed the Doctrine of Charitable Immunity in a case previously decided in favor of this defendant, in Decker v. Bishop of Charleston, 247 S.C. 317, 147 S.E.2d 264 (1966). In Decker, the Plaintiff was injured as a result of injuries she sustained attending a church service at the Cathedral of St. John the Baptist. The Supreme Court stated: "It is our conclusion that the Doctrine of Charitable Immunity should not be over-ruled. The Doctrine is particularly applicable in this case. Here we have a true charity, the Church, engaged in conducting a religious service and it which Carolyn Gaul Schmicht was participating at the time of her injury." Decker, at p. 268.

There is no question from the facts gleaned and the law as stated in this case that the Doctrine of Charitable Immunity was in full force and effect during the entire time frame Fischer abused the Plaintiff, or any alleged acts or omissions on the part of the Diocese. The events which gave rise to the injuries sustained by the Plaintiff occurred at the time the Doctrine of Charitable Immunity was the law in this State. It is an absolute defense to a claim which arose to the acts complained by the Plaintiff against the Defendant.

The Doctrine of Charitable Immunity was abolished in the landmark case of Fitzer v. Greater Greenville South Carolina Young Men's Christian Association, 277 S.C. 1, 282 S.E.2d 230 (1981), which states as follows: "We hold a charitable institution is subject to liability for its

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tortuous conduct the same as other person or corporation. The Doctrine of Charitable Immunity is abolished in its entirety and reversed and remanded the case for trial. Fitzer, at pgs. 231- 232.

Our Supreme Court has made it clear that the application of the abolition of the Doctrine of Charitable Immunity was not to be applied retroactively. "We hold that the Doctrine of Charitable Immunity announced in Fitzer v. Greater Greenville South Carolina Young Men's Christian Association, citations omitted, applies prospectively only." Hupman v. Erskine College, 281 S.C. 43, 314 S.E.2d 314 (1984). The Doctrine of Charitable Immunity is a bar to claims against charities and was still in effect for other forms of negligence at all times of the events which led to the Plaintiff's cause of action.

IV. APPLICATION OF DOCTRINE OF CHARITABLE IMMUNITY

Applying these principles, it is clear that Plaintiff's claims are barred by the Doctrine of Charitable Immunity. The Plaintiff has no facts in dispute that the Defendant, Diocese, is a charitable institution and Sacred Heart School, its officers, agents and employees, are all part of a charitable organization. The Plaintiff concedes these facts for the purposes of this hearing. Furthermore, there is no contention, and neither does the Plaintiff raise one, that the scope or nature of the school's function was operated outside the charitable parameter's of the Diocese during the time in question. It is undisputed that the Diocese and Sacred Heart were, and are, "charities" under South Carolina law. It is undisputed that the events in question occurred before the abolition of the Doctrine of Charitable Immunity in 1981, and even before the Supreme Court's prospective limitations on its application, such as the intentional torts exception in 1973. Accordingly, at the time of the events in question, it was the law of South Carolina that charities

were immune as to all tort liability. Moreover, even if the Court were to apply the intentional torts exception retroactively, the Diocese would still be immune. Certainly, Edward Fischer's heinous acts were intentional and criminal, but there are no allegations in the Complaint, nor are there any facts offered by the Plaintiff, suggesting that the Plaintiff's injuries were caused by intentional acts of the Diocese itself. The allegations in the Complaint are a quintessential claim for negligence.

The Plaintiff does not assert that the Diocese's actions fall outside the protection of the Doctrine of Charitable Immunity as a result of intentional acts on the part of the Diocese. In response to the Diocese's Motion for Summary Judgment, the Plaintiff cited Section 15-3-555, South Carolina Code of Laws, (1976, as amended): "An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years of the time of the discovery by the person of the injury in a casually relationship between the injury and the sexual abuse or incest, whichever occurs later. Subparagraph B: Parental immunity is not a defense against claims on sexual abuse or incest that occurred before, on or after, this Section's effective date."

Plaintiff claims that the Court should not apply the Doctrine of Charitable Immunity in place at the time of his sexual abuse because that was not the actual time of his injury. Instead, Plaintiff claims that his time of injury was some time much later, when he causally connected his symptoms to the sexual abuse. Plaintiff points to the language of Section 15-3-555, which adopts a "discovery rule," extending the Statute of Limitations for sexual abuse until "within three years of the time of the discovery by the person of the injury and a causal relationship between the injury and the sexual abuse . . .".

Plaintiff has mistakenly interrupted Section 15-3-555 for a new statutory cause of action. He advocates this statute converts the discovery rule into a new accrual rule, allowing for a separate cause of action every time he discovers a new symptom. Nothing in this Section provides for a legislative overturning of the Supreme Court's "prospective only" decision in Hupman. On the contrary, the statute is clearly intended as an extension of the Statute of Limitations and there is no indication in the language of the statute that the General Assembly intended to modify or alter the application of the Doctrine of Charitable Immunity for causes of action which occurred before 1981. The Statute of Limitations is an utterly different creature from the Doctrine of Charitable Immunity. The limitations period is a procedural device designed to require the prompt initiation of claims. The discovery rule exception addresses a perceived unfairness to the Plaintiff as a time limit under certain circumstances. In contrast, our Supreme Court held in Hupman that changes to charitable immunity were to be applied prospectively only, on the theory that a charity being sued for events at a particular time should have available to it the immunity doctrine in place at the time of those events.

The Plaintiff believes that the term "by the person of the injury in the casual relationship between the injury and the sexual abuse or incest" refers to the date of when the injury is manifested or discovered. As authority for this contention, the Plaintiff cites Laughridge v. Parkinson, 304 S.C. 51, 403 S.E.2d 120 (1991). The victim from this 1991 Supreme Court Case addressed the application of the statute as follows: "The alleged tortuous conduct in this case occurred in March of 1979. At that time, Brown had been decided and the legislature had enacted Section 44-7-50. Greenville Hospital argues that at the time of the injury, Section 44-7-50 was in effect and that its liability was therefore limited to $100,000.00." Laughridge, at 121.

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While Laughridge certainly stands for the proposition claims and defenses must be applied to the existing rights and defenses as recognized at the time of the injury, there is no interpretation of Section 15-3-555 which proposes "injury" is defined at the moment a particular aspect or manifestation from the wrongful act(s) to then give rise to the cause of action. Stated differently, the Plaintiff contends there were certain symptoms from the acts of Fischer that he is suffering which were not revealed until 2001 or 2002. Furthermore, since these injuries were discovered after the abrogation of the Doctrine of Charitable Immunity in 1981, there is now no Doctrine of Charitable Immunity for the Diocese to apply as a shield against the Plaintiff's complaint. This is a novel interpretation which is not supported by either Section 15-3-555 or by Laughridge v. Parkinson. The Plaintiff has cited no other authority which will support this unique interpretation of when an injury occurs. Quite the contrary, the acts which give rise to the Plaintiff's case definitely occurred in the late 1950s and early 1960s, when the Doctrine of Charitable Immunity was in effect.

The Court also finds compelling the decision of Faulk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (S.C. App. 2000). In this matter, an action was initiated against a Guardian *ad litem*, and the defendant moved for a Rule 12(C), SCRCP, judgment seeking protection pursuant to quasi- judicial immunity: "Judicial decisions which create new substantive rights must be given prospective effect only, while the decisions which create new remedies vindicating existing rights may be given retrospective application (citations omitted). Decisions which create liability where not previously existed must be given prospective application (citations omitted).

"Abrogation of immunity has the effect of creating liability when none previously existed, and thus its application would be prospective." Faulk, at p. 355.

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To accept the interpretation of the Plaintiff that his injuries exist from the time of the discovery by him of some recent revelation in 2002 when the Doctrine of Charitable Immunity no longer applied to a defendant would unravel long standing principles of tort jurisprudence in this State. This interpretation would eliminate a defense that existed at the time of the facts that arose to cause the injury and create a remedy when none ever existed at the time of the acts which gave rise to the injuries which are the subject of this complaint.

The Plaintiff had a cause of action sometime after he turned twenty-one years old. As contained in the Plaintiff's affidavits filed just before the hearing on September 11, 2002, the Plaintiff knew of his injuries sometime immediately after he reached the age of twenty-one years. According to his affidavit, the Plaintiff discovered that he had an injury in as late as 1991 or 1992 which was causally related to the alleged sexual abuse suffered by Fischer. While the Plaintiff may have discovered further injuries after 1991, such discovery is immaterial in his attempt to defeat the implications of the Doctrine of Charitable Immunity. The Plaintiff has cited no case authority which interprets "injury" as used in Section 15-3-555 to include a distinct right or claim which did not exist at the moment of the acts of the Defendant. This Section did not create a new cause of action or new enforceable right not previously existing. This statute simply extended the period of time a plaintiff has to initiate his complaint against a defendant from the time he reached majority status or after he discovered the relationship between the sexual abuse and the injuries he suffered. Nothing in the language of this particular Section abrogates the Doctrine of Charitable Immunity.

Of particular note is Subsection (B) of 15-3-555: "Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this Section's

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effective date." Thus, a clear abrogation of a previous defense to such a claim is announced which is to be applied regardless when the acts, which give rise to the cause of action, may have occurred – before, on, or after – the passage of this statute. The statute is silent in the specific abrogation of any other doctrine or defense, specifically, the Doctrine of Charitable Immunity.

The Plaintiff does not have the ability to bring a cause of action where none exists. If the Plaintiff was barred from seeking redress from the Diocese as a result of this doctrine because the Defendant is a charity and the events occurred before 1981 when the charitable immunity was abrogated, the initiation of Section 15-5-555 does not provide the Plaintiff any relief to the absolute bar against his claim. In Hyder v. Jones, 271 S.C. 85, 245 S.E. 2d 123 (1978) the Court discussed the attempted retroactive application of the abrogation of the parental immunity. While statues are to be construed prospectively only unless it is a clear intent for them to be applied retroactively or if the statute is remedial or procedural in nature. The remedial exception does not apply if the statute creates a legal remedy where one did not previously exist. "Whether we view section 15-5-210 as creating a new cause of action or simply removing a bar to an existing cause of action, the statute supplies a remedy where formally there was none. To this extent Section 15-5-210 effects more than a remedial or procedural change to the long standing doctrine of parental immunity and is not exempt from the presumption of prospective application." Hyder, at 125.

"The elements of a cause of action in tort for personal injury are(1) duty, (2) breach of that duty, (3) proximate causation, and (4) injury. (citations omitted)...' The fundamental test...in determining whether a cause of action has accrued [] is whether the party asserting the claim can maintain an action to enforce it.'(citations omitted) Stated differently, '[a] cause of action accrues

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at the moment when the plaintiff has a legal right to sue on it.' (citations omitted). Grillo v. Speedrite Products, Inc. 340 S.C. 498, 532 S.E.2d 1, at 3 (S.C.App. 2000)

The Plaintiff's claimed lack of discovery may be a means to avoid the Statute of Limitations, which is the subject of the Diocese's Motion to Dismiss, but it does not defeat the defense of Charitable Immunity. The date of discovery of the injury has nothing to do with whether or not the charity was immune at the time of the tort. As established in Grillo, Plaintiff's cause of action accrued at the time he had a right to sue, which was at the time of the sexual abuse, regardless of when the limitations period for such a lawsuit began to run. In other words, the Plaintiff had a cause of action which he could have attempted to enforce in 1991, 1992 or 1994, because the elements of his cause of action were available to him at any of these points in time.

Interpreting the facts and all inferences therein, in the light most favorable to the Plaintiff, there exists no facts to substantiate the Plaintiff was not aware of his injuries within the time constraints of Section 15-3-555. The Diocese is a charity and was at the time of the events in question. Sacred Heart School was part of the Diocese, and also was a charitable operation. There are no genuine issues of material fact as to any element of the Diocese's affirmative defense of Charitable Immunity. It is the Court's finding for the reasons stated above that the Doctrine of Charitable Immunity was in effect at the time of the acts that gave rise to the injury of the Plaintiff and that the Defendant is a charitable organization and that charitable immunity was in full force and effect at the time of these acts, and thus charitable immunity would apply. Accordingly, the Diocese is entitled to judgment as a matter of law on said defense. The Court, therefore, GRANTS the Diocese's Motion for Summary Judgment pursuant to the South

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Carolina common law Doctrine of Charitable Immunity and enters judgment for the Diocese of Charleston as to all claims against it. The parties concede that the Doctrine of Charitable Immunity would not apply to an intentional tort such as outrage. However, considering the remaining issues of this Order this concession seems moot.

VI. MOTION TO DISMISS

A. Introduction

The Diocese has also moved, pursuant to Rule 12(b)(6), SCRCP to dismiss the claims asserted against it on the ground that they are barred by the applicable statute of limitations, Section 15-3-555, South Carolina Code of Laws (1976, as amended). Pursuant to Section 15-3-555, a plaintiff must commence an action arising from child sexual abuse within six years of the time he reaches age 21, or within three years of the time he discovers his injury, and that it was caused by the alleged sexual abuse. The Diocese contends that from the face of the Complaint it is clear that the Plaintiff cannot meet this standard.

In response, as noted above, the Plaintiff has not filed a memorandum in defense of the motion, but has filed the two affidavits stated above. He has also alleged that he has brought his lawsuit within the time period allowed pursuant to Section 15-3-555, "and based on the Diocese having fraudulently concealed its knowledge about Fischer and his actions." (Complaint, ¶13) Plaintiff does not allege any facts indicating that he did not know, or ever forgot that the sexual abuse occurred. Indeed, he does not claim to have repressed his memory of these events. Notwithstanding the legal conclusion that he is proceeding "under authority of" Section 15-3-555, Plaintiff does not actually allege that he failed to connect the sexual abuse and his injuries.

Moreover, there are no facts alleged concerning the date Plaintiff discovered his injuries from sexual abuse, or concerning how or when he came to connect his injuries with the sexual abuse.

Plaintiff's only real "discovery" allegation concerns his inability to discover the Diocese's alleged prior knowledge of Fischer's propensities until recently:

> Less than three years before this filing Plaintiff obtained information that before he was molested by Fischer the defendants had reason to know of Fischer's inappropriate sexual interest in students. Because of the defendants' fraudulent concealment of such information, Plaintiff could not have been aware of their knowledge prior to that time. (Complaint, ¶15)

Plaintiff's other allegations concerning his fraudulent concealment theory consist of general allegations that the Diocese's practice was to keep information about sexual abuse secret, and that it did so in the case of Fischer. There are no allegations that the Diocese ever interacted with Plaintiff concerning his claims, or Fischer, or that it ever made any public statements about Fischer. Indeed, the Plaintiff's fraudulent concealment allegation is that the Diocese failed to announce publicly that Fischer had sexually abused children.

As noted above, the Plaintiff has also submitted an affidavit containing much more information about his knowledge of his injuries and the conduct of the Diocese regarding Fischer, and the Court will not repeat that information here.

B. Conversion to Motion for Summary Judgment

Rule 12(b), SCRCP provides that when "matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." As noted above, Plaintiff has submitted two affidavits pertaining to the Diocese's Motion to Dismiss. As explained below, the Court finds that

Plaintiff's affidavits are dispositive of his delayed discovery and fraudulent concealment claims, entitling the Diocese to judgment as a matter of law.

C. **Discussion**

1. **Delayed Discovery**

Plaintiff's own affidavit establishes that he was born in 1947, and therefore, turned twenty-one years of age in 1968. Accordingly, there can be no dispute that the Plaintiff contends that he commenced this action (in 2002) within three years of discovery, not within six years of turning twenty-one years of age (21).

Plaintiff alleges in the Complaint that he was sexually abused by Fischer as a young teenager. He does not allege that he was unaware of these events as they were happening, or that he ever lost conscious knowledge of them. Plaintiff does not contend in the Complaint that he was ever unaware that he was injured. Instead, in oral argument, Plaintiff's counsel suggested that Plaintiff developed certain conditions long after the abuse occurred, such as post-traumatic stress disorder and stress-related dental injuries. Plaintiff contends, through counsel, that he did not connect these injuries with the abuse until within the three years preceding the filing of this lawsuit.

In his affidavit, Plaintiff provides far more detail about the abuse and his reaction to it. He testifies that he met Fischer in 1960 when he was a seventh grader at Sacred Heart. (Attachment B at 39-40) Fischer first sexually abused Plaintiff when Plaintiff was twelve years old. (Id. at 41). Plaintiff states that the abuse caused him direct, immediate and palpable injury at the time it occurred. Specifically, Plaintiff testifies that when he was sexually abused, it

caused him to suffer humiliation, shame, embarrassment, degradation and a feeling of a "total lack of control". (Pltf. Aff. Attachment A at 4)

Plaintiff was under no illusion about whether what was occurring was right or wrong. He testifies that he purposely did not tell his mother about the abuse because he knew she would kill Fischer. (Id. at 9) Whether or not he meant this figuratively or literally, Plaintiff is clearly indicating his contemporaneous understanding that Fischer's acts were the sort that would warrant and would receive severe punishment.) As Plaintiff makes clear, "I knew that this should not have been happening to me." (Id. at 9-10)

Plaintiff further establishes that he never repressed or suppressed his memory of the abuse acts themselves, or how the abuse made him feel. He specifically states that, "as hard as I tried to forget about Eddie Fischer, something would trigger the thoughts." (Id. at 18-19) Although Plaintiff does state when, upon seeing Fischer and feeling fear and anxiety, he "had no idea why," he also states that "I would do my best to avoid him, but as small as Charleston is, something would always occur to trigger the memories I tried to forget." (Id.) (See also Pltf. Aff. Attachment B at 47-48) Although Plaintiff did not disclose the abuse to anyone over the years, he clearly remembered it ***and he connected it to his feelings of emotional distress***:

> I had sought help through counselors, psychiatrists, psychologists and medical doctors, never once discussing the facts about my teenage years. As hard as I tried to forget about them, the thoughts were still there.****I was ashamed of myself and embarrassed about what he did to me, conditions that have haunted me to this day.*** (Pltf. Aff. Attachment B at 47-48) (Emphasis added)

In light of this testimony from the Plaintiff's own affidavit, the only possible conclusion is that the Plaintiff has, at all times, knew that he was sexually abused, that the abuse was injurious to him, and those injuries were both physical and mental, and the above was caused by

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Fischer, who was a teacher at Sacred Heart School. Nonetheless, the gist of the Plaintiff's argument is that the specific diagnoses of post-traumatic stress disorder and stress-related dental injury did not occur until within the last three years, and therefore his time to sue upon those injuries has not expired.

Plaintiff's own testimony again defeats his claims. Plaintiff states that in 1991 or 1992, when he began alcohol recovery, he encountered Fischer at an AA meeting. This "triggered" him "into talking about what happened to [him] and the pain and that [he] tried to hide and the guilt, the fear, the shame and embarrassment the [he has] endured." (Pltf. Aff. Attachment A at 19; Attachment B at 48). Plaintiff shared his story with a friend at AA, who responded by stating that he knew of others whom Fischer had sexually abused. (Id.) Plaintiff further admits:

> I sought help through the proper channels, at first being diagnosed with social phobia, and then being diagnosed with post-traumatic stress disorder. . . . While participating in a research study for social phobia, I brought up the fact that I had been sexually abused, and Dr. Michael Johnson asked me to if I had ever talked to anybody about this. . . . I said, no, and he gave me the book The Courage to Heal and asked me to read it. . . . . I went to the library and read everything I could on the subject. I talked to different people about it and tried my best to understand why I felt this way. . . . I was given proper medication to balance out the serotonin levels that were stopped early by the trauma when I was a teenage boy. . . . Finally, for the first time in my life after proper medication, I was at ease. I was 44 years old.

(Attachment B at 48-89) (See also Attachment A at 20-21, admitting diagnosis in 1991 of post-traumatic stress disorder at Medical University of South Carolina). Thus, in 1991 or 1992 (when Plaintiff was 44 years old), he was "diagnosed with social phobia, and . . . post-traumatic stress disorder." He specifically related these injuries to the sexual abuse from Fischer. He specifically shared the facts of the abuse with a friend who alerted him that others were abused as well.

On this record, there can be only one conclusion: Plaintiff knew both of his injuries and their wrongful cause at the latest in 1991 or 1992 when he was diagnosed with post-traumatic stress disorder at Medical University of South Carolina. Of course, he was fully aware of the abuse itself from the time it occurred, and of the direct physical and mental injuries flowing therefrom. But, to the extent that the Plaintiff asks this Court to treat post-traumatic stress disorder as a separate injury arising at a different date from his more generalized injuries, the Court can still only extend his time of discovery to 1992, at the latest. The Court, therefore, finds that there is no genuine issue of material fact as to the Plaintiff's claim of delayed discovery and, in particular, finds that the Plaintiff discovered his injuries and their causal relationship to the sexual abuse no later than 1992. Accordingly, pursuant to Section 15-3-555, Plaintiff's claims against the Diocese were barred as of 1995 at the latest, seven years before the filing of this lawsuit.

The Plaintiff's complaint is barred by the Statute of Limitations because he knew of his injuries and the cause of his injuries in 1991, 1992 and 1994. Section 15-3-555 does not permit the Plaintiff to pursue his claim against the Diocese. While the General Assembly may extend or restrict the time within which a complaint may be brought by a defendant, as previously stated, the new statute can not revive a claim which was previously barred. In Estes v Roper Temporary Services, Inc, 304 S.C. 120, 403 S.E. 2d 157, 159 (S.C. App. 1991) the Court addressing an action for breach of contract cited the following as the basis interpreting a statute of limitations : "'The great preponderance of authority supports the general view... that after a cause of action has become barred it cannot be revived by the legislature by extending the limitation period or repealing the limitation statute.' " S. C. Code Ann. Section 15-3-555 provides:

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> An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced...within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual incest, whichever occurs later.

Applying the modified language of the statute retroactively the Plaintiff's claim is barred because he had notice of the causal relationship between the injury and the sexual incest in 1991, 1992 and 1994.

Similarly, in U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E. 2d 335, 337 (1947), the Supreme Court stated: "...when a right of action or cause of action has accrued the law is fixed, and no change of the statutes of limitations shall be wrought by any legislation afterwards fixing a different period." ... "'It is well settled that it is competent for the legislature to change statutes prescribing a limitation to actions, and that the one in force at the time of suit brought is applicable to the cause of action. The only restriction upon the exercise of this power is that the legislature cannot remove a bar which has already become complete...'". The Plaintiff did not file his complaint within the time restrictions of the Statute of Limitations. His failure to do so serves as a complete bar against his claim. The enactment of Section 15-3-555 does not extend the Plaintiff's right under any theory to be within the restraints of the Statute of Limitations, because the General Assembly is unable to extend the time to initiate his complaint once it has already been barred.

2. **Fraudulent Concealment**

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone &

Telegraph Co., 559 S.E.2d 327, 338 (Ct. App. 2001). See also Black v. Lexington School Dist. No. 2, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997). In the Complaint, the Plaintiff makes what can, at best, be called a conclusory assertion of fraudulent concealment by the Diocese. For this reason, the pleading is insufficient as a matter of law, since fraudulent concealment, like all fraud, must be pled with particularity pursuant to Rule 9(b), SCRCP. Notwithstanding Plaintiff's many allegations that the Diocese favored secrecy and never publicly announced that Fischer had abused children, Plaintiff never alleges that the Diocese ever misrepresented anything to the public or to him in particular.

More to the point, there are no allegations - factual, conclusory or otherwise - that the Diocese ever made a misrepresentation that caused Plaintiff to delay in filing his lawsuit. Indeed, he alleges no communications with the Diocese at all on the subject. Absent such allegations, Plaintiff cannot maintain a claim of fraudulent concealment to toll the statute of limitations.

What Plaintiff does allege is that the Diocese kept secret its own alleged imputed knowledge about Fischer. Read most broadly, the Complaint alleges that the Diocese engaged in a pattern and practice of concealing information about its agents and employees who sexually abused children.

Troubling as these allegations are, they miss the point. In order to toll the statute of limitations, Plaintiff must show that he was defrauded in that a misrepresentation caused him to delay in filing his lawsuit. Nothing in this Complaint, or in the affidavits submitted by the Plaintiff permit such an inference.

To begin with, this was not a Plaintiff who was fooled about his injury. Even if the Diocese did conceal that it had knowledge about Fischer either before or after Plaintiff's abuse, that concealment could not take away from Plaintiff his actual knowledge that Fischer, an agent of the Diocese, sexually abused him, and caused him injury. His own affidavit substantiates his clear knowledge of the abuse by Fischer through the points in time when they occurred, when he told Fischer to stop, and when he sought and obtained treatment. Our courts focus on the plaintiff's knowledge of his own injury, not on the identity of the tortfeasor. Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997) (rejecting plaintiffs' contention that statute did not begin to run when they knew of their injuries, but rather when they knew of the Church entities' culpability). Indeed, in Brown, the court specifically observed that even though the plaintiffs "did not know the exact nature of the wrong" at the time of the sexual abuse, "they knew their rights had been invaded." 326 S.C. at 418, 483 S.E.2d at 482. Plaintiff's claim that he did not know of the Diocese's prior knowledge is insufficient and immaterial. Nothing the Diocese said or did took away from Plaintiff the knowledge that an agent of the Diocese sexually abused him.

Plaintiff further states in his affidavits that in 1991 he told a friend about the abuse and that the friend stated that others had been abused. After 1991 or 1992 at the latest, there was nothing preventing Plaintiff from bringing this action. He alleges no conduct on the part of the Diocese that stood in his way, or dissuaded him. Certainly, he may have had more information to sue with evidence of prior notice, or of other victims, but such evidence was in no way necessary to commence this action. Plaintiff's actual knowledge of his claims, and the absence of any misrepresentation by the Diocese to Plaintiff concerning his claims, render his fraudulent

concealment argument a legal impossibility. The Plaintiff could have maintained a cause of action in 1991 or 1992.

The Court, therefore, finds that there is no genuine issue of material fact as to Plaintiff's fraudulent concealment claim. The Diocese made no misrepresentation to the Plaintiff, and Plaintiff had actual knowledge of the sexual abuse by Fischer at all times since it occurred, and had actual knowledge of all his injuries and their cause by 1992 at the latest. Accordingly the Diocese is entitled to judgment as a matter of law on Plaintiff's fraudulent concealment claim.

E. **Conclusion - Motion to Dismiss**

For all the foregoing reasons, the Court finds that Plaintiff has failed to plead a claim for which relief can be granted in that all claims against the Diocese are barred by the applicable statute of limitations. All claims against the Diocese are therefore dismissed pursuant Rule 12(b)(6) SCRCP.

In the alternative, pursuant to Rule 12(b) SCRCP, the Court converts the Diocese's Motion to Dismiss to a motion for summary judgment and, pursuant to Rule 56 SCRCP finds that there is no genuine issue as to any fact material to the Diocese's argument that the Plaintiff's claims are barred by the applicable statute of limitations, and therefore the Court enters judgment as a matter of law in favor of the Diocese and against the Plaintiff.

AND IT IS SO ORDERED!

Deadra L. Jefferson

Judge, Presiding Deadra L. Jefferson
Court of Common Pleas for the Ninth Judicial Circuit

Dated: January 21, 2003
Charleston, South Carolina

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Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: June 2, 2017

Person to Contact:
R. Meyer ID# 0110429
Toll Free Telephone Number:
877-829-5500

United States Conference of Catholic Bishops
3211 4th Street, NE
Washington, DC 20017-1194

Group Exemption Number:
0928

Dear Sir/Madam:

This responds to your June 2, 2017, request for information regarding the status of your group tax exemption.

Our records indicate that you were issued a determination letter in March 1946, that you are currently exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and are not a private foundation within the meaning of section 509(a) of the Code because you are described in sections 509(a)(1) and 170(b)(1)(A)(i).

With your request, you provided a copy of the *Official Catholic Directory for 2017*, which includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions that are subordinate organizations under your group tax exemption. Your request indicated that each subordinate organization is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual, and that no substantial part of their activities is for promotion of legislation. You have further represented that none of your subordinate organizations is a private foundation under section 509(a), although all subordinates do not all share the same sub-classification under section 509(a). Based on your representations, the subordinate organizations in the *Official Catholic Directory for 2017* are recognized as exempt under section 501(c)(3) of the Code under GEN 0928.

Donors may deduct contributions to you and your subordinate organizations as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for federal estate and gifts tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code.

Subordinate organizations under a group exemption do not receive individual exemption letters. Most subordinate organizations are not separately listed in Publication 78 or the EO Business Master File. Donors may verify that a subordinate organization is included

in your group exemption by consulting the *Official Catholic Directory*, the official subordinate listing approved by you, or by contacting you directly. IRS does not verify the inclusion of subordinate organizations under your group exemption. *See* IRS Publication 4573, *Group Exemption*, for additional information about group exemptions.

Each subordinate organization covered in a group exemption should have its own EIN. Each subordinate organization must use its own EIN, not the EIN of the central organization, in all filings with IRS.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Diocese of Charleston

(Dioecesis Carolopolitana)

Most Reverend

ROBERT E. GUGLIELMONE

Bishop of Charleston; ordained April 8, 1978; appointed Bishop of Charleston January 24, 2009; consecrated and installed March 25, 2009. *Office: 901 Orange Grove Rd., Charleston, SC 29407.*

ESTABLISHED JULY 11, 1820.

Square Miles 31,189.

Comprises the State of South Carolina.

For legal titles of parishes and diocesan institutions, consult the Chancery Office.

Chancery Office: 901 Orange Grove Rd., Charleston, SC 29407. Tel: 843-261-0421; Fax: 843-804-9408.

Web: sccatholic.org

Email: smakowski@catholic-doc.org

STATISTICAL OVERVIEW

Personnel	
Bishop	1
Retired Bishops	1
Abbots	1
Priests: Diocesan Active in Diocese	69
Priests: Diocesan Active Outside Diocese	3
Priests: Retired, Sick or Absent	16
Number of Diocesan Priests	88
Religious Priests in Diocese	42
Total Priests in Diocese	130
Extern Priests in Diocese	26
Ordinations:	
Transitional Deacons	1
Permanent Deacons in Diocese	118
Total Brothers	18
Total Sisters	91
Parishes	
Parishes	96
With Resident Pastor:	
Resident Diocesan Priests	41
Resident Religious Priests	7
Without Resident Pastor:	
Administered by Priests	46
Administered by Professed Religious Men	1
Administered by Religious Women	1
Missions	20
New Parishes Created	1
Closed Parishes	1
Professional Ministry Personnel:	
Brothers	3
Sisters	8
Lay Ministers	72
Welfare	
Catholic Hospitals	2
Total Assisted	432,716
Homes for the Aged	1
Total Assisted	26
Special Centers for Social Services	10
Total Assisted	59,659
Educational	
Diocesan Students in Other Seminaries	18
Total Seminarians	18
High Schools, Diocesan and Parish	4
Total Students	1,456
High Schools, Private	2
Total Students	684
Elementary Schools, Diocesan and Parish	28
Total Students	5,010
Catechesis/Religious Education:	
High School Students	2,452
Elementary Students	13,443
Total Students under Catholic Instruction	23,063
Teachers in the Diocese:	
Brothers	3
Sisters	7
Lay Teachers	678
Vital Statistics	
Receptions into the Church:	
Infant Baptism Totals	2,833
Minor Baptism Totals	458
Adult Baptism Totals	181
Received into Full Communion	379
First Communions	3,383
Confirmations	2,356
Marriages:	
Catholic	516
Interfaith	198
Total Marriages	714
Deaths	1,291
Total Catholic Population	201,671
Total Population	4,896,146

Former Bishops—Rt. Revs. JOHN ENGLAND, D.D., ord. Oct. 11, 1808; first Bishop; cons. Sept. 21, 1820; died April 11, 1842; WILLIAM CLANCY, D.D., ord. May 24, 1823; cons. Dec. 21, 1834, Coadjutor; made Vicar-Apostolic of British Guiana, April 12, 1837; died June 19, 1847; IGNATIUS A. REYNOLDS, D.D., ord. Oct. 24, 1823; second Bishop; cons. March 19, 1844; died March 6, 1855; PATRICK N. LYNCH, D.D., ord. April 5, 1840; third Bishop; cons. March 14, 1858; died Feb. 26, 1882; HENRY P. NORTHROP, D.D., ord. June 25, 1865; fourth Bishop; cons. Titular-Bishop of Rosalia and Vicar-Apostolic of North Carolina, Jan. 8, 1882; transferred to Charleston, by brief dated Jan. 27, 1883; died June 7, 1916; WILLIAM T. RUSSELL, D.D., ord. June 21, 1889; fifth Bishop; cons. March 15, 1917; died March 18, 1927; Most Revs. EMMET M. WALSH, D.D., ord. Jan. 15, 1916; sixth Bishop; cons. Sept. 8, 1927; transferred to Youngstown, Ohio, as Coadjutor Bishop, Sept. 8, 1949; died March 16, 1968; JOHN J. RUSSELL, D.D., ord. July 8, 1923; seventh Bishop; cons. March 14, 1950; transferred to Bishop of Richmond, July 10, 1958; died March 17, 1993; PAUL J. HALLINAN, D.D., ord. Feb. 20, 1937; eighth Bishop; cons. Oct. 28, 1958; transferred to Archbishop of Atlanta, Feb. 21, 1962; died March 27, 1968; FRANCIS F. REH, S.T.L., J.C.D., ord. Dec. 8, 1935; ninth Bishop; cons. June 29, 1962; appt. Titular Bishop of Macriana in Mauretania and Rector of North American College, Rome, Italy, Sept. 5, 1964; transferred to Saginaw, Dec. 18, 1968; installed Feb. 26, 1969; retired April 29, 1980; died Nov. 14, 1994; ERNEST L. UNTERKOEFLER, D.D., J.C.D., S.T.L., tenth Bishop; ord. May 18, 1944; appt. Titular Bishop of Latopolis and Auxiliary Bishop of Richmond, Dec. 13, 1961; cons. Feb. 22, 1962; appt. Bishop of Charleston, Dec. 12, 1964; resigned Feb. 22, 1990; died Jan. 4, 1993; DAVID B. THOMPSON, D.D., J.C.L., eleventh Bishop; ord. May 27, 1950; appt. Coadjutor Bishop of Charleston April 22, 1989; ord. May 24, 1989; succeeded to Bishop of Charleston Feb. 22, 1990; retired July 13, 1999; died Nov. 24, 2013; ROBERT J. BAKER, twelfth Bishop; ord. March 21, 1970; appt. Bishop of Charleston July 13, 1999; cons. Sept. 29, 1999; appt. Bishop of Birmingham Aug. 14, 2007; installed Oct. 2, 2007.

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Moderator of the Tribunal—VALERIE MAXINEAU, J.C.L.

Tribunal Judges—Rev. Msgr. CHARLES H. ROWLAND, P.A., J.C.L.; Revs. C. THOMAS MILES, M.C.L., J.C.L.; H. GREGORY WEST, J.C.L.; Sr. SANDRA MAKOWSKI, S.S.M.N., J.C.L.; VALERIE MAXINEAU, J.C.L.

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Promoter of Justice—Very Rev. EDWARD W. FITZGERALD, V.F., J.C.L.

Procurators/Advocates & Case Analysts—Rev. BRYAN P. BABICK, SL.L.; Deacon THOMAS BARANOSKI; LUCINDA BRYAN; JACKELINE NIEDERHEITMANN; MEG WALTER.

Consulting Psychological Expert—LEE SPARWASSER, Ed.S., L.P.C.

Ecclesiastical Notary/Archival Records Technician—CHARLES WUJCIK.

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Youth Ministry—(See Education and Faith Formation, Dept. of).

CLERGY, PARISHES, MISSIONS AND PAROCHIAL SCHOOLS

GREATER CHARLESTON

(CHARLESTON COUNTY)

1—CATHEDRAL OF ST. JOHN THE BAPTIST (1821) Rev. Msgr. Steven L. Brovey, V.F., Rector; Deacons Thomas Baranosk; Charles Olimpio.
Church: 120 Broad St., 29401. Tel: 843-724-8395; Fax: 843-724-6386; Email: secretary@charlestoncathedral.com; Web: www.charlestoncathedral.com.
Mailing Address: 119 Broad St., 29401.
School-See Charleston Catholic School under Sacred Heart, Charleston.
Catechesis Religious Program—Students 88.

2—ST. BENEDICT (1999)
950 Darrell Creek Tr., Mount Pleasant, 29466. Tel: 843-216-0039; Fax: 843-971-6789; Email: office@stbenedictparish.org; Web: www.stbenedictparish.org. Rev. Mark S. Good, Admin.
Catechesis Religious Program—Students 329.

3—BLESSED SACRAMENT (1944)
5 St. Teresa Dr., 29407. Tel: 843-556-0801; Email: blesssac@bellsouth.net; Web: www.blsac.org. Very Rev. Joseph V. Romanoski, V.F., Tel: 843-556-0801; Rev. Jose Gabriel Cruz Rodriguez, Parochial Vicar; Deacons James R. Moore; Kurt Herbst.
School—Blessed Sacrament School, (Grades PreK-8), 7 St. Teresa Dr., 29407. Tel: 843-766-2128; Fax: 843-766-2154; Email: kmurphy@scbss.org; Web: www.scbss.org. Katharine Murphy, Prin.; Bonnie Perry, Librarian. Lay Teachers 23; Students 216.
Catechesis Religious Program—Students 210.

4—CHRIST OUR KING (1971) Rev. Msgr. James A. Carter, P.A.; Rev. Patrick O. Eyinla, Parochial Vicar; Deacons Robert Boackle; Kevin Campbell.
1149 Russell Dr., Mount Pleasant, 29464. Tel: 843-884-5587; Fax: 843-884-7086; Email: dfisher@christourking.org; Web: www.christourking.org.
School—Christ Our King Stella Maris School, (Grades PreK-8), 1183 Russell Dr., Mount Pleasant, 29464. Tel: 843-884-4721; Fax: 843-971-7850; Email: frontoffice@coksm.org; Web: www.coksm.org. John Byrnes, Pres.; Susan Splendido, Prin. Brothers 1; Lay Teachers 69; Students 588.
Catechesis Religious Program—Students 242.

5—CHRIST THE DIVINE TEACHER (1968) Closed. For inquiries regarding parish records, please contact Sacred Heart Parish, Charleston.

6—CHURCH OF THE NATIVITY (1959)
1061 Folly Rd., 29412. Tel: 843-795-3821; Fax: 843-795-2714; Email: nativityc@bellsouth.net; Web: nativitycharleston.org. Rev. S. Thomas Kingsley.
School—Nativity School, (Grades PreK-8), 1125 Pittsford Cir., 29412. Tel: 843-795-3975; Fax: 843-795-7575; Email: pdukes@nativity-school.com; Web: www.nativity-school.com. Ms. Patricia Dukes, Prin.; Paula Hart, Librarian. Lay Teachers 16; Students 103.
Catechesis Religious Program—Mary L. Smith, D.R.E. Students 122.

7—ST. CLARE OF ASSISI (2014)
Mailing Address: 225 Seven Farms Dr., Ste. 107, Daniel Island, 29492. Tel: 843-471-2121; Email: gwest@saintclareofassisi.com; Web: saintclareofassisi.com. Rev. H. Gregory West, J.C.L.
Catechesis Religious Program—Students 238.

8—DIVINE REDEEMER (1956)
1106 Fort Dr., Hanahan, 29410-2053. Tel: 843-553-0340; Fax: 843-553-0346; Email: office@divineredeemerchurch.org; Web: www.divineredeemerchurch.org. Rev. Msgr. Thomas X. Hofmann, J.C.L.; Deacon Andre J.P. Guillet.
School—Divine Redeemer Catholic School, (Grades PreK-8), 1104 Fort Dr., Hanahan, 29410-2053. Tel: 843-553-1521; Fax: 843-553-7109; Email: secretary@divineredeemerschool.com; Web: www.divineredeemerschool.com. Peggy Vice, Prin.; Karen Provost, Librarian. Lay Teachers 10; Students 127.
Catechesis Religious Program—Students 140.

9—HOLY SPIRIT (1938) [CEM]
3871 Betsy Kerrison Pkwy., Johns Island, 29455. Tel: 843-768-0357; Fax: 843-793-2958; Email: holyspiritji@comcast.net; Web: www.holyspiritsc.org. Rev. Msgr. Charles H. Rowland, P.A., J.C.L.; Deacons Mario Cardenas; Joseph Stocker.
Catechesis Religious Program—Students 72.

10—ST. JOHN (1929)
3921 St. John's Ave., North Charleston, 29405-7158. Tel: 843-744-6201; Fax: 843-744-2792; Email: churchoffice@saintjohncatholicsc.org; Web: www.saintjohncatholicsc.org. Very Rev. Joseph V. Romanoski, V.F., Canonical Pastor; Bros. Edward E. Bergeron, C.F.C., Parish Life Facilitator; Damien Ryan, C.F.C., Pastoral Assoc. In Res., Bro. Spencer A. Tafuri, C.F.C.
School—St. John Catholic School, (Grades PreK-8), Tel: 843-744-3901; Fax: 843-744-3689; Email: schooloffice@saintjohncatholicsc.org; Web: saintjohncatholicsc.org/schoolsite/index.php. Karen Durand, Prin.; Bro. F. Damian Ryan, C.F.C., Pres. & Pastoral Assoc.; Janet Deaver, Librarian. Lay Teachers 10; Sisters 1; Students 54.
Catechesis Religious Program—Students 14.

11—ST. JOSEPH (1966)
1695 Wallenberg Blvd., 29407. Tel: 843-556-4611; Fax: 843-556-4612; Email: info@saintjosephchas.com; Web: www.saintjosephchas.com. Rev. Gabriel J. Smith.
Catechesis Religious Program—Students 70.

12—ST. JOSEPH, Closed. For inquiries regarding parish records, please contact St. Joseph Parish, Charleston.

13—ST. MARY OF THE ANNUNCIATION (1789) [CEM]
Rev. Msgr. Steven L. Brovey, V.F., Admin.; Deacon Paul M. Rosenblum.
89 Hasell St., 29401. Tel: 843-722-7696; Fax: 843-577-5036; Email: stmarys1789@bellsouth.net; Web: www.saintmaryhasellst.org.
School-See Charleston Catholic School under Sacred Heart, Charleston.
Catechesis Religious Program—Students 49.

14—OUR LADY OF MERCY (1928) Closed. For inquiries regarding parish records, please contact St. Patrick, Charleston.

15—ST. PATRICK (1837) [CEM]
134 St. Phillip St., 29413. Tel: 843-723-6066; Fax: 843-853-8114; Email: stpat@bellsouth.net. Mailing Address: P.O. Box 20726, 29413. Rev. Henry N. Kulah, (Ghana).
School-See Charleston Catholic School under Sacred Heart, Charleston.
Catechesis Religious Program—Students 25.

16—ST. PETER, Closed. For inquiries regarding parish records, please contact St. Patrick, Charleston.

17—SACRED HEART (1920)
888 King St., 29403-4139. Tel: 843-722-7018; Email: info@sacredheartcharleston.org; Web: www.sacredheartcharleston.org. Rev. C. Thomas Miles, M.C.L., J.C.L., Admin.; Deacon Peter Curcio.
School—Charleston Catholic School, (Grades PreK-8), 888-A King St., 29403. Tel: 843-577-4495; Fax: 843-577-6916; Email: charlestoncatholic@charlestoncatholic.org; Web:

www.charlestoncatholic.com. Fred S. McKay Jr., Prin. Lay Teachers 17; Religious 2; Students 193.
Catechesis Religious Program—Angela M. Prince, D.R.E. Students 17.

18—STELLA MARIS (1845)
Mailing Address: P.O. Box 280, Sullivan's Island, 29482. 1204 Middle St., Sullivan's Island, 29482. Tel: 843-883-3108; Fax: 843-883-3160; Email: flmsmre@bellsouth.net; Web: stellamarischurch.org. Rev. Msgr. Lawrence B. McInerny, J.C.L.; Rev. John Antonydas Gaspaar, Parochial Vicar; Deacons Walter S. Pezanowski; R. Michael Osbourne.
School-See Christ Our King Stella Maris School under Christ Our King, Mt. Pleasant.
Catechesis Religious Program—Tel: 843-883-3044. Students 149.

19—ST. THOMAS THE APOSTLE (1966)
6650 Dorchester Rd., North Charleston, 29418. Tel: 843-552-2223; Fax: 843-552-6329; Email: secretary@stthomasparish.net; Web: www.catholicdoc.org/stthomas. Rev. Arnulfo Jara Galvez, C.M., Admin.
School-See Summerville Catholic School under Regional Schools.
Catechesis Religious Program—Students 101.

OUTSIDE OF THE CITY OF CHARLESTON

ABBEVILLE, ABBEVILLE CO., SACRED HEART (1885)
Mailing Address: P.O. Box 812, Abbeville, 29620. 206 N. Main St., Abbeville, 29620. Tel: 864-366-5150; Email: sacredheart@wctel.net; Web: sacredheartabbeville.com. Rev. Robert J. Sayer.

AIKEN, AIKEN CO.

1—ST. GERARD (1943)
640 Edrie St., N.E., Aiken, 29801. Tel: 803-649-3203; Email: stgerardscatholi@atlanticbbn.net; Web: stgerardaiken.org. Rev. Emmanuel Andinam, Ph.D., Admin.
Catechesis Religious Program—Students 4.

2—ST. MARY HELP OF CHRISTIANS (1853) [CEM]
Mailing Address: P.O. Box 438, Aiken, 29802. 203 Park Ave., S.E., Aiken, 29801. Tel: 803-649-4777; Fax: 803-642-6421; Email: parishoffice@stmarys-aiken.org; Web: www.stmarys-aiken.org. Very Rev. Gregory B. Wilson, V.F.; Rev. James Renaurd West, Parochial Vicar; Deacons Robert A. Pierce; Patrick Mongan, M.D.; Stephen Platte.
School—St. Mary Help of Christians Catholic School, (Grades K-8), 118 York St., Aiken, 29801. Tel: 803-649-2071; Email: pwertz@stmaryschoolaiken.com; Web: www.stmaryschoolaiken.com. Marguerite B. Wertz, Prin. Lay Teachers 26; Students 204.
Catechesis Religious Program—Students 193.

ANDERSON, ANDERSON CO.

1—ST. JOSEPH (1868)
1200 Cornelia Rd., Anderson, 29621. Tel: 864-225-5341; Fax: 864-225-6432; Email: info@sjccs.net; Web: www.sjccs.net. Mailing Address: 1303 McLees Rd., Anderson, 29621. Rev. Marek Sotek, Admin.; Deacon Charles Hanrahan.
School—St. Joseph Catholic School, (Grades K-8), Tel: 864-760-1619; Email: nadine.depape@sjccs.net; Web: stjosephofanderson.com. Nadine DePape, Interim Prin.; Francene Galbally, Librarian. Lay Teachers 15; Students 60.
Catechesis Religious Program—Students 104.

2—ST. MARY OF THE ANGELS (1943)
1821 White St., Anderson, 29624. Tel: 864-226-8621; Fax: 864-226-2536; Email: office@sma43.org; Web: parishesonline.com/smacofm. Revs. Aubrey McNeil, O.F.M.; Michael Patrick Jones, O.F.M., Parochial Vicar.
Catechesis Religious Program—Tel: 864-226-3881. Students 110.

BARNWELL, BARNWELL CO., ST. ANDREW (1831)
110 Madison St., Barnwell, 29812. Tel: 803-534-8177; Email: www.holytrinityogb@gmail.com; Web: www.holytrinitysc.org. Mailing Address: c/o Holy Trinity, 2202 Riverbank Dr., Orangeburg, 29118. Revs. Wilbroad Mwape, Admin.; Gustavo Corredor, S.T.L., Parochial Vicar.
Catechesis Religious Program—Students 20.
Mission—St. Theresa, 155 Railroad Ave., Springfield, 29146. Mailing Address: c/o Holy Trinity, 2202 Riverbank Dr., Orangeburg, 29118. Email: holytrinityogb@gmail.com.

BATESBURG-LEESVILLE, LEXINGTON CO., ST. JOHN OF THE CROSS (1959)
320 W. Columbia Ave., Batesburg-Leesville, 29006. Tel: 803-532-1208; Email: stjohnofthecross@sc.rr.com. Revs. Jose Rodolfo Lache-Avila, (Colombia) S.T.L., Admin.; Robert F. Higgins.
Catechesis Religious Program—Students 216.

BEAUFORT, BEAUFORT CO., ST. PETER (1846) [CEM]
70 Lady's Island Dr., Beaufort, 29907. Tel: 843-522-9555; Fax: 843-522-0667; Email: mcarrera@stpeters-church.org; Web: www.stpeters-church.org. Revs. Paul D. MacNeil, Admin.; Luis E. Serrano Carrero, C.H.S., Sacramental Responsibilities; Deacons Michael A. Beeler; William LaCombe; Charles Cooper, (Retired); Thomas Cook; Eugene Kelenski. In Res., Rev. Robert Galinac, O.F.M.
School—St. Peter Catholic School, (Grades PreK-6), Tel: 843-522-2163; Fax: 843-522-6513; Email: stpetersschool@stpeters-church.org; Web: www.saintpeterscatholicschoolbeaufortsc.org. Ann Feltner, Prin. Lay Teachers 18; Students 105.
Catechesis Religious Program—Students 247.
Mission—Holy Cross, 83 Seaside Rd., Saint Helena Island, 29920. Tel: 843-838-2195.

BLUFFTON, BEAUFORT CO., ST. GREGORY THE GREAT (1960) [CEM]
31 Saint Gregory Dr., Bluffton, 29909. Tel: 843-815-3100; Fax: 843-815-3150; Email: execasst@sgg.cc; Web: www.sgg.cc. Rev. Msgr. Ronald R. Cellini, V.F., V.P.; Revs. S. Matthew Gray, Parochial Vicar; Luis E. Serrano Carrero, C.H.S., Parochial Vicar; Jeffrey A. Kendall, Parochial Vicar; Deacons Gregory W. Sams; Dennis Burkett; Walt Hollis; James Graham; John McCabe; Michael Smigelski; John Crapanzano.
School—St. Gregory the Great Catholic School, (Grades PreK-6), Tel: 843-815-9988; Fax: 843-815-6137; Email: ct@sggcs.org; Web: www.sggcs.org. Christopher A. Trott, Prin.; Ms. Ann Caruso, Librarian. Lay Teachers 15; Sisters 1; Students 199.
Catechesis Religious Program—Students 451.
Chapel—St. Andrew, 220 Pinckney Colony Rd., Bluffton, 29909. Tel: 843-757-6057.

BLYTHEWOOD, RICHLAND CO., TRANSFIGURATION (1998)
306 N. Pines Rd., Blythewood, 29016. Tel: 803-735-0512; Fax: 803-735-1742; Email: office@transfigurationsc.org; Web: www.transfigurationsc.org. Mailing Address: 9720 Wilson Blvd., Blythewood, 29016. Rev. Andrew Trapp; Deacon John Tempesco.
Catechesis Religious Program—Students 154.

CAMDEN, KERSHAW CO., OUR LADY OF PERPETUAL HELP (1914) Rev. John M. Zimmerman.
1709 Lyttleton St., Camden, 29020. Tel: 803-432-6131; Fax: 803-432-3440; Email: nancy@ourladycamden.org; Web: ourlady-camden.org.
Catechesis Religious Program—Tel: 803-432-8808. Students 106.

CHAPIN, LEXINGTON CO., OUR LADY OF THE LAKE (1989) [CEM]
195 Amicks Ferry Rd., Chapin, 29036. Tel: 803-345-3962; Fax: 803-345-8933; Email: info@ollchapin.org; Web: www.ollchapin.org. Mailing Address: P.O. Box 549, Chapin, 29036. Very Rev. Dennis B. Willey, Email: pastor@bellsouth.net; Deacons Gregory Weigold; Malcolm Skipper; John Stotar.
Catechesis Religious Program—Students 254.

CHERAW, CHESTERFIELD CO., ST. PETER (1842) [CEM]
602 Market St., Cheraw, 29520. Tel: 843-537-7351; Email: saintpeterscatholic@gmail.com. Rev. David Michael, Admin.
Catechesis Religious Program—Students 1.
Missions—St. Denis—100 Tyson Ave., Bennettsville, 29512.
St. Ernest, [CEM] 510 Evans Mill Rd., Pageland, 29728.
Catechesis Religious Program—Students 12.

CHESTER, CHESTER CO., ST. JOSEPH (1854)
110 West End, Chester, 29706. Tel: 803-377-4695; Fax: 803-581-7848; Email: frkirby@frkirby.com. Mailing Address: P.O. Box 869, Chester, 29706. Rev. Jeffrey F. Kirby, S.T.L., Admin.
Catechesis Religious Program—

CLEMSON, PICKENS CO., ST. ANDREW (1935)
209 Sloan St., Clemson, 29633. Tel: 864-654-1757; Fax: 864-654-2950; Email: info@saclemson.org; Web: saclemson.org. Mailing Address: P.O. Box 112, Clemson, 29633. Revs. Daniel McLellan, O.F.M.; Robert J. Menard, O.F.M., Campus Min. Chap.; Deacon Richard Campana.
Catechesis Religious Program—Students 136.

COLUMBIA, LEXINGTON CO., OUR LADY OF THE HILLS (1972)
120 Marydale Ln., Columbia, 29210. Tel: 803-772-7400; Fax: 803-798-8030; Email: oloh@sc.rr.com; Web: www.ourladyofthehillssc.org. Revs. Peter E. Sousa, C.Ss.R.; Gustavo Corredor, S.T.L., Parochial Vicar; John Murray, C.Ss.R., Parochial Vicar; Sr. Christina Murphy, S.N.D.deN., Pastoral Assoc.; Deacons Dennis N. Jones; Stephen Burdick; Mark Gray; Charles R. DiRusso, (Retired).
Catechesis Religious Program—Students 504.

COLUMBIA, RICHLAND CO.

1—GOOD SHEPHERD (1984)
Mailing Address: P.O. Box 1298, Columbia, 29202. Tel: 803-765-1334; Fax: 803-765-2208. 809 Calhoun St., Columbia, 29202. Rev. Msgr. Richard D. Harris, V.G., Admin.

2—ST. JOHN NEUMANN (1977)
Mailing Address: 721 Polo Rd., Columbia, 29223. 100 Polo Rd., Columbia, 29223. Tel: 803-788-0811; Fax: 803-788-1501; Email: goshesky@sjnchurch.com; Web: www.stjohnneumannsc.com. Revs. C. Alexander McDonald, S.T.L.; Javier Heredia, Parochial Vicar.
School—St. John Neumann Catholic School, (Grades PreK-6), 721 Polo Rd., Columbia, 29223. Tel: 803-788-1367; Fax: 803-788-7330; Email: bcole@sjncatholic.com; Web: www.sjncatholic.com. Barbara Cole, Prin.; Ms. Karen Zimmerman, Librarian. Lay Teachers 28; Students 310.
Catechesis Religious Program—Mrs. Cherie Smith, D.R.E. Students 390.

3—ST. JOSEPH (1948)
Mailing Address: 3512 Devine St., Columbia, 29205. Tel: 803-254-7646; Fax: 803-799-7607; Email: stjoermm@aol.com; Web: www.stjosephcolumbia.org. 3600 Devine St., Columbia, 29205. Rev. Msgr. Richard D. Harris, V.G.; Rev. Richard C. Wilson, Parochial Vicar.
School—St. Joseph Catholic School, (Grades PreK-6), 3700 Devine St., Columbia, 29205. Tel: 803-254-6736; Fax: 803-540-1913; Email: info@stjosdevine.com; Web: www.stjosdevine.com. Donavan Yarnall, Prin.; Shauna Kinsey, Librarian. Lay Teachers 24; Ursuline Nuns of the Congregation of Paris 1; Students 294.
Catechesis Religious Program—Tel: 803-540-1906. Students 126.

4—SAINT MARTIN DE PORRES (1935)
2229 Hampton St., Columbia, 29204. Tel: 803-254-6862; Fax: 803-799-4720; Email: okeremichael@hotmail.com. Rev. Michael C. Okere, (Nigeria) Admin.; Deacons Carl Johnson; Leland Cave.
School—St. Martin de Porres Catholic School, (Grades PreK-6), 2225 Hampton St., Columbia, 29204. Tel: 803-254-5477; Fax: 803-254-7335; Email: smdpschool@bellsouth.net; Web: www.saintmartindeporres.net. Sr. Roberta Fulton, S.S.M.N., Prin.; Doris Arvelo, Librarian. Lay Teachers 11; Sisters 1; Students 73.
Catechesis Religious Program—Students 51.

5—ST. PETER (1821) [CEM]
1529 Assembly St., Columbia, 29202. Tel: 803-779-0036; Fax: 803-799-2438; Email: stpeters@visitstpeters.org; Web: www.visitstpeters.org. Mailing Address: P.O. Box 1896, Columbia, 29202. Very Rev. Canon Gary S. Linsky, V.F.; Deacons Ronald J. Anderson; David Thompson; Michael Younginer.
School—St. Peter's Catholic School, (Grades PreK-6), 1035 Hampton St., Columbia, 29201. Tel: 803-252-8285; Fax: 803-254-4736; Email: kpreston@stpeterscatholicschool.org; Web: stpeterscatholicschool.org. Kathy Preston, Prin. Lay Teachers 20; Students 147.
Catechesis Religious Program—Students 262.

6—ST. THOMAS MORE (1953)
1610 Greene St., Columbia, 29201. Tel: 803-799-5870; Fax: 803-765-0800; Email: pam@stthomasmoreusc.org; Web: stthomasmoreusc.org. Rev. Marcin Zahuta, (Poland); Deacon Stephen Brown.
Catechesis Religious Program—Students 39.

CONWAY, HORRY CO., ST. JAMES THE YOUNGER (1945)
1071 Academy Dr., Conway, 29526. Tel: 843-347-5168; Fax: 843-347-1212; Email: stjames@stjamesconway.org; Web: stjamesconway.org. Revs. Timothy M. Lijewski; Timothy Akanle Akanson, Parochial Vicar; Deacons Jeffrey P. Mevissen; Robert Sprouse.
Catechesis Religious Program—Students 276.

DILLON, DILLON CO., ST. LOUIS (1943)
Mailing Address: 207 E. Roosevelt St., Dillon, 29536. Hwy. 301 N. & E. Jackson St., Dillon, 29536. Tel: 843-774-0255; Email: bookkeeper.stlouisdillon@gmail.com; Web: www.sites.google.com/site/stlouisdillon. Rev. Robert E. Morey, J.D., Admin.
Catechesis Religious Program—Students 76.

EDGEFIELD, EDGEFIELD CO., ST. MARY OF THE IMMACULATE CONCEPTION (1856) [CEM]
302 Jeter St., Edgefield, 29824. Tel: 803-637-6248; Fax: 803-637-6241; Email: stmarysec@bellsouth.net; Web: www.stmarysedgefield.org. Rev. Filip P. Wodecki, Admin.
Catechesis Religious Program—Students 18.

FLORENCE, FLORENCE CO.

1—ST. ANNE (1940) [JC] Rev. Noel Tria, (Philippines); Deacons James H. Johnson; Robert C. Gerald Jr.; Robert L. Cox III.
113 S. Kemp St., Florence, 29506. Tel: 843-661-5012; Fax: 843-673-2680; Email: stannesec@sc.twcbc.com; Web: stannecatholicparish.com.
Catechesis Religious Program—Students 52.
Mission—Church of the Infant Jesus, 4534 N. Hwy 501, Marion, 29571. Tel: 843-423-1823; Fax: 843-423-1823; Email: missioninfantjesusoffice@gmail.com; Web: www.sites.google.com/site/ijmcharleston. Mailing Address: P.O. Box 520, Marion, 29571. Deacon Donald DeNitto.
Catechesis Religious Program—

2—ST. ANTHONY (1872)
2536 W. Hoffmeyer Rd., Florence, 29501. Tel: 843-662-5674; Fax: 843-662-4800; Email: andrea.foyle@saintanthony.com; Web: www.saintanthony.