THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Dale Van E. Van Slambrook, Presiding Judge

Case No. 2018-CP-10-03929

Appellate Case No. 2025-001689

John Doe .... Appellant.

v.

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

RECORD ON APPEAL
VOLUME 1 of 5

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STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON — 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.

ORDER GRANTING SUMMARY JUDGMENT AS TO ALL CLAIMS (*ENDS THE ENTIRE CASE*)

Defendants, Bishop of Charleston a Corporation Sole, and the incorrectly named“Bishop of the Diocese of Charleston, in his official capacity” (the “Diocese”) moved for summary judgment as to all claims made by the above-captioned Plaintiff pursuant to Rule 56, SCRCP. Plaintiff alleges that he was abused by two teachers in 1970. To toll the statute of limitations for his claims, Plaintiff must establish repressed memory pursuant to the requirements of *Moriarty v. Garden Sanctuary Church of God*.[1] Plaintiff failed to present admissible evidence establishing that there remain genuine issues of material fact for trial regarding the requirements set forth in *Moriarty*. Therefore, the Court finds that the statute of limitations has run on all claims. On that basis, Defendants’ Motion for Summary Judgment based upon the Statute of Limitations is **GRANTED**, and all claims against the Diocese are **DISMISSED WITH PREJUDICE**.

[1] *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000).

FACTUAL SUMMARY

Plaintiff alleges that, in 1970, he was sexually abused by Chris Hartnett and Harold Brooks, who were employed as teachers at Sacred Heart School. Sacred Heart School operated as a ministry of Sacred Heart Parish and of the Roman Catholic Diocese of Charleston. For the 1970 – 1971 school year, Plaintiff's 7th-Grade teacher at Sacred Heart School was Chris Hartnett. Hartnett died many years ago. Harold "Hal" Brooks was another teacher at the school. Brooks testified by affidavit that he only taught at Sacred Heart School for the fall semester, 1970, before resigning to return to his father's business in Winnsboro. Thus, the only evidence before the Circuit Court is that the alleged abuse would have taken place during the fall of 1970.

STANDARD FOR SUMMARY JUDGMENT

In *Kitchen Planners v. LLC v. Friedman,*[2] the South Carolina Supreme Court clarified the standard for summary judgment and specifically rejected the notion that plaintiffs are only required to show a "mere scintilla" of evidence to survive a summary judgment motion. The Court held that: "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine" and that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Rather, as Rule 56(c) mandates, the party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial.'"*[3]

The Supreme Court made clear, Rule 56 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

[2] *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023).
[3] *Id.*
[4] Rule 56(a), SCRCP.

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."[5] "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."[6] "With respect to an issue upon 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.'"[7] The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.[8] Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence that shows there is a genuine issue of fact remaining for trial.[9]

1. There is no admissible evidence that would satisfy Plaintiff's burden of proof to show objectively verifiable evidence of abuse as required under *Moriarty v. Garden Sanctuary*.

Plaintiff was born on May 28, 1957. Plaintiff claims he was abused by the two teachers at Sacred Heart School in 1970. Plaintiff turned 18 on May 28, 1975, thus the statute of limitation for his claims lapsed no later than May 28, 1978. This action was not filed until August 8, 2018, more than thirty years after the statute of limitations had run. Plaintiff has provided no basis for this Court to find that the statute of limitations was tolled.

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[5] *Id.* Rule 56(c).
[6] *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).
[7] *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).
[8] *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).
[9] *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

Plaintiff claims that the statute of limitations should be tolled in this case under the repressed memory standard of *Moriarty v. Garden Sanctuary*. In *Moriarty v. Garden Sanctuary Church of God*, both the South Carolina Court of Appeals and the South Carolina Supreme Court recognized that the theory of repressed memory syndrome is, and remains, highly controversial among psychiatrists and psychologists. As the Supreme Court noted, there is no consensus among the psychological, medical, or legal communities regarding the validity of the theory of repressed memory.[10] Critically, both Courts likewise acknowledged "the horrific possibility of false accusations" and that corroborating evidence is required because of "the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind."[11]

Because of these concerns, the South Carolina Supreme Court requires that a plaintiff claiming repressed memory must present <u>both at the summary judgment stage and at trial</u>: (1) objectively verifiable corroborating evidence of the fact of the abuse and (2) expert testimony to establish the both the abuse and the fact of the repressed memories. Plaintiff has failed to meet either requirement.

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[10] *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000).

[11] *Moriarty*, 534 S.E.2d at 680, *citing Roe v. Doe*, 28 F.3d at 408-09 (suggesting that corroborative evidence of abuse and repressed memory should be required) (Hall, J., concurring); *Olsen v. Hooley*, 865 P.2d 1345, 1349-50 (Utah 1993) (requiring corroborating evidence because of concerns about the reliability of memory in general and revived memories in particular, and the difficulty of defending against claims of revived memories of sexual abuse long past); *S.V.*, 933 S.W.2d at 7-15 (discovery rule applies in repressed memory case only when claim is "inherently undiscoverable" and "objectively verifiable" through corroborating evidence; court assumed plaintiff's injury was inherently undiscoverable, but rejected application of discovery rule because she offered no corroborating evidence).

Plaintiff failed to present any admissible evidence supporting the requirement of objectively verifiable evidence of Plaintiff's being sexually abused. Neither accused teacher was ever convicted of the abuse nor did either teacher ever confess to abusing Plaintiff – in fact, the still-living teacher adamantly denies the alleged abuse, and the deceased teacher taught for 30 years in the Summerville schools without any accusation of any improper sexual conduct with a minor. There are no photographs or witnesses. Plaintiff testified that he reported the abuse to no one. He did not see a doctor or any other health care provider. There is simply a complete absence of objectively verifiable evidence that Plaintiff was abused in 1970 by these two teachers. For that reason alone, Plaintiff has failed to meet the requirements of *Moriarty* and his claims are due to be dismissed as time-barred.

2. Additionally, Plaintiff failed to present the expert evidence required to establish repressed memory syndrome under *Moriarty v. Garden Sanctuary*.

In addition to objectively verifiable evidence of the abuse, *Moriarty* requires that the Plaintiff must present expert testimony to establish the abuse, the fact of the repressed memories, and that those memories were repressed between Plaintiff's 18th birthday – May 28, 1975 until sometime after August 8, 2015 (three years prior to filing the Complaint). Plaintiff presented no admissible expert testimony regarding repressed memory syndrome. There are no neuropsychiatric tests in evidence that confirm that Plaintiff is experiencing repression of childhood memories. There is no admissible expert testimony that Plaintiff's recovered memories of the alleged abuse are accurate. There is no admissible expert testimony establishing when Plaintiff began to repress any memory of the alleged abuse. Finally, there is no admissible evidence of when Plaintiff claims to have recovered memories of the alleged abuse.

Plaintiff has not come forward with admissible evidence that satisfies the heavy burden placed upon him by *Moriarty v. Garden Sanctuary Church of God*. Plaintiff's inability to satisfy that burden places him in exactly the position that gave both the South Carolina Supreme Court and Court of Appeals such grave concern – the only evidence of "repressed memory" is self-reported by Plaintiff. Such is precisely what the *Moriarty* Courts cautioned against.

CONCLUSION

There is a complete failure of proof to establish tolling of the statute of limitations under the *Moriarty* decisions. Therefore it is clear that the statute of limitations ran on Plaintiff's claims in at least 1978, more than thirty years ago. For that reason, the Diocese's Motion for Summary Judgment is **GRANTED**. It is hereby **ORDERED** that Plaintiff's claims be **DISMISSED WITH PREJUDICE**.

Plaintiff's failure to establish the requisite proof regarding his claim of repressed memory syndrome to toll the statute of limitations is dispositive of the remaining issues pending before the Court. As such, the Court will not address those issues.

____
Hon. Dale Van Slambrook
Circuit Court Judge

Moncks Corner, South Carolina
July ___, 2025

Charleston Common Pleas

Case Caption: John Doe VS Diocese Of Charleston The , defendant, et al

Case Number: 2018CP1003929

Type: Order/Summary Judgment

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

Electronically signed on 2025-07-07 08:33:21 page 7 of 7

FORM 4

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**
COUNTY OF
IN THE COURT OF COMMON PLEAS **CASE NO.** 2018 **CP-**1003929

John Doe,	Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston in his official capacity
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: The Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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. ☐ <u>See Page 2 for additional information.</u>

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

☐ **ACTION STRICKEN** (<u>*CHECK REASON*</u>): ☐ 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** *(<u>CHECK APPLICABLE BOX</u>)*: ☐ 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:

This matter came before the Court on the Plaintiff's Motion to Alter, Amend, and/or Reconsider, filed on July 15, 2025. The Plaintiff asks the Court to Reconsider its Order, filed on July 7, 2025. The Court timely received a copy of the Motion for Reconsideration; a Memorandum in Opposition was filed by Defendant. This motion is disposed of without the necessity of a hearing and decided on the record and briefs.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172,420 S.E.2d 834,842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp*., 361 S.C. 9,24, 602 S.E.2d 772, 780 (2004)(emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc., v. Hagen*, 313 S.C. 389, 434S.E.2d 268 (1993; <u>See also</u> *Arnold v. State*, 309 S.C. 157, 172-173, 420 S.E.2d 834,842 (1992).

All matters raised by Plaintiff 's motion have been fully considered and ruled upon by this Court's Order.

After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff Motion to Alter, Amend, and/or Reconsider is heard and on the basis of the rationale set forth in the Defendant Memorandum in Opposition is respectfully **DENIED**.

AND IT IS SO ORDERED!

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : ______________________________

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

Charleston Common Pleas

Case Caption: John Doe VS Diocese Of Charleston The , defendant, et al

Case Number: 2018CP1003929

Type: Order/Form 4

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

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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

FILED
2018 AUG 29 PM 3: 30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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: Lawrence E. Richter

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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

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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).

EXHIBIT A

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 ++7++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 ++7++ 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 (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 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 violetion (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.

++9++

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).

++10++

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 solication. 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 excommunciation 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 <u>is bound most gravely</u> 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. <u>Can. 1942, § 1</u>).

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

FOR ALL PATRIARCHS, 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

~~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 ~~1151~~ 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 ++7++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 induced [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 ~~11711~~ 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 (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 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, 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

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 solication. 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 excommunciation 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 denounncer, 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 or 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 corectly 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 folows, 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 [illegible] 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 exlicit 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 recrecourse for a accused against the canonical prescriptions of this kind it 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 wilhave to be transmitted to the same Holy Congregation according to the preprescription of Canon 1890.

46. These actions, however, even if put into effect, do not extexringuish 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), citing [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 ~~#17~~even, if he has found it more opportune (cfr. n. 9) without his intervention, can receive the confession.

49. In this csae, 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, htat 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.

++18++

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 Promoter 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 formules 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 Promoter 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 treated], 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 [suspensivo], 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 authentic 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 complaint, then, of nullity, as sometimes might occur, let those details 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.

++22++

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 seculer 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].

++23++

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 cleric or attempt 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 which (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 they 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 and to be 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 Chruch holds, believes, preaches, professes and teaches, I confess and I am sorry that I have erred seriously against [that church] through ~~the sacrament of penance [and through the abuse and profanation of 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 despite 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 deliquents [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 daunmciation 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 deunciation] 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 ~~++34++~~ 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 if perchance he gave it. With these words written as they as 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 corections, additions and erasures, if there are some, ++35++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 obseve 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.P.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.X 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.X S.

(To the letter is joined Formula H)

FORMULA G

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 denounciated).

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?

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 stateda (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 H

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 apepared 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 or 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 signified 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].

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: ...

Aske: 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 honorable 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++44++ 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 justice 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.X 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; THE 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 Promoter 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, prelature, etc.) about whom there is reported the crime of solicitation, 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. X. 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 into 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.X. 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 take 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 had 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 penitents 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 content [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 testmony, are of good name, in every way worthy of credentel; 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 written form 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 sacerdotal 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 discrete 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 dispositive 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, he 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 jduge) 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 jduge, 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 ~~++bl++~~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 judgs signs.

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 STATUTE OF LIMITATIONS / LACK OF ADMISSIBLE EVIDENCE OF REPRESSED MEMORY

Defendants, Bishop of Charleston a Corporation Sole, and the incorrectly and improperly named "Bishop of the Diocese of Charleston, in his official capacity" ("the Diocese") move for summary judgment as to all claims made by the above-captioned Plaintiff pursuant to Rule 56, SCRCP. Because Plaintiff cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

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.[1] 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

[1] Rule 56(a), SCRCP.

matter of law."[2] "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."[3] "With respect to an issue upon 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.'"[4] The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.[5] 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.[6]

ARGUMENT

1. Plaintiff cannot come forward with admissible evidence regarding his alleged repressed memory syndrome.

Both the South Carolina Supreme Court and the Court of Appeals expressed deep concerns regarding so-called "repressed memory syndrome" in their decisions in *Moriarty v. Garden Sanctuary Church of God*. As both courts acknowledged, the theory of repressed memory syndrome is controversial among psychiatrists and psychologists – as the Supreme Court noted, there is no consensus among the psychological, medical, legal communities regarding the validity of the theory of repressed memory.[7] Both courts likewise acknowledged "the horrific possibility of false accusations" and acknowledged that corroborating evidence is required because of "the disagreement among the psychological and medical communities about

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[2] *Id.* Rule 56(c).
[3] Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).
[4] Id. (alteration in original) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).
[5] 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).
[6] Baughman, 306 S.C. at 115, 410 S.E.2d at 545.
[7] *Moriarty*, 534 S.E.2d 672, 677 (S.C. 2000).

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the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind."[8] Because of these concerns, the Supreme Court requires that a plaintiff claiming repression must present <u>both at summary judgment stage and at trial</u>: (1) objectively verifiable corroborating evidence to corroborate the fact of the abuse and (2) expert testimony to establish the both the abuse and the fact of the repressed memories.

The *Moriarty* Court held that objective verifiability may be satisfied by corroborating evidence such as: (1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness's account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred.[9] This corroborating evidence is a prerequisite for application of the discovery rule to toll the statute of limitations.

There is no admissible evidence supporting the requirement of objectively verifiable evidence of Plaintiff's being sexually abused. He testified that he reported the abuse to no one. He did not see a doctor or any other health care provider. Neither accused teacher was ever

[8] *Moriarty*, 534 S.E.2d at 680 *citing* *Roe v. Doe*, 28 F.3d at 408-09 (suggesting that corroborative evidence of abuse and repressed memory should be required) (Hall, J., concurring); *Olsen v. Hooley*, 865 P.2d 1345, 1349-50 (Utah 1993) (requiring corroborating evidence because of concerns about the reliability of memory in general and revived memories in particular, and the difficulty of defending against claims of revived memories of sexual abuse long past); *S.V.*, 933 S.W.2d at 7-15 (discovery rule applies in repressed memory case only when claim is "inherently undiscoverable" and "objectively verifiable" through corroborating evidence; court assumed plaintiff's injury was inherently undiscoverable, but rejected application of discovery rule because she offered no corroborating evidence).

[9] *Moriarty*, 534 S.E.2d at 680, *quoting* 511 S.E.2d at 710.

convicted, nor did either ever confess to abusing this Plaintiff – in fact, the still-living teacher adamantly denies it, and the deceased teacher taught for 30 years in the Summerville schools, apparently without any accusation of any improper sexual conduct with a minor. There are no photographs or eye witnesses. Neither teacher has ever been accused of molesting any other child. There is a complete absence of contemporaneous circumstantial evidence that this Plaintiff was abused in 1970.

In addition to objectively verifiable evidence, Plaintiff must present expert testimony to establish the abuse, the fact of the repressed memories, and that those memories were repressed between Plaintiff's 18th birthday – May 28, 1975 until sometime after August 8, 2015 (three years prior to filing the Complaint). There is no admissible expert testimony regarding repressed memory syndrome. There are no neuropsychiatric tests that would confirm that Plaintiff is experiencing actual repression of childhood memories. There is no expert testimony that Plaintiff's so-called recovered memories are even accurate. There is no expert testimony establishing when Plaintiff began to repress any memory or when he recovered them.

In short, Plaintiff cannot come forward with admissible evidence that satisfies the heavy burden placed upon him in *Moriarty v. Garden Sanctuary Church of God*. Plaintiff's inability to satisfy that burden places him in exactly the position that gave both the Court of Appeals and Supreme Court such grave concern – the only evidence of repressed memory is self-reporting by Plaintiff. There is no objectively verifiable evidence, nor is there admissible expert testimony as the *Moriarty* Court demanded. Failing that, the discovery rule does not apply.

2. Plaintiff's claims are barred under the applicable statute of limitations.

Pursuant to S.C. Code Ann. § 15-3-535, any individual plaintiff whose claim arose prior to 2001 has 3 years from the date of the tort to bring his claim.[10] The statute of limitations is tolled until a person reaches his or her majority.

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Johnston v. Bowen,* 313 S.C. 61, 437 S.E.2d 45 (1993). We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist. *Snell v. Columbia Gun Exchange, Inc.,* 276 S.C. 301, 278 S.E.2d 333 (1981). Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.,* 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), *cert. granted,* 287 S.C. 234, 337 S.E.2d 697 (1985), *cert. dismissed,* 288 S.C. 468, 343 S.E.2d 613 (1986).[11]

Statutes of limitation are not mere formalities or technicalities, rather statutes of limitation "have long been respected as fundamental to a well-ordered judicial system."[12]

Plaintiff was born in 1957 and alleges he was abused during the 1970-71 school year. He reached his majority at age 18, in 1975.[13] The statute of limitations ran on Plaintiff's claims no later than 1978.

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[10] In 2001, § 15-3-555 became effective and extended the statute of limitations for cases involving alleged sexual abuse to 6 years after the victim turned 21 years of age. While statutes of limitation can generally be applied retroactively, a new statute of limitations cannot revive a claim where the prior statute has already run. *Doe v. Crooks*, 613 S.E.2d 536, 538 (2005). Such a result would violate the defendant's rights under the Due Process Clause of the South Carolina Constitution. *See Goff v. Mills*, 308 S.E.2d 778, 780 (S.C. 1983); *U.S. Rubber Co. v. McManus*, 45 S.E.2d 335, 338 (S.C. 1947); *Stoddard v. Owings*, 20 S.E. 25, 26 (S.C. 1894).

[11] *Dean v. Ruscon Corp.*, 468 S.E.2d 645, 647 (S.C. 1996).

[12] *Id.* at 4 (internal citations omitted).

[13] S.C. Code Ann. § 15-1-320 changed the age of majority to 18 effective February 6, 1975, just prior to Plaintiff's 18th birthday.

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CONCLUSION

Plaintiff cannot rely on the discovery rule, or upon claims of repressed memory syndrome to toll the effective statute of limitations. There is no admissible evidence to satisfy the burden of proof set out in *Moriarty*. As such, the applicable statute of limitations began to run on Plaintiff's 18th birthday in 1975 and has long since expired. For that reason, summary judgment in favor of the Diocese is appropriate. Because the statute of limitations has run, Plaintiff's claims must be dismissed with prejudice.

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ATTORNEYS FOR DEFENDANTS

October 30, 2019

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 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.

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

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Defendants, Bishop of Charleston a Corporation Sole, and the incorrectly and improperly named "Bishop of the Diocese of Charleston, in his official capacity" ("the Diocese") move for summary judgment as to all claims made by the above-captioned Plaintiff pursuant to Rule 56, SCRCP. Because Plaintiff cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

FACTUAL SUMMARY

Plaintiff alleges he was molested by two teachers at Sacred Heart School in Charleston in 1970 while Plaintiff was a student in the seventh grade at the school. Plaintiff alleges that one teacher, Chris Hartnett, molested him numerous occasions on the school campus. He also says Hartnett drove him to Columbia and that Hartnett and the other teacher, Hal Brooks, molested him in a private home near Gervais Street. Plaintiff testified that he reported the abuse to no one. He did not see a doctor or any other health care provider. Neither accused teacher was ever convicted, nor did either ever confess to abusing this Plaintiff – in fact, the still-living teacher adamantly denies it, and the deceased teacher taught for 30 years in the Summerville schools, apparently without any accusation of any improper sexual conduct with a minor. There are no photographs or eye witnesses. Neither teacher has ever been accused of molesting any other child. There is no admissible evidence that the Diocese had knowledge of any specific risk of harm to this Plaintiff, nor is there any admissible evidence that the Diocese specifically intended that harm would come to Plaintiff at any time. There is no evidence that the Diocese specifically directed a tortious act to Plaintiff.

STANDARD FOR SUMMARY JUDGMENT

In *Kitchen Planners v. LLC v. Friedman*[1] the South Carolina Supreme Court clarified the standard for summary judgment and specifically rejected the notion that plaintiffs are only required to show a "mere scintilla" of evidence to survive summary judgment. The Court held that: "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine" and that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." As Rule 56(c) mandates, the party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts' and 'must come forward with 'specific facts showing that there is a *genuine issue for trial.'"*[2]

As the Supreme Court made clear, Rule 56 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.[3] 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."[4] "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."[5] "With respect to an issue upon 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

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[1] *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023). *See also Isaac v. Onion*, __ S.E.2d ___, 2025 WL 1174537 (S.C. April 23, 2025).
[2] *Id.* (emphasis added)
[3] Rule 56(a), SCRCP.
[4] *Id.* Rule 56(c).
[5] *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

evidence to support the nonmoving party's case.'"[6] The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.[7] Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence of specific facts that show there is a genuine issue of material fact remaining for trial.[8]

I. PLAINTIFF'S CLAIMS SOUNDING IN NEGLIGENCE ARE BARRED BY THE COMMON LAW DOCTRINE OF CHARITABLE IMMUNITY AS FRAMED BY THE SOUTH CAROLINA SUPREME COURT'S HOLDING IN *DOE V. BISHOP OF CHARLESTON*, 911 S.E. 2D 323 (S.C. JAN. 15, 2025).

In its decision in *Doe v. Bishop of Charleston*, the South Carolina Supreme Court left no room for doubt – charitable entities such as the Diocese cannot be liable for negligence-based torts pursuant to South Carolina's pre-1981 doctrine of charitable immunity.[9] The Supreme Court ruling came on Plaintiff's appeal from summary judgment in this case based upon common law charitable immunity. Plaintiff alleges he was molested in about 1970, when, as the Supreme Court held, the doctrine of charitable immunity remained in full effect to bar any negligence-based negligence-based claims against a charitable organization. In *Doe*, the Supreme Court reaffirmed that (a) the Diocese is, and has always been, a charitable entity; and (b) that common law charitable immunity insulated charitable entities from claims based on negligence, though the doctrine did not apply to the intentional torts committed by the charitable entity. For that reason, Plaintiff's Negligence (Second Cause of Action), Breach of Fiduciary Duty (Third Cause of Action), and Negligent Retention or Supervision (Sixth Cause of Action) claims, each of which is based upon allegations of negligence, fail as a matter of law and must be

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[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] *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).

[8] *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

[9] It is undisputed that the Diocese of Charleston is a charitable entity that is immune from negligence-based claims. *Doe v. Bishop of Charleston, supra; see also Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264 (S.C. 1966)

dismissed. Additionally, Plaintiff's Seventh and Eighth causes of action for contract claims allege nothing more than negligence and negligent supervision and must be dismissed as well.

II. PLAINTIFF'S INTENTIONAL TORT CLAIMS FAIL AS A MATTER OF LAW.

A. Plaintiff's intentional tort claims fail as a matter of law because Plaintiff cannot offer any proof that the Diocese specifically intended to harm him.

As the South Carolina Supreme Court held in *Doe v. Bishop of Charleston*, Plaintiff's negligence claims are barred, so only claims based on allegations that the Diocese of Charleston committed an intentional tort against him individually remain.[10] As the Supreme Court recognized in *Doe v. Bishop of Charleston*, the Diocese cannot be called to answer for the alleged intentional, criminal, and deplorable acts of Hartnett and Brooks.[11] Plaintiff is therefore required to prove that the Diocese, as a corporate entity, specifically intended to harm him and that the Diocese took deliberate action that specifically targeted Plaintiff.

In a case also involving allegations of sexual abuse of a minor by a priest, the United States Court of Appeals for the Fourth Circuit, while sympathizing with the plaintiff, noted: "[w]e have not found any facts in the record to support a claim that the Diocese's conduct was intended to injure [Plaintiff]. Of course she does present facts that the priest's conduct was intentional, but he is not a party to this action . . . ."[12] In that same case, United States District Judge Richard Gergel wrote that, having determined that the plaintiff's claims were "quintessentially negligence claims":

The Court notes that the alleged perpetrator, Father McLean, is not a party to this

[10] *See e.g. Upchurch v. New York Times, Co.* 314 S.C. 531, 431 S.E.2d 558 (S.C. 1993)(the intentional conduct must be specifically targeted at the plaintiff); *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (S.C. 1981)(indicating that the conduct must be specifically directed at the plaintiff).

[11] *Doe v. Bishop of Charleston, supra.*

[12] *Mary Roe 1818 v. Bishop of Charleston*, 2023 WL 3496326 at *2 (4th Cir. May 17, 2023)(unpublished)

> action. Were he, and were Plaintiff's allegations proven to be true, there is little doubt that he would be held liable for his reprehensible acts. The Court has great sympathy for Plaintiff. But, as explained *supra* the Defendants here are the Diocese of Charleston. And, for the reasons explained above, Defendants are entitled, under the doctrine of charitable immunity, to summary judgment on the entirety of Plaintiff's claims.[13]

The same is true in this case. While the teachers' alleged actions, if proved would be intentional criminal actions, there is no evidence that the Diocese directed any intentional tortious activity specifically toward Plaintiff.

Under South Carolina law, an intentional tort requires proof that the defendant deliberately and purposefully acted to harm the plaintiff or acted with substantial certainty that harm would occur. Mere knowledge of a potential danger or even gross negligence in failing to prevent harm does not satisfy the "specific intent" standard. For instance, in *Doe 2 v. The Citadel*,[14] also a case involving allegations of sexual abuse of a minor, the South Carolina Court of Appeals emphasized that a plaintiff alleging the intentional tort of outrage was required to prove that the institution took deliberate action specifically directed at the plaintiff with the intent to harm him for the claim to be viable.[15] Plaintiff alleged that, by placing the perpetrator in positions where he would have contact with minors and the opportunity to sexually abuse them, The Citadel committed an intentional tort against him. The South Carolina Court of Appeals disagreed and held that simply knowing about a danger or creating an unreasonably risky environment without taking appropriate precautions, no matter how severe, falls within the realm

[13] *Mary Roe 1818 v. Bishop of Charleston*, 2022 WL 1570810 (D.S.C. May 18, 2022). In that case, which also arose from allegations that a priest molested a minor, the plaintiff alleged claims for (1) fraudulent concealment; (2) negligence / gross negligence / recklessness; (3) breach of fiduciary duty; (4) outrage / intentional infliction of emotional distress; (5) civil conspiracy; and (6) negligent retention or supervision. The District Court determined that the plaintiff had pleaded a claim for negligence and that the claims were barred by the doctrine of charitable immunity.

[14] *John Doe 2 v. The Citadel*, 421 S.C. 140, 153; 805 S.E.2d 578, 585 (Ct. App. 2017).

[15] *Id.*

of negligence or gross negligence rather than intentional wrongdoing.[16]

As was the case in *Doe 2 v. The Citadel,* there is no evidence the Diocese took any affirmative step intended to inflict harm on the Plaintiff. The alleged failure to supervise, concealment of misconduct, or indifference to ongoing issues—even if deemed negligent or reckless—does not equate to deliberately targeting the Plaintiff with the requisite intent. Absent a showing that the Diocese acted with the specific design to harm this particular individual, Plaintiff's intentional tort claims fail as a matter of law.[17] There is no evidence to support that required element for any intentional tort allegation against the Diocese, and Plaintiff's claims for Conspiracy, Intentional Infliction of Emotional Distress, and Fraudulent Concealment must be dismissed.

B. Plaintiff has not introduced admissible evidence to satisfy his burden of proof regarding the essential elements of his claims for Intentional Infliction of Emotional Distress, Fraudulent Concealment, or Civil Conspiracy and, on that basis, the claims must be dismissed.

1. Conspiracy

Plaintiff sole substantive allegation of conspiracy is:

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[16] *Id. and see e.g. Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 276-277, 847 S.E.2d 793, 804-805 (Ct. *App.2020); Edens v. Bellini*, 359 S.C. 433, 448, 597 S.E.2d 863, 869 (Ct. App. 2004 (differentiating between negligence and intentional acts in a worker's compensation case). Such actions could also fall within common law public nuisance – creating a risk of harm to the public going about its daily business. *Black's Law Dictionary* defines a public nuisance as:

> A condition dangerous to health, offensive to community moral standards . . . . Any unreasonable interference with rights common to all members of the community in general and encompasses public health, safety, peace, morals, or convenience.

In *Overcash v. S.C. Elec. & Gas Co.*, 614 S.E.2d 619 (S.C. 2005), the South Carolina Supreme Court rejected the theory of common law public nuisance in this State. It also held that one can only recover for injury to tangible property, and denied any right of recovery for personal injury where there is a statutory public nuisance.

[17] *See e.g. Doe v. Oconee Mem. Hosp.* 437 S.C. 574, 878 S.E.2d 920 (Ct. App. 2022); *Upchurch v. New York Times Co.*, 314 S.C. at 538. 431 S.E.2d at 562; *Doe 2 v. The Citadel*, 421 S.C. at 153, 805 S.E.2d 585.

> 46. Prior to the abuse of the Plaintiff, the 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, his activities constitutes a conspiracy, or a conspiracy of silence. The purpose behind this conspiracy was to protect the 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 protest [sic] minors who were the potential prey of Hartnett and Brooks and their sexually deviant propensities, this Plaintiff included.

Nowhere has Plaintiff identified who the alleged conspirators were. Defendant is without the slightest information of what the agreement to harm Plaintiff was or how the conspirators acted in furtherance of the agreement with the intent to harm him.

It is well-settled law that, in order to establish a civil conspiracy claim, a plaintiff must prove: (1) a combination or agreement of two or more persons, (2) to commit an unlawful or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately result to the plaintiff.[18] Plaintiff has adduced no evidence establishing a factual basis that the Diocese acted with an intent to harm him. "Civil conspiracy requires a specific intent to injure the plaintiff."[19] Some evidence that the alleged conspirators "acted with malice towards" the plaintiff is required.[20] Where, for example, alleged conspirators acted out of a general desire rather than an intent specifically to harm the plaintiff, a

[18] *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (S.C. 2021); *see also Southstar Fin., LLC v. T-Zone Health, Inc.*, No. 2:21-cv-02511-DCN, 2021 U.S. Dist. LEXIS 217697, at *17-18 (D.S.C. Nov. 10, 2021)

[19] *Paradis*, 861 S.E.2d at 780, n. 9. *See also Landon v. Vaden of Beaufort, Inc.*, 2023 WL 8703569 (D.S.C. Nov. 30, 2023); *Sizemore v. Georgia-Pac. Corp.*, 1996 U.S. Dist. LEXIS 22401, 1996 WL 498410, at *13 (D.S.C. Mar. 8, 1996) (citing *Bivens v. Watkins*, 313 S.C. 228, 437 S.E.2d 132, 134 (S.C. Ct. App. 1993)), *aff'd sub nom. Sizemore v. Hardwood Plywood & Veneer Ass'n*, 114 F.3d 1177 (4th Cir. 1997).

[20] *Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co.*, Inc., 992 F.2d 59, 63 (4th Cir. 1993) (applying South Carolina law).

civil conspiracy claim fails as a matter of law.[21]

Further, a plaintiff "must plead additional facts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim."[22] Where, as is the case here, a plaintiff merely repeats the damages from another claim without specifically listing the separate damages resulting from the conspiracy, the count should be dismissed. As Judge Lewis observed in *Coker v. Norwich Com. Grp.*:

> Stated another way, "'[w]here the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.'" *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607, 612 (S.C. 1981) (quoting 15A C.J.S. Conspiracy § 33, at 718), *overruled on other grounds by Paradis*, 2021 S.C. LEXIS 106, 2021 WL 3668152.

In this case, Plaintiff has only charged the same acts for the alleged conspiracy and the other allegedly wrongful acts – he simply cannot seek recovery under both theories for the same conduct.[23] Plaintiff does not allege any particular acts that are any different from those on which he bases his other claims. For those reasons, Plaintiff's conspiracy count fails as a matter of law.

Plaintiff has not come forward with any evidence establishing any specific acts done in furtherance of an agreement to harm him.[24] He cannot identify the conspirators or what the agreement between them even was. He has not come forward with any evidence establishing the overt and malicious act directed toward him by the Diocese. The gravamen of a civil conspiracy

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[21] *Bivens*, 313 S.C. at 234 437 S.E.2d at 136.
[22] *Coker v. Norwich Com. Grp., Inc.*, 2021 U.S. Dist. LEXIS 167799, 2021 WL 4037472, at *5 (D.S.C. Sept. 3, 2021).
[23] *Paradis, supra.*
[24] *Cricket Cove Ventures, LLC v. Gilland*, 300 S.C. 312

claim is the damage resulting from an overt act done pursuant to a common design.[25] Plaintiff's only allegations – allegations that are not supported by any competent and admissible evidence – are that the Diocese took no action. Alleging that the defendant did nothing cannot serve as the basis for a conspiracy claim.

Finally, under the intra-corporate conspiracy doctrine, it is well-settled and accepted law that a corporate entity cannot conspire with itself.[26] Plaintiff essentially contends that employees or agents of the Diocese conspired for the benefit of the Diocese. A conspiracy may not exist where the agent is acting for the benefit of his or her master rather than for his or her own purposes.[27] Plaintiff's allegations fall squarely within the intra-corporate conspiracy doctrine and summary judgment is appropriate.

Simply put, Plaintiff cannot satisfy the evidentiary requirements established in *Paradis v. Charleston County School District* nor can he prove even a single element required in a claim for civil conspiracy. For these reasons, Plaintiff's conspiracy cause of action fails as a matter of law and must be dismissed.

2. Outrage / Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress was not recognized as an actionable tort at the time of the alleged actions by the Diocese. The Restatement (Second) of Torts, § 46 appears to have expressly rejected liability for intentional infliction of emotional distress until the section was revised in the late 1950s and promulgated in the 1965 Restatement. In 1971, Professor

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[25] *See Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989).

[26] *See Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911 (5th Cir. 1952)(affirmed by *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 81 L. Ed. 2d 628, 642, 104 S. Ct. 2731 (1984)).

[27] *See Smith v. Palmetto Denture Care, P.A.*, 2018 U.S. Dist. LEXIS 125715 (D.S.C. July 27, 2018) (Quattlebaum, J.) *citing Anvar v. Greenville Hosp. Sys.*, No. 2007-UP-004, 2007 S.C. App. Unpub. LEXIS 76, at *10-11 (Ct. App. Jan. 10, 2007) *and McMillan v. Oconee Mem'l Hosp.*, 367 S.C. 559, 626 S.E.2d 884 (2006).

Prosser noted that "an action seeking damages for mental and emotional injury outside the scope of some traditionally recognized tort, is a novel one in this country."[28] As the Supreme Court of Oregon noted in 1969,

> [T]he Restatement and courts supporting it have since drastically changed their position from denial of liability for intentionally inflicting emotional distress to the allowance of liability against one who intentionally caused emotional distress without privilege to do so, and later to the present rule which requires that the conduct be extreme and outrageous before liability will attach.[29]

The South Carolina Supreme Court first recognized the tort of outrage as delineated in the Restatement (Second) Torts §46 in 1981.[30] In doing so, the Court acknowledged that intentional infliction of emotional distress was a "comparatively new, independent tort."[31] The recognition of this novel tort can only apply to claims arising after its adoption in 1981.[32] Thus, Plaintiff's Fourth Cause of Action must fail as a matter of law since the alleged actions occurred between 1975 and 1977.

Additionally, to establish the tort of outrage, the plaintiff must demonstrate that the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was utterly intolerable in a civilized community. Plaintiff must prove that the defendant acted with the intent to inflict emotional distress or recklessly when it was certain or substantially certain such distress would result from the defendant's conduct. The plaintiff must

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[28] William L. Prosser, *Law of Torts* (4th ed. 1971).
[29] *Pakos v. Clark*, 253 Or. 113, 453 P. (2d) 682 (1969).
[30] *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (S.C. 1981)
[31] *Id.* 276 S.C. at 159, 276 S.E.2d at 777.
[32] *See e.g. See Hupman v. Erskine College*, 281 S.C. 43, 314 S.E.2d 314 (1984) (the Supreme Court's holding in *Fitzer v. Greater Greenville*, *S.C. Young Men's Christian Association*, abrogating charitable immunity, did not to apply where the injury occurred prior to the 1981 decision); *Walton v. Stewart*, 277 S.C. 436, 289 S.E.2d 403 (1982) (the South Carolina Supreme Court's holding in *Elam v. Elam*, abolishing interfamily immunity, could only be applied prospectively); *Moore v. Berkeley County*, (the decision abrogating sovereign immunity extends only to causes of action arising on or after July 1, 1986).

also show that the defendant's actions caused severe emotional distress that no reasonable person could be expected to endure.[33] Plaintiff cannot adduce any evidence that the Diocese specifically directed extreme and outrageous tortious conduct toward him.[34]

With a complete failure of proof regarding the essential elements of a claim for outrage, Plaintiff's cause of action for Outrage should be dismissed with prejudice.

3. Fraudulent Concealment

Plaintiff has no admissible evidence regarding the essential elements of his claim for fraudulent concealment. A claim for fraudulent concealment arises only when a party is under a duty to disclose information based upon a fiduciary relationship between the parties. The South Carolina Supreme Court held:

> The duty to disclose may be reduced to three distinct classes: (1) where it arises from a *preexisting definite fiduciary relation between the parties*; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.[35]

South Carolina courts have addressed the issue of whether a school and its agents owe a fiduciary duty to its students on multiple occasions. The South Carolina Supreme Court has repeatedly refused to recognize a fiduciary duty existing between a school and a student in part because of the very nature of fiduciary duties is primarily related to business and financial

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[33] *Ford v. Hutson*, 276 S.C. 157, 160, 276 S.E.2d 776, 777 (1981); *Corder v. Champion Road Machinery Intern. Corp.*, 283 S.C. 520, 324 S.E.2d 79 (Ct. App. 1984); *Hainer v. Amer. Medical Intern., Inc.* 320 S.C. 316, 465 S.E. 2d 112 (Ct. App. 1995), *and John Doe 2 v. The Citadel supra*.

[34] *See Gattison v. S.C. State College*, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995), *John Doe 2 v. The Citadel*, *supra*.

[35] *See Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct. App. 1993); *quoting Jacobson v. Yaschik* 155 S.E.2d 601, 605 (1967)(emphasis added).

dealings.[36] The most recent and oft-cited case is that of *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007). In *Doe*, a substitute teacher engaged in a sexual relationship with a 14-year old student. The parents of the student filed suit against the school district on a myriad of theories, including breach of fiduciary duty and an assumed duty *in loco parentis*. In doing so, the parents alleged that the district failed to supervise the substitute teacher. Further, the parents alleged that the school district had prior warnings about the substitute teacher's interest in young girls and knew or should have known of the relationship. The trial court dismissed the claims for breach of fiduciary duty and assumed duty *in loco parentis*, and the Supreme Court certified the case directly.

On review, the Supreme Court affirmed the trial court's dismissal of the breach of fiduciary duty and breach of assumed duty *in loco parentis*. In doing so, the Court agreed with the trial court's analysis that the claims were actually based on the appellant's negligent supervision claim and that "these causes of action were alleged as an attempt to heighten any duty owed by the School District in this situation."[37]

The question of whether a fiduciary duty exists is a matter of equity and thus is reserved for the Court's determination, not as an issue of fact for a jury.[38] As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him.[39] The South Carolina Supreme Court has largely limited the imposition of fiduciary duties to legal or business settings in which one

[36] *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003).
[37] *Doe v. Greenville County Sch. Dist.*, 375 S.C. at 72, 651 S.E.2d at 310.
[38] *Id. see also Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003).
[39] *Steele v. Victory Sav. Bank*, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988).

person entrusts money with another, to include lawyers, brokers, or corporate directors.[40] In contrast, Plaintiff attended Cathedral School for two years. There is no other basis for Plaintiff's allegations and the well-settled law is that his role as a student at a school will not create a fiduciary relationship between the parties. For that reason, Plaintiff's claim for fraudulent concealment fails as a matter of law.

More broadly, South Carolina has never recognized a general duty of care to prevent acts of a third person without concrete evidence of a specific danger to *specific* persons. For example, in *Doe v. Bibby*[41] the South Carolina Court of Appeals held that the wife of a known sexual predator owed no duty to a child-visitor to the family home whom her husband sexually abused. Because there was no evidence the wife had knowledge of a specific threat of harm to that specific minor, the wife did not breach any duty of care.[42] Even a general knowledge of the sexual abuser's predilection was insufficient to trigger a duty to protect an undefined group of minors from the husband/predator.

The same was true in *Doe v. Marion.*[43] In that case, the minor plaintiff was sexually abused by his pediatrician. The physician was undergoing treatment from a psychiatrist for his predilection for molesting children. The victim sued defendant's treating psychiatrist, alleging she failed to warn him of the pediatrician's predilection for molesting children. The South Carolina Supreme Court affirmed dismissal of the case against the psychiatrist because, even though she was well aware of her patient's dangerous tendencies, there was no evidence of a specific threat of harm toward Doe. Without notice of a specific threat of harm to a specific

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[40] *Id.*
[41] *Roe v. Bibby* 410 S.C.287, 763 S.E.2d 645 (Ct. App. 2014).
[42] *Id.*
[43] *Doe v. Marion* 373 S.C. 390, 399, 645 S.E.2d 245, 250 (2007).

individual, the psychiatrist owed no duty of care to potential victims of her patient.[44]

South Carolina law is clear – in order to impose a duty to protect others from the criminal acts of another, a defendant must have knowledge of a specific threat to a particular person.[45] Even where the defendant possessed knowledge of a dangerous tendency, there arose no duty of care to any third party unless the defendant knew there was a specific threat of harm to that particular individual. South Carolina has steadfastly refused to impose any duty of care to protect the public at large, or even to a discreet group of people, even when one *knows* of the tortfeasor's dangerous predilections. The duty of care is triggered only when one has knowledge of some dangerous proclivity *and* knowledge of a specific threat to a specific individual.

There is no admissible evidence that Hartnett ever engaged in any inappropriate conduct with a minor prior to his being hired by Sacred Heart school. Likewise, there is no evidence he ever abused a child during his entire teaching career. So too for Hal Brooks. The only evidence is that Brooks taught school at Sacred Heart for just a few months. There is a complete absence of any evidence that he had been accused of abusing a child prior to his being hired. There are no complaints about him, nor any record that anyone claimed he abused a minor at any time. Neither is there any evidence that he has ever been accused of molesting a child since. Brooks

[44] *Id.*, 645 S.E.2d at 250.

[45] *See also*, *Bishop v. S.C. Dep't of Public Health*, 331 S.C. 79, 502 S.E.2d 78 (1998) (Department owed duty of care to warn child of potential harm when mother had threated to harm that child prior to discharge from institution); *Rogers v. S.C. Dep't of Parole and Community Corrections*, 320 S.C. 253, 464 S.E.2d 330 (1995) (no duty to warn potential victims that a prisoner was being furloughed, even though prisoner had burglarized their home previously, absent knowledge of a specific threat that prisoner would); *Gilmer v. Martin*, 323 S.C. 154, 473 S.E.2d 812 (Ct. App. 1996) (Psychiatrist had no general duty to warn even though he was aware his patient, who expressed suicidal tendencies, worked with vulnerable persons, even though the group was discernible and small); *Sharpe v. S.C. Dep't of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987) (therapist owed no duty to warn of a patient's violent propensities where there was no specific threat to a specific person).

adamantly denies the incident.[46]

There is no admissible evidence that the Diocese knew of any "dangerousness" of the either teacher accused of sexually abusing minors, nor this Plaintiff produced even a scintilla of evidence that the Diocese concealed *these* teachers' prior inappropriate sexual behavior with minors, because there is no such evidence.[47] The Plaintiff has no evidence whatsoever that the Diocese knew or should have known that either Hartnett or Brooks posed a danger to children or that the Diocese failed to warn anyone about them.

III. PLAINTIFF'S CONTRACT-BASED CLAIMS FAIL AS A MATTER OF LAW

Just as Judge Gergel found in *Mary Roe 1818 v. Bishop of Charleston*[48] Plaintiff's contract claims are quintessentially negligence and negligent supervision claims for which he cannot recover.[49] Plaintiff cannot come forward with admissible evidence regarding any material fact to support his allegation that <u>he</u> or his grandparents on his behalf entered into any contract with the Diocese; that the Diocese breached that contract; or that any fraudulent act accompanied the breach. Even assuming there was a contract between the parties, there is no evidence that the Diocese breached that contract. Additionally, Plaintiff bears the burden of proving that his alleged injuries were within the contemplation of the parties at the time the contract was made.[50] Again, there is no such evidence. In short, Plaintiff's allegations have no legal basis, and the breach of contract claims must be dismissed.

Finally, Plaintiff's Breach of Contract Accompanied by a Fraudulent Act claim fails

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[46] *See Affidavit of Harold Brooks,* ***Exhibit B****.*

[47] *See Doe v. Bishop of Charleston* 754 S.E.2d 494, 500-1 (S.C. 2014).

[48] *Mary Roe 1818*, 2022 WL 1570810

[49] *See Doe v. Bishop of Charleston*, 911 S.E. 2d 323 (S.C. Jan. 15, 2025).

[50] *McNaughton v. Charleston Charter School for Math & Sci., Inc.*, 411 S.C. 249, 261, 768 S.E.2d 389, 396 (S.C. 2015). Emotional distress damages – such as those alleged by Plaintiff – are not typically recoverable in breach of contract actions. *See e.g. Id., and South Carolina Fed. Sav. Bank v. Thorton-Crosby Devel. Co., Inc.*, 303 S.C. 74, 399 S.E.2d 8 (S.C. 1990).

because Plaintiff has failed to plead fraud with the specificity required under Rule 9, SCRCP. He has not put forward any proof regarding the time, place, and manner in which the Diocese acted with fraudulent intent directed toward him individually in breaching some contract with him.

For these reasons, Plaintiff's contract-based claims must be dismissed as a matter of law.

IV. PLAINTIFF'S CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS AS THERE IS NO ADMISSIBLE EVIDENCE THAT WOULD SATISFY PLAINTIFF'S BURDEN OF PROOF UNDER *MORIARTY V. GARDEN SANCTUARY.*

A. Plaintiff's has no Evidence to Support his Claim that the Statute of Limitations Should be Tolled for Nearly Forty Years.

Plaintiff's claims are barred by the statute of limitations.[51] His allegations in the Complaint that "His memory was repressed."[52] those memories are unsupported by any admissible evidence. Plaintiff was born on May 28, 1957. He turned 18 on May 28, 1975. His claims lapsed no later than May 28, 1978. This action was not filed until August 8, 2018, more than thirty years after the statute of limitations had run.

It beyond dispute that South Carolina's three-year statute of limitations applies to this case.[53] Pursuant to the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the statutory period of limitations

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[51] *See* Timeline attached as ***Exhibit A***

[52] Compl. ⁋16.

[53] *See* S.C. CODE ANN. § 15-3-530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law"); *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371-72, 597 S.E.2d 27, 29 (Ct. App. 2004) (holding the three-year statute of limitations began to run on homeowner's negligence claim when he discovered his newly purchased modular home was damaged during delivery).

begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.[54] The South Carolina Supreme Court has interpreted the "exercise of reasonable diligence" to mean that "the injured party must act with some promptness" when on notice of a potential claim.[55] "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial."[56] It takes very little to start the clock.

Dr. Sally Duffy, the psychologist identified by plaintiff as a potential expert, could not identify with any specificity when Plaintiff recovered the memory of his abuse. Rather, she testified she thinks that:

- In 2012, when Plaintiff moved from Charleston to Greenville without his wife, "that was a huge, huge thing for him." "He started having all kind of problems, couldn't cope and he was overwhelmed." "It was around 2012 he started having some – some blips of memory . . . because he was completely falling apart at that point and he was overwhelmed by emotion." "[T]hat made some kind of sense to me, which was hard because there were so many inconsistencies."[57]
- "But, apparently, I think – I think personally, I think the trigger for him primarily was the overwhelming negative emotions and stress associated with moving to

[54] *Id.* at 525-26, 787 S.E.2d at 489-90 (citations and quotations omitted); see also S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.").
[55] *Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).
[56] *Id.*
[57] Deposition of Sally Duffy, 105-106. ***Exhibit C.***

Greenville [in 2012], where he didn't really want to go, and having to live without his wife. . . ."[58]

- Q: But with John Doe, there's know way for us to say when he began, when he remembered the abuse?

  A: No. Like I said, it's my opinion that he started having blips after – with the stress of moving to Greenville.

  Q: In 2012?

  A: In 2012. And, like you said, his wife said something about the surgery [in 1999], so I don't know . . . .[59]

- Plaintiff's therapist, Dorothy Whalen, noted regarding Plaintiff's first session with her on June, 27 2016 that Plaintiff reported having a history of "sex abuse by neighbor (age 6) and by adults at a Catholic facility a few years later. These memories were repressed until a few years ago when [increased] sx dev (after heart bypass surgery).[60]

- Dr. Duffy agreed that Therapist Whalen recorded that Plaintiff mentioned remembering his abuse after heart bypass surgery in 1999.[61]

- Plaintiff's wife testified that Plaintiff began experiencing severe depression as early as 2000 and 2002. He began crying and entered deep depression in 2010 - 2012 and would only say that he was so ashamed. Depression increased and became unmanageable after the move to Greenville in 2012.[62]

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[58] Duffy deposition, 107. ***Exhibit C.***
[59] Duffy deposition, 109. ***Exhibit C***.
[60] Redacted note of Therapist Dorothy Whalen. ***Exhibit D***.
[61] Duffy deposition, 105. ***Exhibit C***.
[62] Deposition of Mrs. Doe, 21; 29; 48 - 49; . ***Exhibit E.***

- The records obtained from the VA Hospital in Greenville note that "[Plaintiff] was seen by Dr. Thode. States brought up a lot of memories of something that happened in church and that was not good."[63]

Plaintiff has not presented any admissible evidence that qualifies for the tolling afforded under *Moriarty v. Garden Sanctuary*. South Carolina has a statute of limitations. Tolling the statute is exceptional – in fact there is no reported case in which another plaintiff has satisfied *Moriarty*'s stringent requirements.[64] The statute of limitations ran many years ago, and Plaintiff's claims must be dismissed.

B. There is no admissible evidence that would satisfy the requirements of *Moriarty v. Garden Sanctuary Church of God* in order to toll the statute of limitations.

Both the South Carolina Supreme Court and Court of Appeals expressed deep concerns regarding "repressed memory syndrome" in their decisions in *Moriarty v. Garden Sanctuary Church of God*. As the South Carolina Court of Appeals noted, under the theory of repressed memory syndrome, when an event occurs that is horrifically traumatic, the victim will attempt to cope by *completely* shutting the memory out.[65] In theory, repressed memory is not at all like the ordinary process of forgetting bad experiences or a person choosing not to think about them. Rather, when a memory is repressed, the person's conscious mind will have no access to the circumstances and specific incidents that were traumatic.[66]

As both Courts acknowledged, the theory of repressed memory syndrome was, at the time, highly controversial among psychiatrists and psychologists – as the Supreme Court noted,

[63] Redacted VAH records, ***Exhibit F.***

[64] *See e.g. Doe v. Smith*, 2014 WL 2968925 (Ct. App. 2014)(unreported)(plaintiff failed to present independently verifiable, objective evidence to corroborate her repressed memory claim and thus failed to satisfy the requirements of *Moriarty*

[65] *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 157-58, 511 S.E.2d 699, 703 (Ct. App. 1999).

[66] *Id*, 344 S.C. at 158, 511 S.E.2d at 703.

there is no consensus among the psychological, medical, or legal communities regarding the validity of the theory of repressed memory.[67] Critically, both Courts likewise acknowledged "the horrific possibility of false accusations" and that corroborating evidence is required because of "the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff's memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind."[68] Because of these concerns, the South Carolina Supreme Court requires that a plaintiff claiming repression must present both at the summary judgment stage and at trial: (1) objectively verifiable corroborating evidence of the fact of the abuse and (2) expert testimony to establish the both the abuse and the fact of the repressed memories.

Plaintiff must present expert testimony to establish the fact of the abuse, the fact of the repressed memories, and that those memories were repressed between Plaintiff's 18th birthday – May 28, 1975[69] – until sometime after August 8, 2015 (three years prior to filing the Complaint). There is no expert testimony to establish that requirement at all. No one can pinpoint when Plaintiff actually recalled being abused – even assuming he actually repressed that memory clinically. There is no admissible expert testimony that would satisfy the requirements set forth

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[67] *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000).

[68] *Moriarty*, 534 S.E.2d at 680, *citing* *Roe v. Doe*, 28 F.3d at 408-09 (suggesting that corroborative evidence of abuse and repressed memory should be required) (Hall, J., concurring); *Olsen v. Hooley*, 865 P.2d 1345, 1349-50 (Utah 1993) (requiring corroborating evidence because of concerns about the reliability of memory in general and revived memories in particular, and the difficulty of defending against claims of revived memories of sexual abuse long past); *S.V.*, 933 S.W.2d at 7-15 (discovery rule applies in repressed memory case only when claim is "inherently undiscoverable" and "objectively verifiable" through corroborating evidence; court assumed plaintiff's injury was inherently undiscoverable, but rejected application of discovery rule because she offered no corroborating evidence).

[69] S.C. CODE ANN. § 15-1-320 changed the age of majority to 18 effective February 6, 1975.

in *Moriarty*.

Moreover, there are no neuropsychiatric tests that would confirm Plaintiff is experiencing actual repression of childhood memories. There is no expert testimony that Plaintiff's alleged recovered memories are even accurate. There is no expert testimony establishing when Plaintiff began to repress any memory or when he recovered them. The only evidence Plaintiff presents is his own self-reporting of what he says he did, and did not, remember.

In short, Plaintiff has not come forward with admissible evidence that satisfies the heavy burden placed upon him by *Moriarty v. Garden Sanctuary Church of God* to establish repressed memory to toll the statute of limitations. Plaintiff's inability to satisfy that burden places him in exactly the position that gave both the South Carolina Supreme Court and Court of Appeals such grave concern – Plaintiff's own self-reporting of what he says he did and did not remember is the only evidence. Such is precisely what the *Moriarty* Courts cautioned against.

C. To the extent Plaintiff's treating therapists or experts may testify they believe Plaintiff's self-reporting, that testimony would constitute improper vouching and is inadmissible.

As is discussed in more detail in Defendants' memorandum regarding the inadmissibility of Plaintiff's proffered expert testimony, under South Carolina law, application of the discovery rule based on alleged repressed memory syndrome requires expert testimony to prove the abuse occurred as well as to prove that the memories of the alleged abuse were repressed. In order to present opinions to a factfinder, two factors must be established: (1) the expert must be qualified to provide that opinion by education, experience, or some special knowledge; and (2) the opinion must be based on science that is reliable. Plaintiff's experts are not qualified to provide testimony about repressed memory syndrome, and, given the dearth of science supporting opinions regarding the hypothesis of repressed memory are not reliable. On that basis, Plaintiff's proffered expert testimony must be excluded.

Critically, South Carolina law also requires that expert testimony must be reliable in order to be admitted into evidence under Rule 702.[70] Plaintiff's experts cannot satisfy this reliability requirement with regard to repressed memory syndrome. As the South Carolina Supreme Court, the Court of Appeals, plaintiff's own expert witness, and the defense experts all agree, repressed memory syndrome is a highly controversial topic in the field of psychology and psychiatry, with major professional associations denying its very existence.[71] Plaintiff's experts can point to no study, research, or publication they have either conducted or relied upon that can show any form of test to diagnose whether someone has repressed memory syndrome. They can present no proof of the existence of any method to determine whether a repressed memory is truthful. They can provide no scientific basis to show what error rate there is in reports of repressed memory. Their sole source of diagnostic information is self-reporting of the Plaintiff, which is an inherently unreliable source. In the absence of any scientific basis for their opinions, the reliability requirement for the admissibility of the expert opinion cannot be met.

Further, in *State v. Dawkins*,[72] the South Carolina Supreme Court held that a treating psychiatrist improperly bolstered the credibility of the victim when "the solicitor posed the following question - 'Based on your examination and your observations of Pamela, are you of the impression that her symptoms are genuine?,' to which the doctor answered, 'yes.'"[73] The impermissible harm from improper bolstering "is compounded when the witness is qualified as an expert"[74] because fact witness testimony is often improperly given more weight when

[70] *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010).
[71] Duffy deposition. ***Exhibit C***.
[72] 297 S.C. 386, 377 S.E.2d 298 (1989).
[73] *State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989).
[74] *Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017)(cleaned up).

bolstered by an expert. It would be impermissible bolstering to allow any expert retained by Plaintiff to testify with certainty that Plaintiff was abused merely because they reviewed records from his clinical treatment or even if they have interviewed him themselves. Such testimony, without more, is mere bolstering of Plaintiff's self-reporting and unduly prejudicial to Defendant's case. Numerous other courts agree, and prohibit bolstering by treating therapists and experts. Psychologists simply cannot be permitted to testify that they believe what the plaintiff told them.[75]

Plaintiff must produce admissible expert testimony to prove the fact of his repression of memories and both the recovery of those memories and the accuracy of the recovered memories. Plaintiff does not produce either. As importantly, no expert satisfies the reliability requirement for admission of expert testimony pursuant to S.C.R.Evid. 702. The theory of repressed memory syndrome is largely discredited in the scientific community,[76]and the proposed expert did not employ any scientifically accepted methods for arriving at a conclusion that Plaintiff suffers from repressed memory syndrome. All that is left is the self-reporting of the Plaintiff, with nothing more to substantiate these serious allegations.[77] As a result of the lack of admissible

[75] *See e.g., Clark v. Edison*, 881 F. Supp. 2d 192, 216 ("The principal danger in admitting the testimony is the possibility that the jury will interpret the expert's testimony, explicitly or implicitly, as an opinion that the plaintiff is credible.") *also State v. Cressey*, 628 A.2d 696, 699-700 (N.H. 1993) (Improper to allow statements in conclusion that the children exhibited symptoms consistent with those of sexually abused children).

[76] Piper, A., *et al. What's Wrong with Believing in Repression? A Review for Legal Professionals*, 14 Psych. Pub. Pol'y and L. 223, 237 (2008) ***Exhibit K***; Loftus, E., *The Myth of Repressed Memory* (1994); Loftus, *The Reality of Repressed Memories*, 48 Am. Psychologist 518 (May 1993). *See also, e.g.,* Ernsdorff & Loftus, *Let Sleeping Memories Lie? Words of Caution About Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J. Crim. L. & Criminology 129 (1993); Joseph A. Spadaro, Comment, *An Elusive Search for the Truth: The Admissibility of Repressed and Recovered Memories in Light of Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 30 Conn. L. Rev. 1147 (1998); Cynthia V. McAlister, Comment, *The Repressed Memory Phenomenon: Are Recovered Memories Scientifically Valid Evidence Under Daubert?*, 22 N.C. Cent. L.J. 56 (1996); E. A. Foster, Comment, *Repressed Memory Syndrome: Preventing Invalid Sexual Abuse Cases in Illinois*, 21 S. III. U. L.J. 169 (1996)

[77] *Clark v. Edison*, 881 F. Supp. 2d at 196-97. *See also State v. Hungerford*, 697 A.2d

expert evidence, Plaintiff has failed to satisfy the strict mandate of *Moriarty*, and summary judgment must be granted in favor of Defendants.

There is no expert testimony to establish when Plaintiff lost all ability to access the memory of his alleged abuse or when he remembered. In the absence of such proof, no legal doctrine provides for tolling his claims beyond the limitations period provided for under South Carolina law. There being no genuine issue of material fact regarding Plaintiff's claims and causes of action against Defendants. The Diocese is entitled to judgment as a matter of law, and this case should be dismissed in its entirety.

V. PLAINTIFF'S REMAINING CLAIMS ARE ALSO BARRED PURSUANT TO THE *RES JUDICATA* EFFECT OF THE 2007 CLASS ACTION SETTLEMENT ENTERED INTO BY THE DIOCESE FOR THE BENEFIT OF ALL VICTIMS OF SEXUAL ABUSE WHO WERE BORN PRIOR TO JULY, 1981.

Plaintiff was a member of the defined class and resided in Charleston at the time the notice of class settlement of all sexual abuse claims against the Diocese was published in newspapers all around the State of South Carolina, including the Charleston *Post & Courier*. Plaintiff did not make a claim in the class action, and his claims are now barred.

The Diocese of Charleston entered into a Class Action Settlement of all potential claims that personnel or priests of the Diocese sexually abused minors. On January 12, 2007, the

916, 923-24 (N.H. 1997) ("[M]emories may be actual recollections of actual traumatic events, manufactured narratives of events that never occurred, or some combination of these. . . . [A plaintiff] may not know into which category their memories fit." (citing Loftus, *The Reality of Repressed Memories* at 524-25, 533 and Wells & Murray, *Eyewitness Confidence in Eyewitness Testimony: Psychological Perspectives* 155, 159-70 (G. Wells & E. Loftus eds., 1984))); *and Quattrocchi*, 681 A.2d at 883 ("'[A] well-intended therapist and an honest patient can also follow the wrong direction and arrive at a portrait of the past that satisfies the requirements of "narrative truth" [a picture of the past that fits the clinical picture], and that the patient will accept as true, but that in fact is false.'" (quoting Jacqueline Kanovitz, *Hypnotic Memories and Civil Abuse Trials*, 45 Vand. L. Rev. 1185 (1992))); *Tyson v. Tyson*, 727 P.2d 226, 229 (Wash. 1986) ("Recent studies by certain psychoanalysts have questioned the assumption that the analyst has any special ability to help the subject ascertain the historical truth. . . . The purpose of emotional therapy is not the determination of historical facts, but the contemporary treatment and cure of the patient." (citations omitted)).

Defendants entered into a Class Settlement Agreement to settle the claims of a class of people who alleged that they were sexually abused as minors by personnel of the Diocese Defendants.[78] The Settlement Agreement addressed the claims of two classes of individuals:

- All individuals born on or before August 30, 1980, who , as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released ("Primary Class") and
- The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released ("Consortium Class").

A Fairness Hearing was held before the Honorable Diane S. Goodstein, on March 9, 2007, and the Court approved the Settlement Agreement by Orders dated July 30, 2007, and August 31, 2007.[79] The Court determined that the proposed Class Settlement was fair to both the named class representatives and to the absent class members and that both the named plaintiffs and Class Counsel were adequate representatives of the class. **The Court entered its judgment approving the settlement classes and ordered Class Counsel to notify the class of the settlement.** The classes were "opt-out" classes, that is, if an individual satisfied the criteria of either class, he is automatically a class member, bound to the law of the case and the terms of the

[78] ***See Exhibit G***– Settlement Agreement - *John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2, and Rachel Roe, Individually and as Representative v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity of a Class of People Similarly Situated,* Case Numbers 2006-CP-18-1310, 1311, 1636 (Dorchester County Court of Common Pleas).

[79] ***See Exhibit H–*** Order Certifying Classes and Giving Preliminary Approval to Settlement; ***Exhibit I-*** July 30, 2007 Order; ***Exhibit J–*** August 31, 2007 Order.

Settlement Agreement. An individual must have affirmatively "opted-out" by filing a Notice of Opt Out to preserve his rights to pursue an independent claim against the Defendants. The Court's Order also specified the manner in which notice of the class settlement and claims procedure was to be provided to the members of the class, including publication in 10 South Carolina newspapers and the Augusta *Chronicle*, as well as the Diocese's publication the *Catholic Miscellany*.

With the judgment entered, the current Plaintiff's claims are barred under the doctrine of *res judicata,* which applies to putative class members, both absent and actual, in the same manner as it applies to ordinary litigation. The doctrine of *res judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties to the previous litigations are identical to the subsequent case, and the merits of the successor action were included in the preceding one. "*Res judicata* requires proof of three elements: (1) that a final, valid judgment was entered on the merits of the first suit; (2) the parties to both suits are the same; and (3) the subsequent action involves matters properly included in the first action."[80] "For purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted, but rather the cause of action, meaning the underlying facts combined with the law giving what party a right to a remedy of one form or another based thereon."[81]

Under the doctrine of *res judicata* "a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues

[80] *Judy v. Judy*, 677 S.E.2d 213, 217 (S.C. Ct. App. 2009); *citing Plott v. Justin Enter.*, 679 S.E.2d 92, 95 (S.C. Ct. App. 2007).

[81] *Judy*, 677 S.E.2d at 218 *quoting Plum Creek Devel. v. City of Conway*, 513 S.E.2d 106, 109 (1999).

actually litigated and as to issues that might have been litigated in the first action."[82] Because the class action judgment is binding upon all those for whom the notice program was reasonably calculated to reach, Plaintiff's claims are now barred by *res judicata*. All three elements of *res judicata* are present – the Plaintiff's claims of sexual abuse are identical to the claims asserted in the court-approved class action settlement; Plaintiff alleges he was a minor who suffered sexual abuse by an employee, agent, or priest of the Diocese of Charleston; the allegations of abuse are the same as the conduct defined in the Class Action settlement. Plaintiff falls squarely within the classes of claimants whose causes of action were resolved and released by the Class Action Settlement and Judgment.

A judgment in favor of the class extinguishes the claims of all members of that class, and the claims merge into the judgment granting relief.[83] The Class Action Court entered a final, valid, and enforceable judgment on the merits of the claims asserted on behalf of the class of similarly situated individuals. The Class Action Court's orders of July 30, 2007, and August 31, 2007, approved the Settlement Agreement that incorporated the claims of the class of claimants**.**[84] There is no question that Plaintiffs' claims were encompassed by the Class Action Settlement and Order Approving Settlement. Plaintiff neither participated in, nor opted out of the Class Action Settlement.

Plaintiff's status as a member of the approved class of claimants under the Class Action further satisfies the requirement for identity of parties. "There is, of course, no dispute that under elementary principle of prior adjudication, a judgment in a properly entertained class

[82] *Treadaway v. Smith*, 479 S.E.2d 849, 855 (S.C. Ct. App. 1996).
[83] *Cooper v. Fed. Res. Bank of Richmond*, 467 U.S. 867, 874 (1984).
[84] *See **Exhibits H*** and ***I***.

action is binding on the class members in any subsequent litigation."[85] On the face of his Complaint, this Plaintiff clearly was a similarly situated member of the settlement class approved by the Class Action Court, as he falls within the definitions of the classes, but did not participate in the claims process. The Defendants likewise are identical – the Catholic Diocese of Charleston and the Bishop of Charleston. Therefore, the identity of parties cannot be disputed.

Finally, the claims of the Plaintiff could have been raised in the approved Class Action claims process. Plaintiff claims to have been sexually abused as a minors by an agent or employee of the Diocese. The Diocese litigated and resolved all claims of past sexual abuse in the Class Action Court. The Class Action Settlement provided a specific framework for claims to be made and the Class Notice was clear that failure to participate in the settlement framework would result in their claims being completely and forever barred.

All issues arising out of claims of childhood sexual abuse by Diocese of Charleston personnel were previously litigated in the Class Action. Fair and adequate notice was provided for the March 9, 2007 Fairness Hearing and for participation in the Class Settlement. Due process was afforded the class members, and the Plaintiff had a full and fair opportunity to litigate the issues raised in his current Complaint. The Defendants now seek dismissal Plaintiff's claims as barred by the resolution of the Class Action.

Plaintiff is barred from relitigating the issues finally determined in the Class Action. As the Class Action Court noted, the class settlement sought to "protect the interests of both the absent class members and the *Diocese's right to have the conclusive effect of a class action*." (Emphasis added). The Class Settlement is binding on absent class members if the notice procedure was in the best practicable form, and was reasonably calculated under all the

[85] *Id.*

circumstances to apprise interested parties of the pendency of the action and give them an opportunity to present objections.[86] The Class Action court has great flexibility in determining what is the most practical notice under the circumstances to meet the requirements of due process.[87] The record is clear and undisputed – Class Counsel provided actual notice to the 20 or so individuals who had previously contacted the Diocese about alleged sexual abuse – the Diocese Defendants, Class Counsel, and the Solicitor for the First Circuit all confirmed that was the extent of the list. There are no others. Then Class Counsel provided notice by publication in 10 South Carolina newspapers plus the Augusta *Chronicle* and in the Diocese's state-wide publication. The Class Action court took specific note of the national and international publicity regarding the Class Action Settlement.

The Due Process Clause does not require any inquiry into whether any individual received notice of class settlement. Rather, the Constitution merely requires that notice be reasonably calculated to reach absent parties.[88] As the Class Action Court found, the notice procedure complied with Due Process and those members of the settlement class who did not submit claims in the Class Action Settlement are now barred by the settlement and *res judicata*.

CONCLUSION

For the reasons stated herein, the Diocese's motion should be granted, and Plaintiff's claims should be dismissed in their entirety and with prejudice.

[86] *See Phillips Petroleum v. Shutts*, 472 U.S. 797, 812 (1985) (internal quotations omitted).

[87] Protecting the Members of the Class: Notice, 7B *Fed. Prac. & Proc. Civ.* § 1793 (3d. ed. 2014).

[88] Newburg on Class Actions § 8:35 (5th. Ed. 2014).

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

June 3, 2025 By: /s/ Richard Dukes

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ATTORNEYS FOR DEFENDANTS

EXHIBIT A

John Doe v. Bishop of Charleston

Civil Action No. 2018-CP-10- 03929

TIMELINE OF EVENTS

DATE	SOURCE	NARRATIVE
MAY 28, 1957		DOE DATE OF BIRTH
FALL, 1970	COMPLAINT AND TEACHER CONTRACTS; AFFIDAVIT OF BROOKS	DOE ALLEGES ABUSE BY CHRIS HARTNETT AND HAL BROOKS WHILE HE WAS A STUDENT AT SACRED HEART SCHOOL IN CHARLESTON. BROOKS ONLY WORKED AT SACRED HEART IN THE FALL OF 1970. HARTNETT LEFT FOR DORCHESTER COUNTY PUBLIC SCHOOLS AFTER 1970-1971 SCHOOL YEAR.
MAY 28, 1975		DOE 18TH BIRTHDAY – AGE OF MAJORITY UNDER S.C. CODE ANN. 15-1-320 (EFFECTIVE FEBRUARY 1, 1975
MAY 28, 1978		THREE YEAR STATUTE OF LIMITATIONS EXPIRES
1999		PLAINTIFF UNDERGOES HEART BYPASS SURGERY
AUGUST, 2007		DIOCESE OF CHARLESTON CLASS ACTION SETTLEMENT OF CLAIMS OF SEXUAL ABUSE – NOTICE PUBLISHED STATEWIDE IN NEWSPAPERS.
2010 – 2012	MRS. DOE DEPOSITION 20: 19 – 21: 21; 29: 4-22 ***EXHIBIT E***	PLAINTIFF SUFFERED SEVERE DEPRESSION – WOULD SAY HE WAS SO ASHAMED. PLAINTIFF TOLD WIFE "I DON'T WANT TO TELL YOU BECAUSE I'M SO ASHAMED, BUT I WAS MOLESTED."
PRIOR TO 2012	SALLY DUFFY DEPOSITION, 107:14 – 25 ***EXHIBIT C***	DR. DUFFY BELIEVES PLAINTIFF BEGAN RECOVERING "BLIPS" OF MEMORIES OF THE ABUSE WHILE STILL IN CHARLESTON

2012	Mrs. Doe Deposi ***Exhibit E*** VA Hospital Records, ***Exhibit F***	Plaintiff relocates to Greenville. Experienced severe depression. Sought treatment at VA Hospital for anxiety, depression, and survivor's guilt
Post 2012	Deposition of Dr. Sally Duffy ***Exhibit C***	Stress of moving to Greenville really triggered memories of his abuse manifested by severe depression.
August 2014 -	VA Hospital Records, ***Exhibit F***	Plaintiff initiates psychiatric treatment with Dr. Rick Thode at VA Hospital. Notes history of physical / emotional / sexual abuse.
June 27, 2016	Greenville Therapy Records – ***Exhibit D***	Plaintiff begins therapy with Dorothy Whalen in Greenville. Intake Note: Sex Abused by neighbor (age 6) and by adults at a Catholic facility a few years later. These memories were repressed *until a few years ago* when [increased] Sx of depression (after heart bypass surgery)
Sept 26, 2016	VA Hospital Records ***Exhibit F***	Note – "Was seen by Dr. Thode. States brought up a lot of memories of something that happened in church and that was not good.
August 8, 2018		Complaint filed in Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF HAROLD BROOKS

Personally appeared before me, Harold M. Brooks, who swears and deposes as follows:

1. The undersigned is over the age of 21, and has personal knowledge regarding the matters herein.

2. The identity of John Doe has been provided to me and I am aware that he has made claims that I sexually abused him while he was a student at Sacred Heart School in Charleston in 1970. I categorically deny ever having molested the Plaintiff or any other minor at any time. I do not recall having Plaintiff as one of my students.

3. I was hired as a teacher at Sacred Heart after graduating from Erskine College. I was raised in the Baptist faith and was not a Catholic when I was hired. I remember the priest who ran Sacred Heart, Fr. Manning, but do not recall his position or title. The job at Sacred Heart was my first and only teaching position. I quickly realized teaching school was not my calling, and I resigned from Sacred Heart in December, 1970 and returned to Winnsboro, my home town. I then went to work for my father's granite business. Between 1971 and my retirement in 2002, I worked in several different positions, mostly for granite companies.

HMB

4. I have never been accused of molesting any minor and have never been convicted of such a crime. I certainly never sexually abused any student at Sacred Heart. I am not aware of any other teacher engaging in sexual misconduct with any student at Sacred Heart.

5. I knew Chris Hartnett and he told me about the job opening at Sacred Heart. At the time Chris Hartnett was probably my best friend. Chris Hartnett was a good and reputable person and, as far as I knew, he would not sexually assault anyone. I believe Chris Hartnett taught school in Dorchester County for many years. Chris stayed in my home when Hurricane Hugo struck Charleston in 1989. That was the last time I remember seeing him. I understand he passed away roughly 18 years ago.

6. I never agreed with anyone to harm Plaintiff.

7. I did not participate in any "cover up" of sexual of a minor by any teacher at Sacred Heart.

8. It is my understanding that Plaintiff says I attended some party at a brick house on Gervais Street in Columbia where Chris Hartnett and I both sexually assaulted the Plaintiff. That is absolutely untrue. I never attended such a party and never engaged in such behavior with Chris Hartnett, the Plaintiff, or anyone else. I deny being involved in taking Plaintiff to some bar and leaving him there. Plaintiff's allegations about me are absolutely untrue.

9. Based on my friendship with Chris Hartnett and my knowledge of him, I do not believe he would engage in such conduct either.

HMB

FURTHER AFFIANT SAYETH NOT.

Harold M. Brooks

Harold M. Brooks

Sworn to and subscribed before me this the 28 day of ~~November,~~ OCTOBER 2019.

Patrick B. McDaniel

Notary Public for State of South Carolina

My commission expires: MARCH 2

2026, ~~2019~~

HMB

Greenville Therapy Center, P.A.
3519 Pelham Road, Suite 103
Greenville, SC 29615

6/27/14 [redacted]

Impression 59 yr old Catholic male c̄ hx of Profound Trauma. Sex abused by neighbor (age 6) and by adults at a Catholic facility a few years later. These memories were repressed until a few years ago when ↑ Sx of dep. (after Heart (By pass) Surgery) Went to VA therapist (he is former marine) + therapist kept digging + digging. Then ↑ resurfacing of memories "like watching a movie." Over 25 yr ago → his 1st wife + children killed in House fire. 2x attempted suicide 1st time, got drunk + crashed car into a tree, 2nd time → BAC of Cocaine. "God brought me back." Married 2nd wife 'Bel' with 4 dau. Married 25 yrs. Close supportive rel c̄ Bel who has brought him back to life from death(s) of his family + 2 suicide attempt. Also → his heart disease + diabetes.

Sx → prob staying asleep, ↓ appetite, dep compulsion (cleans too much, prob's c̄ memory), hopeless, Not suicidal Anx Fear. "I'm right on the Edge." Flashbacks of Abuse. Afraid he'll get fired from Job at Publix. Boss is a "Monster." Wife does not know about Abuse.

Greenville Therapy Center, P.A.
3519 Pelham Road, Suite 103
Greenville, South Carolina 29615

6/27/16 [redacted]

to tell her (shame)
Thinks she should leave him + find someone else. No sex since By pass surgery
My wife is my Rock
Strong Faith God has come to me (at his lowest) Is there Hope? (yes)
I'm not ready to go yet

PTSD 4/13/16

(1) Abuse CBT

(2) Support from Wife

Progress Notes

States not eating as well due to knee pain and tramadol.
  Carotids about 50%.
  Not taking asa 81 mg.
Eyes examined Feb 2016 - repeat in 2 yrs.

Hyperlipidemia - not taking lipitor daily. Has not filled since April. Says is taking. No labs to confirm values., Discussed need to take daily. Says does not take daily after a while. May take twice a week.

Thyroid nodule found on CT at Cards. U/s done and has 2 solid nodules. Mother had thyroid cancer in her 50's.

Moved to Greenville in April 2014. Has
  family here - daughter and 2 sisters. Lost his house in Charleston. WIfe has a job and financially better.
  Pt is working at Publix. Meat cutter and on his feet all day. WOrking shifts.
 Had trauma yrs ago. Lost
  his wife and kids in a fire. Was severely depressed. Now remarried. Never
  has been on antidepressants. Always a work a holic. Drove a truck for yrs.
  Placed on meds and states concerned about raising bp - so stopped med - effexor. Was going over 130 and anxious all the time. Rash on legs cleared since
stopping first med - celexa. States no SI or HI. Was Seen by Dr Thode. States brought up a lot of memories of something that happened in church and that was not good. States effexor made him
anxious. Now seeing church counselor.

  Pt was in the Marines - 2 yrs - was a combat engineer - Over seas in Japan
  and Korea.

 c/o knee pain - Planning on R TKA . No date. worse in am. Taking advil/motrin - 800 mg daily to bid. Also on tramadol. Last xrays in 8/2016 djd. KNeeling alot
at work. Has a pad now to kneel on. Helping. Had recent injection - april 2016.
No swelling. Pain in back of knee now. Most pain on walking and sometime in bed. Denies injury. No
  sports in school. Bilat knee pain now. Previous surg on R knee for meniscal repair or removal.Tramadol for pain.

  Dm - Taking metformin 500 mg bid. Taking daily.
  . A1c at 6.2. Brings in meter. Some highs post meal. Mosts in range. Checking sugars daily.

HTN - not taking any meds. Was on coreg and stopped.

Signed: 08/19/2014 18:17

09/16/2014 ADDENDUM STATUS: COMPLETED
R/s for 9-16-14 @ 8:30.

/es/ RICK D THODE
PSYCHOLOGIST
Signed: 09/16/2014 08:19

Receipt Acknowledged By:
09/16/2014 08:50 /es/ TERRI LEA STULTS
PROGRAM SUPPORT ASSISTANT

LOCAL TITLE: MH SUICIDE RISK ASSESSMENT
STANDARD TITLE: SUICIDE RISK ASSESSMENT NOTE
DATE OF NOTE: JUL 29, 2014@08:30 ENTRY DATE: JUL 29, 2014@08:46:48
AUTHOR: THODE,RICK D EXP COSIGNER:
URGENCY: STATUS: COMPLETED

The Suicide Risk Assessment is routinely completed once a year with all veterans, due to positive suicide, depression or PTSD screen, upon completion of a Suicide Behavior Event Report (SBER), for Suicide High Risk Flag documentation, and when clinically indicated.

Reason for suicide risk evaluation (click all that apply):
Routine yearly assessment
Time spent with patient: 46-60 min

Within the last month have you had thoughts of harming or killing yourself?
No, patient denies suicidal thoughts.

Have you ever attempted to commit suicide or participated in self-directed violence?

Yes, patient admits to attempting suicide or self-directed violence.
Has a Suicide Behavior Event Report (SBER) been completed on all attempt(s)?
No, SBER not completed because behavior took place over one year ago and is not required. 2 attempts by OD on cocaine between losing family to a fire in 1983 and 1987.

Are you feeling hopeless?
No

Do you have current homicidal ideation (thoughts of harming/killing someone else in the last 30 days)?
No

Risk Factors: (click only those that apply)

Demographic: Gender (Male), Race (Caucasian/White or American Indian)

Psycho-social: Abuse History (physical/emotional/sexual), Family/Friend History of Suicide, Financial/Economic, Lack of Family/Social Support, Relationship/Marital Problems

Health Related: Impulsivity/Poor Self-Control, Psychiatric Diagnosis History

Protective Factors: (click only those that apply)   Caregiver (sense of responsibility to family/friend/pet), Employment, Life Satisfaction/Hopeful, No History/No current alcohol or substance abuse, Positive coping/problem solving skills being utilized, Reality Testing ability, Spirituality/Religious Beliefs

Suicide Risk: (click only one level of risk)
Low
Patient is a low risk. No further follow-up is needed/required at this time.

Intervention: (click all that apply)

Please add the Suicide Prevention Team as signers when making recommendations surrounding the Suicide High Risk List/Flag and as needed for notification purposes. SPC TEAM: Cynthia Davis (ext.7034) & Amy LaClaire (ext.4360).

SUICIDE RISK ASSESSMENTS ARE ASSUMED TO BE VALID AT THE TIME IN WHICH THEY ARE CONDUCTED. SUBSEQUENT INTERVENING VARIABLES COULD RESULT IN CHANGES IN SUICIDE RISK FOR THE PATIENT.

/es/ RICK D THODE
PSYCHOLOGIST
Signed: 07/29/2014 15:19

<u>THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).</u>

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

FILED - RECORDED
2007 JAN 17 PM 3:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of classes of people similarly situated,

Plaintiffs,

vs.

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

Defendants.

SETTLEMENT AND ARBITRATION AGREEMENT

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

RJB

EXHIBIT A

John Doe 10 2010-CP-10-7233 00647

Arbitration Agreement" formalizing the agreement reached between the Representatives1 and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[2] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

---

1 The class representatives will be referred to throughout this Agreement as "the Representatives."

[2] "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RdJB

000131

John Doe 10 2010-CP-10-7233 00648

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of $5 million and $7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

RJB

John Doe 10 2010-CP-10-7233 00649

exceeding $4 million, then in that event, the Diocese shall take such action necessary to have the secondary $7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.

c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

Type of Alleged Abuse	Minimum Payment	/ Maximum Payment
Limited inappropriate touching on the victim	$10,000.00	$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	$20,000.00	$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	$60,000.00	$125,000.00
Egregious acts, such as sodomy, any act		

+RJB

accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.	$150,000.00	$200,000.00
Loss of consortium (Parent or Spouse)	$20,000.00	

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be $20,000.00 for each parent of the Claimant, and $20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.

e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;

2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]

3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;

5. Name of parents, whether they are living or deceased;

6. Name of spouse (if any);

7. The form must be signed and dated; and

8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.

h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.

i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.

j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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shall control. In any event, as to all issues, the orders of the court shall control.

k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.

l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).

m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.

n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner or the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.

p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

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hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.

s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.

t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.

u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. **SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS.** In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	$160,000.00
John Doe 66	$100,000.00
John Doe 66 A	$100,000.00
John Doe 67	$100,000.00
Jane Doe A	$30,000.00
Jane Doe B	$30,000.00
Rachel Roe	$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past

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and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than $950,000.00 nor more than $2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. **PAYMENT OF CLAIMS.**

A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.

B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

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to Class Counsel and the Diocese, if necessary.

C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.

D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.

b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

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accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

c. <u>Victim Assistance Minister</u>. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.

d. <u>Sexual Abuse Advisory Board.</u> Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.

e. <u>Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board.</u> The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

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8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).

9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

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claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

Executed this 12th day of January, 2007.

FOR THE CLASSES:

Lawrence E. Richter, Jr.
CLASS COUNSEL

Witness

FOR THE DEFENDANTS:

The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY AND FOR THE BISHOP OF CHARLESTON, A CORPORATION SOLE

Witness

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	ORDER CERTIFYING CLASSES AND GIVING PRELIMINARY APPROVAL TO SETLLEMENT

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67[1] are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

[1] Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.[2]

ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCP Rule 23?

2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

LAW/ANALYSIS

A. Certification of the Classes

SCRCP Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

[2] The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[3] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

1. Numerosity/ Impracticability of Joinder.

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

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[3] "Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

2. Commonality/Typicality

The second and third prongs of Rule 23 are general considered to be identical and are most often analyzed together. Commonality is the requirement that common question of law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCP Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

3. Adequacy of Representation

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

4. $100 requirement.

Last, SCRCP Rule 23(a)(5) requires that the amount in controversy exceed $100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds $100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of $100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCP Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

B. Preliminary Approval of the Settlement

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCP Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and 2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

A. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenvllle *News* Spartanburg *Herald;* Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. Objection. Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

C. Prayer for Attorneys Fees. The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!

Diane S Goodstein

The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007
At Summerville South Carolina

Legal Notice

Notice of Proposed Settlement of Class Action

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity

YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")

2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.

Class Counsel set forth at the end of this Notice.

EXHIBIT A

The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on March 9, 2007, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same no later than February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:
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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	**ORDER APPROVING SETTLEMENT**

THIS MATTER was before the Court for a Fairness Hearing on a proposed class settlement, for an award of attorneys fees and litigation costs, and for approval of certain forms and documents relative to notice to the class and claims process. The Court had preliminarily approved the settlement by order dated January 12, 2007. For the reasons set forth herein, I find the Settlement and Arbitration Agreement to be fair and reasonable as to the Primary Class as a whole, and I approve the same. This Order further addresses the claims procedure, attorney fees and litigation costs.

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

The Fairness Hearing was noticed by publication in 11 newspapers of general circulation in all parts of the state; potential class members known to the parties were given actual notice by mail. In addition, the Court takes notice that there was substantial media coverage of the proposed settlement in advance of the Fairness Hearing.

Three objections were filed as of the time of the hearing. The Class Representatives and the Defendants submitted an agreed upon addendum to the settlement which contained an opt-out procedure and restated the parties' intentions as to the meaning of certain terms contained in the agreement. The Court held a full hearing on all of the objections and on the petition for attorney fees.

During the hearing, the Court, *sua sponte*, directed David Pascoe, Solicitor for the First Judicial Circuit, to conduct an investigation into a document entitled, "INSTRUCTION" which plaintiffs' claim was the basis for how sexual abuse allegations were to be handled by the Diocese. In the course of that investigation, Solicitor Pascoe directed the Diocese to review all of its files to determine the names of any individual who alleged that he or she had been sexually abused as a minor to ensure that the names of those individuals had been turned over to law enforcement as required by statute and to ensure that the individuals received actual notice of these proceedings.

In order to protect the confidentiality of individuals who claim abuse and who had informed the Diocese of their claim, the Diocese undertook the responsibility of providing actual notice of the class action and settlement terms to all individuals who might fit within the primary class of the pendency of this action. The Diocese represented that there were 20 such individuals, 16 of whom it located. As to the remaining four, I directed the Diocese to provide those names to class counsel who then assisted in attempting to locate these last four individuals. Plaintiffs provided the Court the affidavit of Steven A. Smith who stated that he identified two individuals who might be those being sought, but that, in his opinion, all reasonable efforts had been used to locate the individuals and that they could not be found with the limited information in possession of the Diocese.[1]

Those individuals who received notice were asked to contact the Court in short order. No objections were received.

2. Investigation by Solicitor David Pascoe

As mentioned above, the Court directed David Pascoe, First Circuit Solicitor, to investigate into certain matters, in particular, a document entitled "INSTRUCTION," concerning the manner in which sexual abuse allegations were to be handled. On July 13, 2007, at hearing was held at the Dorchester County Courthouse, St. George, South Carolina, where Solicitor Pascoe reported that his investigation included the Diocese review of its files and conversations with the General Counsel. During the July 13th hearing, Solicitor Pascoe stated that he made contact with the South Carolina Attorney General and the United States Attorney for the District of South Carolina concerning the INSTRUCTION. The report from the United States Attorney's Office was that a similar investigation had been conducted by the United States Attorney in Massachusetts and that no criminal charges were ever brought as a result of it.

At the July 13th hearing, Solicitor Pascoe reported that his investigation continues; however, he reported no reason that the civil action should not proceed.

ORDER

1. Notice to All Members of the Class

The "INSTRUCTION" raised concerns with the Court that some individuals did not or would not receive proper notice of the class settlement in order to object to or participate in the settlement proposed for the class. The parties and the Court considered several options on how

[1]One of the remaining two was reported to the Diocese by a victim who has indicated that he has no specific knowledge that the individual was actually abused.

best to address this concern and to protect the interests of both the absent class members and the Diocese's right to have the conclusive effect of a class action.

As stated above, the Diocese undertook on its own to notify the potential members of the class known to it. Normally, this burden would fall on the plaintiffs. *Eisen v. Carlisle & Jacquline*, 417 U.S. 156 (1974). Nevertheless, because of the nature of the allegations, the Diocese believed that it would be more appropriate for it to undertake this responsibility in order to ensure the confidentiality of those who have come forward to it. *See* Rule 23, SCRCP (giving the Court the authority to establish how notice may be sent).

The Diocese has represented to the Court that 20 individuals who may be class members were identified by it in a search of its files. Sixteen of these were located, and as to the other four, I find, based on Mr. Smith's affidavit, that reasonable efforts were used to locate those individuals and that their present whereabouts are unknown. *Eisen v. Carlisle & Jacquline*, 417 U.S. 156 (1974). The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members and has asked the Court to approve the settlement with the Diocese's representation and stipulation as a condition of the approval.

Based upon the representations of the Diocese, its stipulation as stated herein, and Class Counsel's conditional consent, I believe that the concerns which the "INSTRUCTION" raised have been satisfied as to the civil action. As to any criminal conduct which may exist, I trust that the appropriate prosecutors take the proper course of action.

2. Objections to the Settlement

At the time of the hearing, three objections were filed. Subsequently, two of the objectors have withdrawn their objections. Matthew Creech, on behalf of attorney Johnny Parker, withdrew an objection on behalf of his client on the record at the March 9, 2007 Fairness Hearing on this matter at the Dorchester County Courthouse, St. George, South Carolina, and Walter Bilbro withdrew an objection on behalf of his client via document filed with the Dorchester County Clerk of Court on June 6, 2007. Therefore, the Court is left to rule only on the objections filed by John Does A through N. For the reasons set forth below, the objections are overruled.

A. <u>Standing of John Does A through N</u>

As an initial matter, plaintiffs challenge the ability of John Does A through N to make any claim as to the fairness or reasonableness of class structure or settlement because their objection asserts that they "conditionally opt-out" of the settlement. Plaintiffs argue that since these individuals are not parties to the litigation, they do not have standing to object to the definition of the class. The Fourth Circuit has addressed this issue in *Gould v. Alleco, Inc., et al.*, 883 F.2d 281 (4th Cir. 1989) *cert. denied* 493 U.S. 1058. In essence, the Court held that an individual who believes that his or her rights will be impacted by any stage of an action, prior to settlement, must seek a timely intervention into the action under Rule 24.

This identical reasoning has been adopted by the South Carolina Supreme Court. In *Ex Parte Condon*, the Supreme Court of South Carolina was confronted by the state Attorney General's attempt to challenge an award of attorneys fees arising from a class action lawsuit. 354 S.C. 634, 583 S.E.2d 430 (2003). Our Supreme Court adopted the analysis that the manner in which individuals who wish to assert their rights in a case is to move to intervene pursuant to SCRCP Rule 24 and, if they failed to take that action, they have no standing. *Id.* at 640, 433.

The Court finds this reasoning to John Doe A through N's "conditional opt-out" persuasive. The objectors cannot have it both way. Since it appears they intend to opt-out, I hold they do not having standing to raise these objections. Nevertheless, even if they did, I find their objections are without merit, and I will address those in course below.

B. <u>Objections to class definitions</u>

John Does A through N claim insufficiencies in the class definitions. The objection states that those individuals who do not fit into the definitions seek amendment of the definitions to fit them. As the above cases state, it is axiomatic that only those who are parties to the litigation may participate in it. The creation of a class makes those class members parties to the litigation. Those who do not fall within the definitions are not parties to the case. *Gould, supra.* Accordingly, unless those individuals have filed a timely motion to intervene to participate in the class drafting, they maintain their rights to proceed against the same defendants for the creations of a different class to include themselves and others similarly situated if they can meet Rule 23 requirements. Hence, none of their legal rights have been impaired and they are free to proceed on their own. *Id.* Those who do fit in the class and do not care for the definition of the class as defined may opt-out of the class and proceed on their own.

Nevertheless, the definitions as approved by the Court meet both the spirit of the issues joined in the litigation and the settled tort law of South Carolina.

The first objection is based on a reading by the objectors of the Consortium Class definition to exclude those parents or spouses whose child or spouse's individual claim had been adjudicated, settled, or otherwise resolved. For many reasons, this would have been a legitimate exclusion, not the least of which would have been the propriety of dealing with all claims at the same time.[2] However, when the class definition is read in the light in which the settling parties and the Court intended when the settlement was approved preliminarily, the objection is satisfied. The parties have submitted an addendum to the Court which stipulates that the definition is intended in the broader reading. This was the original intent of the settling parties, and any other reading must be attributed to draftsmanship.

The next ground for objection is that the classes exclude those whose claims have been adjudicated, settled, or otherwise resolved. The objectors would have the class definition re-written so that those whose claims were unsuccessfully prosecuted under failed legal theories can be revived. However, to do so would have the traditional basis of tort rules, not to mention due process, turned upside down. *See generally In Re: "Agent Orange" Product Liability Litigation,* 611 F.Supp. 1396 (1985)(holding that traditional tort principles should be used in class action settlements involving traditional tort claims). Clearly the law allows a party only 'one bite of the apple' in litigation. "A final judgment on the merits in a prior action will preclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action."

[2]Recall that all claims under both classes are those which facially by definition have passed the applicable statute of limitations. Issues of proof and damages may arise in the delay between resolution of the two claims, notwithstanding their independent character.

Price v. Georgetown, 297 S.C. 185, 375 S.E.2d 355 (Ct. App. 1988). *See also Nunnery v. Brantley Construction Co., Inc.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App, 1986)(dismissal with prejudice has *res judicata* effect). South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties. *Smothers v. Richland Mem. Hosp.*, 326 S.C. 566, 493 S.E.2d 107 (Ct. App. 1997).[3] Hence, any prior claims that have been adjudicated or settled are barred by law.[4] Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual.

The objection next states that certain of the John Does are, "apparently excluded from the settlement because John Doe D previously wrote to the Diocese about the minor's molestation and the Diocese refused to accept responsibility." I see no such exclusion in the class definitions or settlement and this objection is overruled as being without merit.

Last, the suggested amendment requests that the Consortium Class definition have the phrase "and who suffered a loss of the abused individual's consortium" removed from it. This phrase essentially requires some damage proximately caused. This qualification simply complies with recognized tort law and should easily be met by most members of the class. Any parent or spouse who makes any statement or showing of any loss is eligible as a consortium class member and for recovery. For example, a spouse who must pick up a child from school so her husband,

[3]Any claim such as mistake of fact is too individualized to be dealt with in this class action, though may be the basis for some other suit.

[4]John Doe L brought an action through objector's counsel which was dismissed by consent order which stated, "John Doe v. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, No. 04-CP-10-3653, is properly dismissed with prejudice as a result of the Supreme Court decision in *Doe v. Crooks*." Order of the Hon. J. C. Nicholson dated April 19, 2006. Apparently, this objection is intended to reverse counsel's consent to the dismissal of this claim with prejudice.

the regular driver, can attend a psychiatric session has suffered some loss of consortium. A parent whose son had to go to a special summer camp because of bad behavior has lost the child's consortium. The objection is overruled.

C. Objection as to Matrix

Next, John Does A through N object to the claim distribution matrix on the basis that the type of abuse is "arbitrary" since the Courts have held that sexual abuse is "inherently injurious." In support of their contention, the objectors rely heavily on *Manufacturer and Merchants Mutual Ins. Co., Harvey*, 330 S.C. 152, 493 S.E.2d 22 (Ct. App. 1998). Harvey is an insurance declaratory judgment action based on an egregious set of facts involving grandparents abusing their grandchildren. Plaintiffs assert that the case does not stand for the propositions relied on by them and, instead, shows why the matrix developed by the settling parties is a fair and reasonable course. I agree with the plaintiffs

The *Harvey* Court was called upon to determine whether the act of sexual abuse on a child could be negligent for purpose of requiring the Harveys' homeowners carrier to defend and indemnify them. In holding the duties did not exist within the fact pattern *sub judice*, the Court found that sexual abuse requires intent. In so holding, the Court of Appeals stated, "We conclude that the effect of sexual abuse is so integral to the act that the intent to do the act is interchangeable with the intent to cause the resulting injury." *Harvey* at 161, 227. It went on to say that as of that opinion, 41 other states had reached the conclusion that "the intent to perform the act of molestation is sufficient to infer the intent to harm the child." *Id.* at FT 1.

The *Harvey* ruling is instructive on why the matrix based on the degree and type of abuse is sensible, fair and legally effective manner for the handling of individual claims. The *Harvey*

Court's analysis that "the effect of the sexual abuse is so integral to the act ... [in] caus[ing] the resulting injury," is an easy basis for upholding the degree of abuse matrix. *Harvey* recognizes that as the act worsens in degree, so does the harm. Correspondingly here, the use of the type of injury matrix found in the settlement will adequately place claimants into the proper place for a fair determination of the value of the claim.

Basing the claim value on the individual psychological damage alone would be difficult, if not impossible, to do. Psychological damages almost always have a degree of variance and uncertainty, not all of which can be tied directly to the acts of the agent or employee of the Diocese. South Carolina law recognizes the difficulty in proving emotional distress by requiring that it be accompanied by physical manifestations before it can be compensated, unless the conduct was intentional. *Ford v. Hudson*, 276 S.C. 157, 276 S.E.2d 761 (1981)(recognizing the tort of intentional infliction of emotional distress as the only cause where compensation for emotional distress requires a showing of physical manifestations).[5] Accordingly, the use of psychological damages alone as an assessment is a far less equitable means of compensating the claims of all of the victims for the severity of the individual injuries each has suffered. I am comfortable that the matrix presented by the settling parties is a fair and reasonable method of adjudicating claims. I overrule this objection.

D. Compensation of Consortium Claims

Last, the John Doe A through N objectors state that the amount accorded for consortium damages is "out of all proportion" with the manner in which they claim juries handle such

[5]While it is clear that the individual priests or agents inflicted intentional harm, it does not necessarily follow that the Diocese, as their employer, would have the same type of liability in Court under South Carolina law. It is proper for the Court to consider the plaintiffs' ability to prove elements of a case in approving a settlement. See *In Re: Agent Orange Products Liability Litigation*, 818 F.2d 145, 174 (2nd Cir. 1987)

claims. In support of this contention, the objectors rely on the jury verdict in *Glover v. Port-Gaud School*, a Charleston County case in which a large jury verdict was rendered. Plaintiffs assert that the amount provided in the settlement for consortium claims is proportionate when considering the state of the law of consortium and the overall value of the claims. I agree.

Notwithstanding the *Glover* jury verdict, which never made it through the appellate process, there has been no change in the law as it was at that time: "As the South Carolina Supreme Court has made clear, a spouse is the only party who may bring a loss of consortium claim under S.C. Code § 15-75-20." *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639 (2005). See also *Hughey v. Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful.

Furthermore, the spousal claims, while directly recognized at law, are claims which have challenging damages issues. By definition, here the husbands or wives of the consortium claimants were sexually abused as children, hence, before they married the claimant. As a result, the claimant married his or her spouse in the condition in which they assert as a loss of creating consortium. And, of course, most if not all of these claims are well beyond the statute of limitations, which would serve as a complete bar to these claims. Last, any claimant who believes their individual claims will successfully exceed the damages amount provided for in the class claims structure has the right to opt-out and proceed on their own. I overrule this objection.

3. Approval of Settlement

Based on the arguments of all counsel at the Fairness Hearing and my own review of the terms and conditions of the settlement agreement, I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim, all of which should enable and encourage individuals to come forward and make the same. Accordingly, I enter judgment approving the settlement.

I direct that all provisions of the Settlement Agreement take effect upon the execution of this order. The claims period should run for a period of 120 days (or the end of the first business day thereafter) beginning on the 10th day after the execution of this order and the date of the close of the claims filing period must be published. Within ten (10) days of this Order, Class Counsel is to begin publication of notice that the claims period is open and that individuals have a right to opt-out of the settlement if they so choose. Class Counsel proposes a notice of the same in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class Counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenvllle *News* Spartanburg *Herald;* Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

Class counsel and counsel for the Diocese are to provide the claims packet to any individual who has requested the same.

4. Forms for notice to the primary class and for use during the primary class claims process

The parties have proposed certain forms to be used in claims processing. The forms are attached hereto as Exhibits B through H. Class counsel proposes that these forms be provided to all individuals who are known to them to be interested in the class and to post these forms, for availability, on the internet. The Court has reviewed the forms and believes them to be appropriate for use in the case and I approve the same.

5. Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than $950,000.00 and no more than $2.5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of $2.5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours[6], and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years; it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

"In determining a reasonable attorneys' fee, the Court should consider the following six factors: 1) the nature, extent, and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of representation; 5) the

[6] Although additional information was not submitted for work performed by Class Counsel after the March 9th Fairness Hearing, the Court notes that two status conferences were held in person, three were held by telephone, and one additional hearing was held which would provide additional hours.

beneficial results obtained; and 6) the customary legal fees for similar services." *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

The Court's review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys' fee in the amount of $2.5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class counsel has been able to succeed in this case where other lawyers, in identical cases, have failed; and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

The matter has taken four years to prosecute, and, at this point, the conclusion of the settlement has already consumed a year and a half. Counsel has provided the Court conservative proof of more than 3,700 hours of time spent prior to the Fairness Hearing, with additional time expended, and to be expended, on the case since that time and in carrying out the terms of the settlement. All of the counsel in this case are known to the Court to have had exemplary legal and professional success and this fact has not been contested.

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel's prayer for a fee award of $2.5 million is 20.8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon, Littlejohn v. State*, 354 S.C. 634, 644, 583 S.E.2d 430, 435 (2003)(finding

Attachment S - 000014

that a contingency of between 20 and 30 percent of recovery was reasonable in a class action matter).

For the reasons above, I award Class Counsel $2.5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order.

6. Costs

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of $85,259.50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional $15,731.86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

Class Counsel has been directed to publish notice of the claims period and opt-out right. Since these expenses have been ordered by the Court, the bills for publication of the notices may be presented by Class Counsel directly to the escrow agent and paid by him per the Settlement Agreement.

7. Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial $4,540,000.00 upon the execution of this order.[7]

THEREFORE, IT IS ORDERED that the Settlement and Arbitration Agreement dated January 12, 2007 be approved as a final settlement between the parties and that the terms and conditions of the Settlement Agreement become an order of this Court, and that the claims

[7] The Diocese previously paid $460,000.00 to the class representatives for the settlement of their claims.

process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

IT IS FURTHER ORDERED that the forms proposed by the parties and attached hereto as Exhibits A through H be approved for use in the claims process; and

IT IS FURTHER ORDERED that class counsel be awarded the sum of $2.5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement; and

IT IS FURTHER ORDERED that the escrow agent be authorized to pay Class Counsel the sum of $100,991.36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement.

AND IT IS SO ORDERED!!!

Diane S. Goodstein

The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007
At Orangeburg, South Carolina

Order on Matters Heard March 9
Exhibit A

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE
John Doe #53, et al. v. Diocese of Charleston, et al. Class Action Settlement

This action applies to 1) any person born on or before August 30, 1980; 2) who as a minor, was sexually abused; 3) at any time by agents or employees of the Diocese of Charleston; 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	**Postmarked or received by [Date to be Inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	**Postmarked or received by [Date to be Inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator. The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like. Claims will be generally classified into one of 4 groups based on the severity of the injury sustained. Members of the Consortium Class with *bona fide* claims will receive $20,000.00. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS COVERED BY THE CLASS ACTION.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:
Richter & Haller, LLC,
622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesesettlement@richterfirm.com
www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVE BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted].

Order on Matters Heard March 9
Exhibit B

Attachment S - 000019

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

READ THIS DOCUMENT CAREFULLY AS YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS DOCUMENT.

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if:

1. You were born on or before August 30, 1980;
2. who, as a minor;
3. were sexually abused;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina); and
5. you have not previously had a similar claim fully heard by a court or settled.

You may also participate in this settlement if you are:

1. The spouse OR parent of
2. individuals born on or before August 30, 1998;
3. were sexually abused as a minor;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina);
5. and you have suffered the loss of the individual's services, society and companionship; and
6. have not previously had a similar claim fully heard by a court or settled.

"Sexual abuse" is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the Claim Form by the deadline noted.	**Postmarked or received by [Date to be inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class.	**Postmarked or received [Date to be inserted]**

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process. To receive a full copy of the Settlement and Arbitration Agreement and it Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesesettlement@richterfirm.com.

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on, and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

1. Limited inappropriate touching on the victim: an amount between $10,000.00 and $18,500.00.

2. Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between $20,000.00 and $55,000.00.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary

3. Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances: an amount between $60,000.00 and $125,000.00.

4. Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage: an amount between $150,000.00 and $200,000.00.

5. Members of the consortium class will receive $20,000.00 for consortium damages.

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS ARISING FROM THE CLASS.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC,

622 Johnnie Dodds Blvd., Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000. Email to dioceseseettlement@richterfirm.com

Claims and Opt-out forms may also be obtained from www.richterfirm.com

Order on Matters Heard March 9
Exhibit C

Attachment S - 000024

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, "all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: ______________________________

Date of Birth: ____________________ Social Security Number: ____________________

Mailing Address: ______________________________

____

Home Telephone Number: ______________ Work Telephone Number: ______________

Cellphone Number: ______________ Email Address: ______________

For claims made on behalf of someone else
Name of Representative Making the Claim: ______________________________

Relationship of Representative to Claimant: ______________________________

Nature of the Representative Capacity: ______________________________

Full name of parents: ______________________________

Are either or both of your parents living or deceased? If so, state which one: ______________

____

Name of spouse (if any): ______________________________

Name of the abuser (if you claim multiple abuses, use a separate claims form):

____

Location(s) at which the abuse occurred: ______________________________

Dates/ Time period during which the abuse occurred: ______________________________

What was your relationship to the abuser; [i.e. priest/altar boy; coach/ basketball player]: _______

____

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a ***free*** session of psychological assessment and two other counseling ***free*** sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant ________________ Date ________________

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit D

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

This form is to be used by, "The spouses and parents of all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant:____

Date of Birth: _______________________ Social Security Number: _________________

Mailing Address: ____

____

Home Telephone Number: ________________ Work Telephone Number: ______________

Cellphone Number: _____________________ Email Address: ______________________

For each individual for whom you claim some relationship has been damaged, please provide the information below:

Name	Address	Date of Birth	Relationship to You

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred; 2) dates/ time period during which the abuse occurred; and 3) the relationship of the individual to the abuser; [i.e. priest/altar boy; coach/ basketball player].

Please state the date or time period on which you learned of the alleged abuse described above.

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship.

You are able to have a ***free*** session of psychological assessment and two other counseling ***free*** sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

______________________________ ______________________________
Claimant Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted].** IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS.

Order on Matters Heard March 9
Exhibit E

Attachment S - 000030

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No. 06-CP-18-1310
		CASE No. 06-CP-18-1311
		CASE No. 06-CP-18-1636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,	)	
Plaintiffs,	)	
vs.	)	**DECLARATION OF OPT-OUT FROM CLASS SETTLEMENT**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name: ______________________ Signature: ______________________

Address: ____

City, State, Zip Code: ______________________________________

Date of Birth: ______________________

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED.

Order on Matters Heard March 9
Exhibit F

Attachment S - 000032

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No. 06-CP-18-1310
		CASE No. 06-CP-18-1311
		CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,	)	
Plaintiffs,	)	
vs.	)	**VOLUNTARY WAIVER OF APPEAL**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

I, ______________________________, a claimant in the above matter, understand and agree that by participating in the class settlement process for this case approved by the court, I am expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in this matter, including decisions made on whether I am a member of one of the classes, whether my claim is *bona fide*, and as to any injuries I sustained and damages I am to receive.

Before making this decision, I have asked all questions I have regarding the settlement, the claims process, and my legal rights. I have had the opportunity to discuss this matter with an attorney of my own choosing.

______________________________	______________________________
Claimant	Date
______________________________	______________________________
Witness	Date

Order on Matters Heard March 9
Exhibit G

CLAIMANT'S GENERAL RELEASE

__________________ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the day of , 200 .

Print Claimant's Name	Claimant's Signature
Witness	Witness

Attachment S - 000036

Order on Matters Heard March 9
Exhibit H

Attachment S - 000037

IMPORTANT LEGAL NOTICE

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v. Diocese of Charleston, et al.

This action applies to 1) any person born before August 30, 1980; 2) who as a minor was sexually abused; 3) by an agent or employee of the Diocese of Charleston; 4) and whose individual claim has not been previously settled or otherwise resolved.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	**Postmarked or received by [Date to be inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	**Postmarked or received by [Date to be inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click here:

Orange Form: Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW.

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever:

Members of the Primary Class:

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Blue Form: Claim Form for Primary Class Members
AND
Green Form: Voluntary Waiver of Appeal
AND
White Form: Claimant's Release

Members of the Consortium Class:

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Yellow Form: Claim Form for Consortium Class Members
AND
Green Form: Voluntary Waiver of Appeal
AND
White Form: Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself:

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**:

Pink Form: Opt-out Form

PLEASE NOTE:

1. No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class;
2. Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesesettlement@richterfirm.com

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVED BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**.

Attachment S - 000040

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	**ORDER OF THE COURT**

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived AND to this extent said agreement is hereby acknowledged and approved and made the Order of this Court.

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

R.App. 070

Q8 p 1 of 3

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

AND IT IS SO ORDERED!

Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

Pg 2 of 3

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.

Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
Summerville South Carolina

LexisNexis®

User Name: Rich Dukes

Date and Time: Monday, February 10, 2020 10:15:00 AM EST

Job Number: 109603889

Document (1)

1. *ARTICLE: WHAT'S WRONG WITH BELIEVING IN REPRESSION?: A Review for Legal Professionals, 14 Psych. Pub. Pol. and L. 223*

   Client/Matter: 00002.00001 rsd

   Search Terms: "What's wrong with believing in repression"

   Search Type: Natural Language

   Narrowed by:

Content Type	Narrowed by
Secondary Materials	-None-

LexisNexis®

ARTICLE: WHAT'S WRONG WITH BELIEVING IN REPRESSION?: A Review for Legal Professionals

August, 2008

Reporter
14 Psych. Pub. Pol. and L. 223 *

Length: 11540 words

Author: August Piper, Seattle, Washington; Linda Lillevik, Carey & Lillevik and Roxanne Kritzer, Seattle University School of Law

August Piper, independent practice of psychiatry, Seattle, Washington; Linda Lillevik, Carey & Lillevik, PLLC, Seattle, Washington; Roxanne Kritzer, Seattle University School of Law.

Correspondence concerning this article should be addressed to August Piper, 901 Boren Avenue, Suite 1010, Seattle, WA 98104. E-mail: *biofeedback901@yahoo.com*

Highlight

Some courts in recent years have tarnished their credibility by willingly and blindly adopting the theory of repressed memory. Such acceptance can destroy the reputations of falsely accused individuals, and, by failing to pay due attention to scientific evidence, gives credence to pseudoscience and demeans the scientific method. This paper was written to inform judges and attorneys about the relevant evidence, which shows that: (a) the concepts of repressed and recovered memory are not generally accepted in the psychological and psychiatric community; (b) the studies cited to support these concepts reveal significant flaws; (c) much empirical evidence has been accumulated against the theory of repression; (d) the studies using the best methodology offer the least support for the repression hypothesis; and (e) there is no evidence that recovered memories accurately reveal the specifics of long-ago events. Repressed- and recovered-memory theory is not supported by science.

Text

[*223] Many laypeople, and some mental health professionals as well, have come to believe during the past two decades or so that memories of harrowing, even brutal, childhood events--even those repeated many times over extended periods--can be *repressed*, or cast completely out of consciousness. That is, to avoid the psychic pain such memories would cause, the mind supposedly denies them access to consciousness. The result is that the person remembers nothing whatever of the events, no matter how short the time between them and no matter how frequently they are repeated (Bass & Davis, 1988; Briere, 1989; MacMartin & Yarmey, 1998; Ofshe & Singer, 1994; van der Kolk, 1994; van der Kolk & Fisler, 1995). This casting-out process is unwilled and automatic, and supposedly occurs immediately, even as the noxious event is taking place (Ofshe & Singer, 1994). Childhood sexual abuse, so the theory goes, is an especially likely--even invariable--cause of such memory failure (Bliss, 1986; Brown, Scheflin, & Hammond, 1998; Coons & Milstein, 1986; Herman, 1992). The theory holds, in addition, that the buried memories are stored, often with perfect fidelity to the original events (Bass & Davis, 1988; Terr, 1994; van der Kolk & Fisler, 1995), and that the memories' malign influence causes multiple psychiatric problems (Herman, 1992; Ofshe & Singer, 1994). Indeed, repressed-memory proponents believe that treating such problems requires "recovering" the buried memories--bringing them to consciousness--where they supposedly provide a record of those **[*224]** long-ago occurrences (Herman, 1992; Terr 1994). All these processes account for the phenomenon in which adults who initially knew nothing whatever about having been sexually victimized as children will then later claim to "recall" that they were.

What does science say about such beliefs? Are they widely accepted in the psychological and psychiatric communities? How often, and how powerfully, does repression operate? Indeed, does it exist at all? How reliable and veridical are recovered recollections?

The psychological and psychiatric communities appear to be increasingly skeptical about repressed and "recovered" memories from the distant past (Brandon, Boakes, Glaser, & Green, 1998; Crews, 1997; McNally, 2005; Paris, 1996b; Piper, Pope, & Borowiecki, 2000; Pope & Hudson, 1995; Rofe, 2008; Stocks, 1998). But, how well do attorneys and trial judges understand the reasons for this skepticism-that is, that science does not support such concepts? Because adjudicating cases involving these concepts has proven vexatious (Porter, Campbell, Birt, & Woodworth, 2003; Van Koppen & Crombag, 1999), the present paper is offered in hopes of providing attorneys and trial judges with information to ease that task. It examines the literature, especially that published since the 1999 review by Faigman, Kaye, Saks, and Sanders, which was critical of repressed and recovered memories (Faigman, Kaye, Saks, & Sanders, 1999). Has scientific knowledge about these concepts changed since then? How have courts since 1999 ruled on admitting recovered- and repressed-memory testimony?

Terminology

This paper examines only one question: does scientific evidence support the idea that people commonly become unable to remember harrowing events, and then, after a period of amnesia, "recover" the memory? The paper is not concerned with the presumptive mechanism of this hypothesized phenomenon; the mechanism is irrelevant to the question of whether evidence for the phenomenon exists. As long as there is agreement about the matter being discussed, the specific term applied to the matter should not distract attention from the question of whether it occurs. Because theorists have used many terms--traumatic amnesia, suppression, psychogenic amnesia, repression, dissociative amnesia, robust or massive repression, etc.--to describe this hypothesized occurrence, and have sometimes used them imprecisely, the reader might benefit from a brief discussion of terminology.

In discussions about highly stressful experiences that cause memory failure, the term *traumatic amnesia* is better avoided, because it risks confusion with the memory deficit produced by physical insults to the brain. *Suppression* and *repression* also cause confusion. Freud considered the two terms to be roughly equivalent (Erdelyi, 2006). However, suppression has evolved to mean an active and more or less willed "decision to defer paying attention to a conscious impulse or conflict" (Vaillant, 1990, p. 262), whereas repression as discussed here is considered to operate automatically and unconsciously (Brandon et al., 1998; McNally, 2003; Ofshe & Singer, 1994), causing "a burial of memory" (Ten, 1994, p. 85). In addition, although *psychogenic amnesia* is sometimes used as a synonym for repression, the terms should not be used interchangeably. Psychogenic **[*225]** amnesia is characterized by massive retrograde memory loss (i.e., loss of recall for an entire block of time before some given point), whereas the phenomenon discussed here involves a circumscribed failure to recall one or more traumatic event(s). Furthermore, in contradistinction to the kind of memory failure under examination here, psychogenic amnesia does not have an immediate temporal relationship to a trauma (i.e., it occurs at some variable time afterwards); is not accompanied by loss of personal identity, typically ends abruptly rather than gradually; rarely lasts more than a few weeks; and usually does not require psychotherapy for its termination (Brandon et al., 1998; McNally, 2003, p. 187).

In this paper, *dissociative amnesia*, defined as resulting from *repression*, will refer to the inability to remember that supposedly results from a severe psychological insult. Freyd (1996) accepts this use of "repression," and both she and other writers consider the term to be synonymous with dissociation (Erdelyi, 1990, 2006; MacMartin & Yarmey, 1998). For example, "Repression and dissociation are sometimes used interchangeably, and even when [they are not], the differences between them are often unclear" (Bowers and Farvolden, 1996, p. 358). Moreover, recovered--memory proponents believe that both repression and dissociation perform the same function--protecting the psyches of traumatized individuals (MacMartin & Yarmey, 1998; Ofshe & Singer, 1994). Legal cases exemplifying this hypothesized phenomenon thus become *repressed-memory* cases; the once-repressed recollections are *recovered memories*.

One should remember what amnesia and repression do--and do not--mean. Amnesia means an *inability* to recall something (McNally, 2003). It "connotes a pathological condition . . . carrying with it the implication that [trauma-induced amnesia] is a condition in need of treatment" (Read & Lindsay, 2000, p. 144). The term does not refer to a person who has deliberately tried to avoid thinking about an unpleasant occurrence. Nor does it apply to a situation in which someone had simply not thought about an event for a long time, but would have been quite capable of recalling it if directly asked; one cannot speak of repression if an appropriate reminder triggers immediate recollection.

Another phenomenon is sometimes--but wrongly--considered as an example of a repressed traumatic memory. As evidence for traumatic amnesia, some theorists cite the DSM-IV PTSD criterion of "inability to recall an important aspect of the trauma." However, there are two problems with this argument. First, repressed-memory legal cases involve claims of inability to recall, not merely *some aspect* of the traumatic event, but rather *anything at all* about it. For example, plaintiffs often claim that, for years, they had no memory whatsoever of the sexual mistreatment.

Second,

> the mind does not operate like a videotape recorder, and so there is no reason to expect that every aspect of a traumatic experience will be encoded into memory in the first place. (Encoding refers to

> the act of forming, in neural tissue, a mental picture, or symbolic representation, of an event. It is the first step in forming a memory.) Under conditions of high arousal, most people attend to the central features of the event at the expense of the peripheral ones. Individuals robbed at gunpoint sometimes fail to encode the face of the robber, often because their attention is glued to his weapon. A failure to recall the assailant's face would not constitute "amnesia" for an important aspect of the trauma, because the victim **[*226]** never encoded the face into memory in the first place. The DSM-IV symptom is ambiguous because it fails to distinguish between [on the one hand] encoding followed by retrieval failure (i.e., amnesia) and [on the other] simple failure to encode during the event itself (McNally, 2005, p. 819).

In other words, to demonstrate repression, it must be shown that a person first actually encoded the event, but thereafter was unable to remember it.

It is important to keep in mind that the noxious events in question are *extreme*. They cause intense fear, horror, or helplessness: for example, those listed in DSM-IV-TR as causing posttraumatic stress disorder: severe automobile accidents, concentration camp internment, violent personal assaults, terrorist attacks, and the like. Some recovered-memory plaintiffs have claimed they repressed recollection of events that were undeniably trivial and caused them no distress at the time. Such claims make no sense.

Is the Repression Concept Generally Accepted by the Law?

According to *The New Wigmore: a Treatise on Evidence*, previous judicial opinions and scientific publications are two major sources used to ascertain general acceptance (Kaye, Bernstein, & Mnookin, 2004). What do these sources say about dissociative amnesia and its related concepts?

Judicial Decisions

"When other courts have evaluated the general acceptance of a form of scientific evidence, their opinions and decisions may provide useful precedent" (Kaye, Bernstein, & Mnookin, 2004, p. 176). Piper, Pope, and Borowiecki (2000) reviewed U.S. appellate-level decisions in recovered-memory cases. The authors found that before about 1999, most courts refused to recognize the validity of repression, either to justify tolling a statute of limitations, or as a scientifically validated theory that can legitimately be presented to a jury. They also found that in the great majority of appellate-level decisions, the courts refused to accept, either explicitly or implicitly, the validity of repressed and recovered memory. Moreover, when state Supreme Courts required evidentiary hearings on these concepts, *in every case* they were rejected.

Since 1999, when Faigman and colleagues reviewed the state of the law, State courts have continued to struggle with the admissibility of expert testimony on repressed and recovered memory. Some of the States grappling with this question since then are South Carolina, Indiana, Utah, Arizona, Illinois, and Indiana. As indicated by the many unpublished opinions, the "science" underpinning repressed memory is still being challenged across the nation, even in States where expert testimony on repressed memory was admitted before 1999.

The evidentiary rule that is applied by the court determines the admissibility of testimony on recovered memory. Many states have adopted the federal evidence rule and the case law surrounding the admissibility of scientific evidence. In the federal court system, the admissibility of expert testimony or scientific findings is decided on whether or not the testimony would aid the trier of fact in understanding the evidence or determining a fact in issue. *Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 592,* 113 S. Ct. 2786 125L.Ed.2d 469, 482 **[*227]** (1993). The level of acceptance in the scientific community is considered only as a supplementary factor. Id at 594. The broad standard posited by *Daubert* deviates from the previous *Frye rule*, Frye v. United States, 54 App. D.C. 46, 293 Fed. 1013 (1923), which requires that expert opinions be based on theories or methods generally accepted by the scientific community. Id at 47. Courts throughout the state and federal court levels, whether they use the Frye standard or the Daubert standard, or have developed their own standards, are divided on whether the scientific community generally accepts repressed-memory theory. The courts' decisions reflect these divisions.

With the adoption of the Daubert standard, federal cases involving repressed or recovered memories, dissociative identity disorder, or any other kind of psychiatric or psychological condition, no longer consider whether the mental disorder or condition is commonly accepted within the mental health community. Borawick v. Shay, 68 F. 3d 597 (1995); U.S. v. Bighead, 128 F.3d 1329 (1997); S.V. v. R. V., 933 S. W.2d 1 (1996). District courts use a case-by-case or totality-of-the-circumstances evaluation and are given discretion to balance all the factors to determine both the reliability of the evidence, as well as the probative versus prejudicial effect of the testimony. Borawick v. Shay, 68 F.3d at 605.

A number of the cases litigated since 1999 involve suits brought years after the Statute of Limitations (a statutory time beyond which an action cannot be brought) has run. The first hurdle for recovered-memory cases involves qualifying for an exception to the Statute of Limitations. For example, Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000), held that an individual with dissociative amnesia or a repressed memory may satisfy the statute of limitations exception under the discovery rule if he or she can "prove to the jury that a person of common knowledge and experience would not have been put on notice that she had a claim . . ." and can "establish the fact of her repressed memories by expert testimony." Id. at 333. The court included this common-knowledge requirement with the expert testimony to take cognizance of the fact that repressed-memory theory falls within a controversial area of psychiatry. Id. at 332. In addition, because the Supreme Court of South Carolina recognized the "horrific possibility of false accusations," it added the requirement that a plaintiff must present independently verifiable, objective evidence corroborating a repressed memory claim. Id. at 334. The court stated that:

> the element of "objective verifiability" may be satisfied by corroborating evidence such as (a) an admission by the abuser; (b) a criminal conviction; (c) documented medical history of childhood sexual abuse; (d) contemporaneous records or written statements of the abuser, such as diaries or letters; (e) photographs or recordings of the abuse; (f) an objective eyewitness's account; (g) evidence the abuser had sexually abused others; or (h) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable conclusion that sexual abuse occurred. Id. at 336.

The Indiana Supreme Court declined to declare all repressed memories unreliable. Doe v. Shults-Lewis Child and Family Service, Inc., 718 N.E.2d 738, 750-751 (1999). The court noted:

> Indeed, if anything can be discerned from a review of the current horizon, it would be that there is no single trend among state courts on the question of repressed **[*228]** memory in childhood sexual abuse cases. Put simply, there is enough information supporting the theory of repressed memory that this Court cannot reject it in all cases as a matter of law. Id. at 750.

Even in states where Daubert and the Federal ER 702 have been adopted, admissibility of repressed-memory testimony is not guaranteed. The Supreme Court of Utah, for example, found that repressed memory as a *new science* had not passed the threshold of reliability test. Franklin v. Stevenson, 1999 UT 61;987 P.2d 22, 28 (1999). The basis for the decision was the court's own review of the literature:

> Our research suggests that the idea of memory repression itself, let alone the methods of recovery, is a point of disagreement within the medical, psychiatric, and psychological communities. *See, e.g.*, Douglas R. Richmond, *Bad Science: Repressed and Recovered Memories of Childhood Sexual Abuse*, 44 U. Kan. L. Rev. 571, 564-65 (1996) (discussing views of the American Medical Association, the American Psychological Association, and the American Psychiatric Association); Julie M. Kosmond Murray, *Repression, Memory, and Suggestibility: a Call for Limitations on the Admissibility of Repressed Memory Testimony in Sexual Abuse Trials*, 66 U. Colo. L. Rev. 477, 498-504 (1995) (same). *Id*. at 16.

The Arizona Supreme Court affirmed the State's use of the *Frye* standard, but nevertheless, permitted testimony on repressed memory. Logerquist v. McVey, 196 Ariz. 470; 1 P.3d 113 (2000). The Court determined that Frye did not apply in a repressed memory case. It reasoned that the testimony was based on the witness having reached a conclusion by inductive reasoning derived from his or her own experience, observation, or research, as opposed to having done so by deduction from applying novel scientific principles, formulae, or procedures developed by others. In *Logerquist*, the validity of recovered-memory theory was tested by interrogating the witness; in *Frye*, it was tested by inquiring into general acceptance.

Finally, the Illinois and Louisiana courts are the most permissive of testimony on repressed memories. Illinois, taking notice of the increasingly common belief that child sexual assault victims repress their memories, allowed testimony on this topic. Hobert v. Covenant Children's Home, 309 Ill. App. 3d 640, 642; 723 N.E.2d 384, 386 (2000). In Louisiana (Doe v. Archdiocese of New Orleans, 823 So. 2d 360, 365 [2002]), the expert had developed his own methodology from available information on repressed memory, as well as from numerous clinical studies, to create a list of factors specific to the plaintiff. The expert acknowledged that memory repression varies among individuals; that patients are vulnerable to implanted suggestions that they were abused; and that because of the lack of standardization, there is no known error rate for detecting repressed memories. Despite the expert's acknowledgement of these weaknesses, the Court held that his methodology and opinions conformed to the science of repressed memory, and admitted the testimony.

To summarize: as of 2008, the Law has yet to definitively determine repressed memory's acceptability as a scientifically validated theory that can legitimately come before a jury. The States' decisions have varied as their Courts continue to **[*229]** examine and evaluate the general acceptance and validity of repressed-memory theory.

Is the Repression Concept Generally Accepted in the Relevant Scientific Community?

Those who support the notions of dissociative amnesia and repression have repeatedly argued that the relevant scholarly and scientific community considers these ideas scientifically valid and generally accepted, and that the courts should accept these concepts. For example, Brown, Scheflin, and Hammond (1998) assert that "repressed memory . . . or more appropriately, dissociative amnesia . . . has been recognized by most medical, psychological, and mental health professional organizations. The world literature has validated this concept for over a century" (p. 599). Moreover, according to Gleaves and associates, "dissociative . . . amnesia was studied and described extensively by Pierre Janet in the 1880s as well as by Freud in some of his early writings" (Gleaves, Smith, Butler, & Spiegel, 2004, p. 11).

These authors here make the common error of believing that the kind of repression discussed in the present paper is identical to that described by Janet and Freud in the 19th century (Ofshe & Singer, 1994). The belief misreads history. As mentioned above, this modern-day repression "allegedly permits patients to lose the ability to retrieve knowledge of major life events, extremely long series of traumatic events, and immensely complicated patterns of social behavior. [Accounts may include] up to 1,000 rapes and/or assaults stretching over years . . . or decades-long sexual and physical victimization by networks of satanic cults, and confessions of mass murder" (Ofshe & Singer, 1994, p. 395). Some theorists believe, moreover, that after being repressed, these memories are forever stored unchanged, as in a kind of deep freeze.

We have found nothing to suggest that either Janet or Freud ever wrote of such an expansive and powerful mental mechanism (Merskey, 1999; Ofshe & Singer, 1994; Ofshe & Watters, 1994; Webster, 1995). For example, Hedges (1994) observes that the notion of massive forgetting of a traumatic experience and the possibility of later video-camera-type recall is not a part of any existing psychoanalytic theory of memory. We have similarly found no evidence that any of Freud's patients developed the kind of extreme memories mentioned just above. Moreover, typical 19th-century dissociative amnesia cases showed features unheard of in today's repressed- and recovered-memory cases: brief hysterical alterations of consciousness, episodic convulsions or hysterical fits, transient loss of personal identity, sleepwalking, hysterical hallucinations, and various gait disturbances (Merskey, 1999; Nemiah, 1979). In other words, yesterday's and today's "repression" and "dissociation" differ markedly.

Rather than being a concept introduced by Janet or Freud, the repression of today was apparently never proposed until about a century after these men lived: it was only in 1985 that the notion of "massive repression" first appeared. In that year, Judith Herman delivered a speech to the American Psychiatric Association, describing this new mental mechanism (Ofshe & Singer, 1994; Pendergrast, 1995; Webster, 1995). No record exists of anyone ever having mentioned such a concept before this speech, and nothing previously published in the scientific literature on **[*230]** memory had indicated that such a mechanism's existence was ever suspected. The concept of massive repression appears to have been a relatively recent discovery even for Herman herself: just 4 years before the 1985 speech, she published a book on sexual abuse-incest between fathers and daughters (Herman, 1981). In the book's 250 pages, not a single mention is made of this kind of profound memory disturbance. Again, the type of repression--called *robust repression* by Ofshe and Watters--at issue in today's courtroom cases has very little in common with that of Freud. That this kind of repression is a product of the late 20th century has significance, to be discussed below (see *What evidence has been offered against the concept of repression*?).

Scientific Publications

In 1997, two memory researchers observed that "the recovered memories debate is the most passionately contested battle [ever] waged about the nature of human memory. Professionals on [either side] of the debate [found] their competence, motives, and even integrity called into question. The debate has consistently [been] characterized by strong emotions and often by outright acrimony" (Lindsay & Read, 2001, p. 71). Even in 2006, one commentator could say, "No issue has seen such contentious and emotional brawling among psychologists as the question of repression" (Smith, 2006, pp. 534-535).

This divisiveness and acrimony extended even to high levels of the American Psychological Association. In 1993, the Association established a working group of six expert psychologists: three clinicians and three researchers. Its charge was to review the scientific literature on adults' previously unrecalled memories of childhood sex abuse, and to make recommendations to the Association to inform future discourse. Unfortunately, even after months of deliberations, the working group itself could not agree enough to be able to write a joint final report. The clinicians wrote theirs, the researchers wrote theirs, each then replied to the other, and then each wrote a rejoinder to the replies (Alpert, Brown, Ceci, Courtois, Loftus, & Ornstein, 1996).

Further evidence that scientific authorities do not generally accept repressed and recovered memory concepts is shown by position papers of several major professional societies. The American Medical Association, the American Psychiatric Association, the (British) Royal College of Psychiatrists, the Canadian Psychiatric Association, and the Australian Psychological Society have all voiced skepticism about these notions. For example,

> The American Medical Association considers recovered memories of childhood sexual abuse to be of uncertain authenticity, which should be subject to external verification. The use of recovered memories is fraught with problems of potential misapplication (American Medical Association Council on Scientific Affairs, 1995, p. 117).
>
> If memories of events have not been revisited and cognitively rehearsed in the interval between occurrence of the events and attention being paid to them some years later, it is not clear that such memories can endure, be accessible, or be reliable (Canadian Psychiatric Association, 1996, p. 305).
>
> Existing scientific evidence does not allow global statements to be made about a definite relationship between trauma and memory. The available scientific and clinical evidence does not allow accurate, inaccurate, and fabricated memories to **[*231]** be distinguished [from one another] in the absence of independent corroboration (Australian Psychological Society, Limited, 1994, p. 2).

In addition, many individual mental health professionals are deeply skeptical about dissociative amnesia and its allied concepts, as has been demonstrated in several surveys (Dell, 1998; Lalonde, Hudson, Gigante, & Pope, 2001; Pope, Oliva, Hudson, Bodkin, & Gruber, 1999). For example, in one investigation published in 1999, only about one-quarter of psychiatrists considered dissociative amnesia to be supported by "strong evidence of validity" (Pope et al., 1999, p. 322); the other choices were "little evidence of validity," "partial evidence of validity," and "no opinion." Only about one-third believed the diagnosis of dissociative amnesia should be included without reservations in DSM-IV; the other choices available were "should not be included at all," "should be included only with reservations," and "no opinion." Another survey (Dell, 1988), published even earlier (1998), revealed that over 80% of respondents had experienced "moderate to extreme" (p. 528) skepticism from others about dissociative identity (multiple personality) disorder (a condition that supposedly is related to sexual abuse and memory repression).

A paper by Erdelyi concerning repression, published in 2006, generated numerous commentaries that varied "from outright rejection of the reality of repression . . . to urgings that [its] ambit be extended" (Erdelyi, 2006, p. 535). "When the science is interpreted properly, the evidence shows that traumatic events--those experienced as overwhelmingly terrifying at the time of their occurrence--are highly memorable and seldom, if ever, forgotten" (McNally, 2005, p. 821). "Until convincing, replicable evidence is forthcoming, the concept of traumatic amnesia may be little more than psychiatric folklore" (McNally, 2004, p. 100). Harrison Pope (personal communication, March 2007) notes that "although some papers in the peer-reviewed literature purport to accept the concept of repressed memory, this acceptance does not logically permit the conclusion that the concept is *generally* accepted. General acceptance clearly means that there is a *consensus* in the literature produced by the relevant scientific community." And finally, after reviewing the literature on repression, the author of a 2008 review concluded, "The fact remains that the Freudian notion of repression cannot be used as a scientific psychological construct" (Rofe, 2008, p. 76).

In summary, dissociative amnesia, repression, repressed and recovered memory, and their kin remain extremely controversial among psychiatrists and psychologists. Moreover, never since they first appeared in the literature have these concepts won general acceptance in the American psychological/psychiatric community.

What Flaws Exist in the Evidence Cited for Repression?

Repressed-memory theorists claim to have found much scientific support for the notion that people commonly fail to recall traumatic experiences (Brown, Scheflin, & Hammond, 1998, pp. 538-539; Dalenberg 2006, p. 279). However, the studies cited suffer from one or more of three flaws.

The first is that the studies do not show that the subjects completely failed to recall severely upsetting experiences--that is, that the subjects experienced amnesia. Rather, repressed-memory theorists point to one of three phenomena. One is partial amnesia, defined as failure to recall some details of the experiences. **[*232]** Another is forgetfulness in one's daily life: a relative's anniversary, for instance, or what one went to the grocery store to buy. And deliberate attempts to avoid thinking about the unpleasant experience constitute the third. None of these phenomena constitutes dissociative amnesia. Nevertheless, advocates of repressed memory, such as Dalenberg (2006) and Brown, Scheflin, & Hammond (1998; Ch. 7), repeatedly attempt to argue that partial amnesia, day-to-day forgetfulness, and deliberate avoidance are somehow the same as having repressed the memory of the incident itself (McNally, 2003; Piper, Pope, & Borowiecki, 2000; Pope, Oliva, & Hudson, 1999).

A second flaw is that

> Reports of the percentage of [mistreated people] who were partially or fully amnesic for [the mistreatment] are meaningless in the absence of baseline data for amnesia for nontraumatic events. It is clear that "amnesia" for [such] events is far from zero. Most people have gaps in their memories for childhood (McNally, 2003, pp. 198 and 227).

To obtain data bearing on these latter two points, Read and Lindsay (2000) encouraged study participants to attempt to recall childhood events that actually had occurred. (The events were presumably nontraumatic: high school graduation and attendance at summer camps.) The investigators then assessed these attempts' effect on the participants' judgments of prior memory impairment for the events. Before the memory-retrieval activities, 16% of the childhood events were characterized by prior periods of "partial amnesia," and 5% by prior periods of "complete amnesia." According to Read (1999), "These data indicate that estimates of trauma's effect on memory must be compared to an appropriate, non-zero base rate of affirmative responding to such questions. Prior research has implicitly assumed that base rate to be zero, when it clearly is not" (p. 9).

In addition, Read and Lindsay (2000) found that after the memory-retrieval exercises, the rate of partial amnesia increased from 16% to 70%. These results show that responses to retrospective questions about prior periods of poor memory can be dramatically altered through memory-retrieval activities typical of those techniques sometimes used in psychotherapy (Read & Lindsay, 2000). The results also agree with what has long been known: people do badly at judging whether or not they did, or could, remember something at some earlier time; such judgments correlate either poorly, or not at all, with actual memory performance (Read, 1999). In other words, asking about periods of having "no memory, or less memory than today" is a highly dubious exercise (Herrmann, 1982; Read, 1999).

The third flaw in the evidence cited by Dalenberg (2006) and Brown and colleagues (1998) is use of retrospective studies. Such studies suffer from several weaknesses. The most crucial is the difficulty of looking back over years or decades to verify that the claimed abuse actually occurred. This means that the investigators conducting *retrospective* studies cannot know whether any given participant has actually experienced the event in question. In a retrospective study intended to determine, for example, whether people forget traumatic events, participants must be asked some variant of two questions: first, "Did some traumatic event happen to you?" And second, "Was there ever a time when you had no memory, or less memory than you do today, about that event?" In other words, study participants are asked to verify not only how well they recalled, at **[*233]** some time in the past, an event that may have occurred in the even more distant past, but also that they truly had experienced the event. Compare this methodology with that of *prospective* studies (see below), where entry into the study requires verification that the trauma actually occurred.

Another weakness of retrospective studies: "asking [a person] to remember a time when [he or she] couldn't remember something is a logical quandary. The question borders on the ridiculous, because it assumes that [a person] would have knowledge of the status of a memory during a period when that memory, by the subject's own admission, never came into consciousness" (Ofshe & Watters, 1994, p. 308).

It is important to remember that retrospective studies form the overwhelming majority of investigations cited as proof of repression. However, because all such studies suffer from the same inherent and fatal flaws, they cannot prove the existence of repression. *Prospective* investigations are required (Piper, Pope, & Borowiecki, 2000; Pope, Oliva, & Hudson, 1999).

What form would such investigations take? The requirements for a scientifically satisfactory prospective demonstration of dissociative amnesia are actually quite simple (Pope & Hudson, 1995; Pope, Oliva, & Hudson, 1999). One would first identify a group of individuals known to have experienced a harrowing event, and then, after a suitable time, inquire about their current recall of that event.

The traumatic event should be so severe that no one would be likely to simply forget it. This severity requirement eliminates simple forgetting as a cause of recall failure. Many experiences that do not cause children physical pain but nonetheless may appear to be sex abuse (e.g., certain kinds of fondling, sleeping nude with children, or taking showers with them) would not be particularly memorable to young people (Haugaard, 2000; McNally, 2005; Nelson, 1989; Piper, 1997). Failure to recall such experiences thus indicates forgetting, not repression. Consider, for example, the often-cited study by Williams (1994), in which 129 women who, as young girls, had been examined for possible sexual mistreatment. Williams contacted them 17 years later to see whether they recalled the event that had led to the initial examination. Thirty-eight percent did not mention it. Because of this result, some commentators believe the study provides evidence for repression of memories for childhood sex abuse. However, more than two-thirds of the girls showed no signs of genital trauma on initial evaluation. This fact suggests that many of them may not have experienced penetration and in some cases had undergone nothing more memorable than fondling. Those who had had nonmemorable experiences would be likely to simply forget--not repress--the index event.

Both Loftus (1994) and Pope, Oliva, & Hudson (1999) discuss other reasons why the Williams study does not provide evidence for repression. Among these is Williams' observation that the women failed to report some events while readily reporting others that were equally traumatic. Repression cannot account for such findings, "because it cannot explain why only some episodes are forgotten, whereas many equally horrific [events] are thoroughly remembered" (McNally, 2003; p. 213).

The trauma would have to be solidly documented. Uncorroborated accounts of abuse should be viewed with scientific skepticism, because without external **[*234]** corroboration, neither psychotherapists nor scientists can determine a given account's veridicality (Brandon et al., 1998; Courtois, 1997; Paris, 1996b; McNally, 2003). There is simply no way to determine truth based either on the content of a memory or the emotional intensity with which it is expressed (Brandon et al., 1998; Courtois, 1997; Hyman & Pentland, 1996; Leichtman & Ceci, 1995).

Second, the study would exclude people who had developed amnesia for some "biological" reason, such as seizures, drug or alcohol intoxication, sleep deprivation, brain injury, nutritional deficiencies, or the well-known phenomenon of childhood amnesia, which results, at least partially, from immaturity of the young child's brain. Because of this immaturity, children are normally amnesic for most events occurring before age three or four (McNally, 2005; Usher & Neisser, 1993) and "many adults remember hardly anything from before the age of seven" (McNally, 2003, p. 44). Thus, repression should not be posited to explain nonrecall of an event that occurred when a child was younger than about 4 years of age.

Third and finally, a study must show that subjects truly developed amnesia for the trauma. To do so, one must first exclude cases in which victims simply tried to avoid thinking about the event--as mentioned above, this is suppression, not repression. Cases in which the subject chose not to disclose the abuse to the interviewer must also be excluded. Reasons for this "pseudoamnesia" include embarrassment, poor rapport with the interviewer, a wish to protect a third party, a sense of having deserved the mistreatment, or a desire to toll a statute of limitations to achieve some benefit (Femina, Yeager, & Lewis, 1990; National Center for Health Statistics, 1961; Pope & Hudson 1995; Widom & Morris, 1997). Thus, failure to report experiences must not be assumed, without further investigation, to be failure to *recall* them.

The "further investigation" means performing a "clarification interview" (Femina, Yeager, & Lewis, 1990), as follows. Anyone who initially claimed not to recall the traumatic incident would meet with an interviewer, who would first attempt to establish a solid rapport with the interviewee. The interviewee would then be gently asked about the discrepancy between the known trauma and his or her later claim of nonrecall. In the important study by Femina and colleagues (1990), *every person* who initially denied recalling the mistreatment acknowledged remembering the mistreatment when given a clarification interview. Melchert and Parker (1997) obtained similar results. Thus, the importance of clarification interviews cannot be overestimated; they are hallmarks of good science in the search for proof of repression and dissociative amnesia (McNally, 2003).

If a substantial number of individuals continued to deny any memory for the traumatic experience, and if--importantly--they derived no apparent benefit from simply claiming amnesia, then one would have a methodologically sound study showing that dissociative amnesia for abuse experiences can actually occur (Piper, Pope, & Borowiecki, 2000; Pope, Oliva, & Hudson, 1999).

To our knowledge, as of this writing, the only study of child sexual mistreatment that satisfies all three of the above requirements is by Bonanno and colleagues (2002). In that investigation, 67 people were studied; all were documented to have experienced severe sexual abuse as children. Of note, the investigators performed a clarification interview, after which only two people failed to **[*235]** disclose the abuse. The investigators strongly suspected that even these two remembered the mistreatment.

A 2003 study by Goodman and associates is perhaps the next most rigorous investigation. It satisfies two of the three requirements listed above (no clarification interview was performed). Of the 180 participants who were probably beyond the age of childhood amnesia when they were abused, only 8% failed to disclose the mistreatment. According to the authors, their results "do not support the existence of special memory mechanisms unique to traumatic events, but instead imply that normal cognitive operations underlie long-term memory for [childhood sexual abuser]" (Goodman et al., 2003, p. 117). The authors question whether forgetting childhood sexual abuse is a common experience (Goodman et al., 2003, p. 117), and state that "failure to report [childhood sexual abuse] should not necessarily be interpreted as evidence that the abuse is inaccessible to memory" (Goodman et al., 2003, p. 113).

And in another investigation, Epstein & Bottoms (2002) found that "fewer than 1% of abuse victims who reported temporary forgetting appear to have experienced a complete absence of conscious memories for events that occurred after the offset of childhood amnesia" (p. 222).

These three investigations' results agree with McNally's (2003) observation that "the better a study's methods, the less likely it is to find evidence of missing memory for trauma" (p. 209). The significance of the three studies should not be underestimated. They represent the best methodology currently available, and all of them argue against the idea that complete memory loss is a typical response to traumatic events. Thus, as of mid-2008, we are aware of no scientific studies meeting the methodological criteria specified above that provide evidence for repression (Brandon et al., 1998; Goodman et al., 2003; McNally, 2003; Pope & Hudson, 1995; Pope, Oliva, & Hudson, 1999).

What Evidence Has Been Offered Against the Concept of Repression?

In addition to the lack of evidence *for* repression, it is important to note the substantial evidence *against* this concept. For example, an exhaustive literature search focusing on more than 10,000 survivors of severe, specific, historically documented traumatic events did not find even one person who developed amnesia for the trauma (Pope, Oliva, and Hudson, 1999).

Many other investigations discredit the idea of repression. Contrary to what repression theory predicts, these studies demonstrate that adults recall central details from shocking and stressful experiences better than those from happy experiences, and better than those from everyday, mundane events (Berntsen, 2002; Berntsen & Thomsen, 2005; Christianson, 1992; Fivush, 1998; Koss, Tromp, & Tharan, 1995; Schacter, 1995). Similar results are found in children (Howe, 2000; Howe, Cicchetti, & Toth, 2006; Oates & Shrimpton, 1991; Ornstein, 1995). And studies examining children's recall of sexual mistreatment show that such experiences (if occurring after the offset of infantile amnesia) are typically recalled well (Alexander et al., 2005; Bonanno et al., 2002; Cordon, Pipe, Sayfan, Melinder, & Goodman, 2004; Fivush, 1998; Goodman et al., 2003; Widom & Morris, 1997). For example, not a single case of repression is mentioned in a review examining 3,369 sexually abused children (Kendall-Tackett, **[*236]** Williams, & Finkelhor, 1993). The failure to cite even one child who repressed his or her abuse memories is particularly remarkable when it is considered that Linda Williams, one of the 1993 review's co-authors, is the same Williams whose 1994 study is often cited by repression proponents as providing some of the best evidence for repressed traumatic memory.

A belief in repression must face one very serious illogicality. If memory is thought of as an organism's ability to encode, store, and retrieve past information to serve present needs, then any organism that forgot its past would be at a grave evolutionary disadvantage. Consider an early human who one day barely escapes a saber-tooth cat's fangs--and then forgets the attack. He would clearly run a risk of failing to learn from the near miss--and winding up as dinner for the next hungry feline, with inauspicious consequences for passing along his genes--if the memory of the encounter were somehow unavailable to him. As McNally (2003) notes: "It is difficult to imagine how a repression mechanism that undermines memory for significant events could have evolved" (p. 77).

Finally, if dissociative amnesia were an actual human psychological phenomenon, one would expect to find, from the earliest writings in world literature, several clear, concrete examples of amnesia for traumatic events. But one research group (Pope, Poliakoff, Parker, Boynes, & Hudson, 2007), despite an exhaustive search, was unable to find a single case before about 1750. When this fact is considered, and when it is recalled that only in the late twentieth century did anyone discover "massive repression," the importance of the question asked by Ofshe and Watters becomes clear:

> Does it make sense that although adults and children have experienced trauma throughout the history of the human race, [ours would be] the first generation to document . . . that victims can walk away from endless brutalizing experiences with no knowledge that something bad has happened to them? (Ofshe & Watters, 1994, p. 36)

Do Repressed Memories Remain Fixed and Unchanging?

As everyday experience teaches, and research confirms, memories weaken and change over time. However, against these well-established facts, some repressed-memory theorists have adopted beliefs that have very significant consequences for the legal treatment of childhood sexual abuse cases. Such theorists believe trauma memories that have become repressed thereby become indelible and fixed for years or decades, impervious to any later experience, as if entombed in amber (Bliss, 1986; Clark, 1993; Fredrickson, 1992). These writers further believe that psychotherapists can lift or release the repression and unearth the buried memories, which then supposedly paint a substantially accurate picture of the original traumatic event (Bass & Davis, 1988; Clark, 1993; Fredrickson, 1992; Herman, 1992). And at least one recovered-memory proponent considers repressed trauma memories, once unearthed in this manner, to be *more* accurate than ordinary, continuous memories (Terr, 1994).

Such beliefs, if true, would give psychological and psychiatric professionals a window into the past, allowing them to see with certainty what traumatized the individual and triggered his or her repression. These professionals could then **[*237]** provide testimony that might help fact finders decide whether, for example, to toll limitations periods that would otherwise bar the causes of action.

But memory researchers debunk these theorists' notions, which "stand in stark contrast to the empirical facts" (Howe, Cicchetti, & Toth, 2006, p. 761). For example, the claim of a repressed and recovered memory's literal correspondence to the original trauma is refuted by the recognition that "[the human] mind retains information in a fairly literal state for at most two seconds" (Einstein & McDaniel, 2004, p. 35). What is stored in memory is not a literal copy of an event, but rather a constructed representation of that event. As the representation is being formed, it is affected by our preexisting knowledge of the world, our biases, and any inferences that we might make at the time of the experience (Loftus, 1996; Porter, Birt, Yuille, & Lehman, 2000). "These are called *constructive* processes, reflecting the idea that we construct a representation, rather than copy information directly into memory" (Einstein & McDaniel, 2004, p. 40).

Moreover, the available research repeatedly demonstrates that memories of traumatic events appear to follow the same laws as do those of more mundane events. In both kinds of memories, details fade as time passes; both kinds of memories are subject to interference from later experiences; and both can be systematically distorted over time (Ceci, 1995; Ceci & Loftus, 1994; Neisser & Harsch, 1992; Schacter, 1995, 1999; Zola, 1998). Simply put, the belief that trauma memories are indelible and unchanging ignores one of the most important and widely accepted discoveries about the nature of memory: that it is not *reproductive* and *static*, but rather *reconstructive* and *dynamic*.

To illustrate: books and videotapes, as reproductive storage devices, always reproduce the same information when accessed; the retrieved information faithfully represents what was originally written or recorded. However, one does not read memories as from a book, or play them back as from a videotape. Laboratory research shows that "neural representations of events are continually . . . modified and reorganized [over] time" (Zola, 1998, p. 924), meaning that what people remember is dynamic and fluid; constantly erased, distorted, biased, and otherwise altered by events occurring before and after the memory was originally encoded (Beahrs, Cannell, & Gutheil, 1996; Kihlstrom, 1994; Schacter, 1995, 1999; Usher & Neisser, 1993).

Memory works by storing bits and pieces of the original event in different brain regions, where "ensembles of neurons . . . each represent a little bit of the memory" (Zola, 1998, p. 924). When a person attempts to recall an event, the brain assembles and binds these distributed components. They are then combined with components from other experiences, some of which had been acquired before the event and some after, to reconstruct that recollection. These processes governing memories of ordinary events seem to govern memories of trauma as well--which means, again, that there is little reason to suppose these latter memories are any less susceptible to distortion than ordinary memories (Paris, 1996b; Neisser & Harsch, 1992; Schacter, 1995; Shobe & Kihlstrom, 1997; Zola, 1998). Thus, memory is not so much like *reading* a book as it is like *writing* it from fragmentary notes--and revising it over and over as we do so (Kihlstrom, 1994; Zola, 1998).

This analysis has an important implication for legal cases: psychological research gives no reason to believe that the productions called recovered memories **[*238]** necessarily or invariably represent accurate descriptions of childhood experiences (Ceci & Loftus, 1994; Laney & Loftus, 2005; Paris, 1996a; Rae, 2008). A recovered memory has no special claim to truth.

One final point is worth recalling. Recovered-memory theorists sometimes claim that "body memories" or "emotional memories" can provide a window into the truth of long-past events (van der Kolk, 1994; van der Kolk & Fisler, 1995). In other words, the claim implies that factual content can be discerned through these nonverbal routes. The claim is erroneous (McNally, 2003). Only language-mediated, or "*declarative*, memory for factual content is relevant to questions of truth or falsity" (Beahrs, Cannell, & Gutheil, 1996, p. 48).

Conclusion

In 1999, Faigman and colleagues, quoting the *Hungerford* decision (697 A.2d 916 [N.H. 1997] at 929) said the day had not yet arrived when repressed and recovered memories could be perceived as reliable. Nine years later, that day has still not dawned. The present review shows that in 2008, science still fails to provide evidence for belief in repression and recovered memories, and that the Law continues to wrestle with these concepts.

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