

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 2 of 5

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CA No. 2018-CP-10-3929
	)	
John Doe,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S SUPPLEMENT
	)	MEMORNADUM IN
Bishop of Charleston, a Corporation Sole	)	OPPOSITION TO MOTIONS
and The Bishop of the Diocese of	)	FOR SUMMARY JUDGMEMNT
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	

Over the more than six years of the case, plaintiff has created a voluminous record of his sexual abuse as a 7th grader by teachers employed by the Defendants and on its premises, his repressed memory of those events, and the Defendants' ongoing efforts to hide and stifle reports of sexual abuse. The Diocese has run to the appeals courts twice, both on frivolous and lost claims, each time getting more bites at the apples than any other defendant would receive. ***It is time for John Doe to have his day in court.***¹ The Defendants' motions for summary judgment should be denied.

1. Defendants' motions have been heard and were denied by the Supreme Court. Those denials are the law of the case.

In the appeal before the South Carolina Court of Appeals and Supreme Court on the Defendants' losing charitable immunity excuse for enabling the abuse of children, it asserted all of the motions they make now. Ex. A. The Supreme Court expressly declined to grant the Defendants judgment on those claims. Ex B. "We decline to address any alternate sustaining ground for summary judgment, and we remand Petitioner's claims to the trial court." After the

¹ The plaintiff incorporates by reference the entire record and all arguments previously made this in matter. The attached record is provided to the court for ease of reference, but is not intended to be exclusive.

Supreme Court reviewed the Defendants' defenses, it only remanded the petitioner's claims; the Supreme Court could have entered judgment on the alternate grounds re-asserted here, but instead did not remand the Defendants' defenses. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

Having had a full opportunity to argue and appeal these same motions, the denial of those motions is the law of the case. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). Here, the Defendants made all of the same arguments, lost those arguments, and have now come back before this court for yet another bite at the apple.² The hearing should be canceled on the grounds that the motions were heard and denied.

2. Doe is entitled to his day in court.

Doe brought this case in 2018. The Defendants have done everything possible to avoid being held accountable by a jury of their peers. The case has been on appeal twice. The first, a clearly frivolous attempt to avoid the Defendants' discovery obligations, was dismissed by the Court of Appeals as interlocutory. Ex. C. They then followed that dismissal with a meritless petition for certiorari on the same frivolous issue, causing more delay. Doe then had to proceed to vindicate his rights on a clearly erroneous decision of law on the charitable immunity issue, which he did, but not before four more years of stagnation.

² This is the Diocese's fourth bite of the apple, having argued these motions before Judge Price, the Court of Appeals, and the Supreme Court. No one other defendant gets to keep making the same pre-trial arguments.

The point is that Doe, having faced two appeals and won them both, is entitled to a trial, win or lose. No more motions that avoid the inevitable or create more appellate burden. While Doe believes these motions have been heard, denied and now invalid, the Defendants still retain the ability to make motions at the directed verdict portion of the trial. Hence, while to trying to quadruple dip, it does so without any prejudice to it. To the extent viable, the motions should be denied.

3. The record contains sufficient evidence of Doe's repressed memories.

In the case of *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)³, the Supreme Court allowed for the statute of limitations to be stayed for those who suffer from repressed memories until the memory, established by expert testimony of the repression and "corroborating evidence" of the abuse. Corroborating evidence, which may be either direct or circumstantial, includes:

"(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."

Moriarty, at 336, 680.

Here, *three* doctors testify that Doe suffered from repressed memory of his abuse. See Ex. H, I, J, and K. "[Doe] does clearly appear to have non-volitionally repressed memories of the abuse by schoolteacher to the point of not remembering that he actually was in the 7th grade." Ex. L. The Diocese may not like the science, but the evidence of Doe's repression is substantial and complies with the law.

³ The Defendants, which routinely degrade the victims of its acknowledged pattern of enabling sexual abuse, calls repressed memories, "junk science." In actuality, the Defendants are attempting to argue that *Moriarty* should be overturned. The law as it currently stands clearly allows the evidence of repressed memories to proceed.

Further, the record includes multiple pieces of evidence of the abuse, including: 1) Doe's testimony that he was forced to engage in fellatio with Hartnett and essentially kidnapped to Columbia for a sex party (Ex. I); 2) proof that Doe was a student at Sacred Heart (Ex. F); 3) proof that Hartnett as Doe's teacher (Ex. G); and 4) the Diocese's admissions that sexual abuse and rape of children routinely occurred by its priests and agents and those rapes were-- as a matter of Diocesan policy-- covered up (Ex. H). Such evidence, combined, is sufficient circumstantial evidence to meet the eighth prong for summary judgment purposes. Accordingly, that motion should be denied.

4. Plaintiff's claims are not barred by the 2007 Class Action Settlement.

The Honorable J.C. Nicholson addressed this specific excuse in 2017. There, 8 cases to which the Defendant was party in each, were consolidated and a collateral review of the settlement was conducted. Specifically, Judge Nicholson reviewed a situation, as here, where the plaintiff claimed repressed memories. Judge Nicholson held:

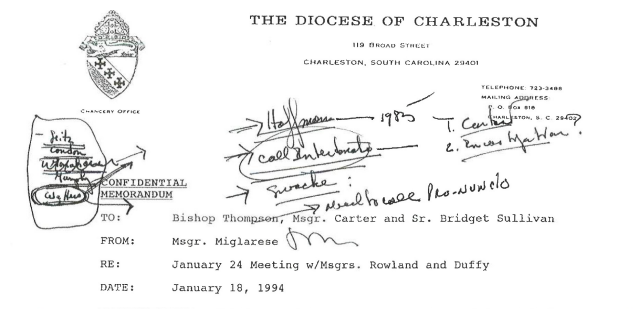
In addition, the Court concludes as to Plaintiff John Doe 193, who alleges that he lived in South Carolina but had a repressed memory at the time of class notice, that it would be inconsistent with due process to bind him to the class action settlement if he in fact had a repressed memory of sexual abuse at the time that notice was published. Therefore, if he can prove a repressed memory by a preponderance of the evidence, he will not be bound by the class action settlement. This Order does not address the merits of whether John Doe 193 in fact had a repressed memory as he has alleged.

See *John Doe 193 v. The Bishop of Charleston, a Corporate Sole, et al.*, 2013-CP-10-3733. Ex O. The Defendants are collaterally estopped from asserting their res judicata argument. Under South Carolina law, "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360,

362 (Ct. App. 2013). The Diocese had a fair chance in 2017 to litigate this same issue and lost. Accordingly, that motion should be denied.

5. There is sufficient evidence that the Defendants acted with intent.

Numerous business records produced by the Diocese and the testimony of several priests of the Diocese admit longstanding efforts to cover up its problem of sexual abuse by its priests and employees. The cover up included moving the offending employee to a different location to enable additional abuse, not reporting the abuse or rape to law enforcement, and requiring on penalty of damnation the victim to keep quiet. When a courageous victim finally came forward in 1993, un beholden to the fearmongering the Defendants used on other victims (See Ex. H), the Diocese admitted how it protected its perpetrators. In a 1994 memo, the then Vicar General (second in command to the Bishop) wrote the Bishop at the time:



Secondly, we need to bring out the fact that we need to protect the assets of the diocese from massive liability charges. Where there might have been reasonable cause in the past for moving someone out of active ministry, and we did nothing but transfer them. It looks as though we are judging the past by present standards, but that is the arena of life that we are currently engaged in.

The business records of the Diocese contained more admissions of it hiding the abuse, blaming the victims, and covering up for the perpetrators. (Ex H and Ex J). Here, the record includes multiple pieces of evidence of the abuse, including: 1) Doe's testimony that he was forced to engage in fellatio with Hartnett and essentially kidnapped to Columbia for a sex party (Ex. I); 2) proof that Doe was a student at Sacred Heart (Ex. F); 3) proof that Hartnett as Doe's teacher (Ex.

G); and 4) the Diocese's admissions that sexual abuse routinely occurred by its priests and agents and was covered up (Ex. H). For purposes of showing intent for an intentional tort, the duty of the plaintiff is to show the, "a specific intent to accomplish the contemplated wrong." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 575, 861 S.E.2d 774, 780 (2021). Here, those acts including hiding the substantial abuser problem by moving known abusers and forcing the victims to keep quiet about their abuse, among other things.

The special treatment of these Defendants should end now. Doe is entitled to his day in court and the motions should be denied.

WHEREFORE the plaintiff prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

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June 3, 2025

Charleston, South Carolina

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000804

John Doe,.....Appellant,

v.

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

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STATEMENT OF ISSUES ON APPEAL

1. **The Circuit Court properly granted summary judgment to Respondents based upon the common law doctrine of charitable immunity applicable at the time Appellant allegedly suffered sexual abuse – Fall, 1970.**
2. **As independent sustaining grounds, the Circuit Court could properly have granted summary judgment based upon the statute of limitations or based upon the *res judicata* effect of the 2007 class action.**
3. **All of Appellant’s separate causes of action likewise failed due to lack of any evidence supporting the essential elements of each claim.**

STATEMENT OF THE CASE

A. Procedural History

John Doe filed this action against the Diocese of Charleston and “the Bishop of the Diocese of Charleston, in his official capacity”¹ in August, 2018 (R. pp. 58- 124). Respondents timely filed a motion to dismiss based upon charitable immunity and the *res judicata* effect of a 2007 class action settlement.² The Circuit Court denied those motions on March 4, 2019. The Diocese answered the Amended Complaint on March 19, 2019, and filed a motion for partial summary judgment regarding “the Bishop of the Diocese of Charleston, in his official capacity” on March 29, 2019³ (R. pp. 125-135 and R. pp. 742-748). The Diocese filed a supplemental brief regarding the important religious liberty issues and supplemental authority in support of its motion. (R. pp. 749-788). The Circuit Court denied the Diocese’s motion for partial summary judgment on July 24, 2019 (R. pp. 40-45)⁴

Pursuant to the Circuit Court’s scheduling order dated June 14, 2019, discovery closed on October 15, 2019, and the deadline for filing dispositive motions was October 30, 2019. (R. pp.

¹ The only proper legal entity is Bishop of Charleston, a Corporation Sole, an entity established by the General Assembly in 1880.

² Appellant has taken the position that the ruling on Respondents’ 12(b)(6) motion is dispositive of the issue for the remainder of the case. Respondent pointed out that the presiding judge who heard the motion to dismiss specifically recognized that Respondent could, and would, raise the issue again at the summary judgment stage of the litigation. The court below recognized that determination and overruled Appellant’s argument.

³ Both by statute and pursuant to the bylaws of the Corporation Sole, the ecclesiastical office of Bishop of Charleston operates in the secular world as the Corporation Sole. The Diocese maintains its position that the Circuit Court’s refusal to give full effect to its decisions regarding how it is organized and operates in civil law violated the First Amendment’s religion clauses.

⁴ After the Circuit Court denied reconsideration of that order, the Diocese appealed.

38-39) Respondents filed individual motions for summary judgment based upon the absence of any genuine issue of material fact regarding: (1) the defense of common law charitable immunity (R. pp. 789-842); (2) the defense of the statute of limitations (R. pp. 843-849);⁵ (3) the defense of *res judicata* (R. pp. 849-952); and that there was no genuine issue of material fact regarding the elements of each claim asserted by Appellant – (4) negligence, negligent retention, negligent supervision, and outrage (R. pp. 953-964); (5) conspiracy (R. pp. 975-999); (6) fraud-based and contract claims (R. pp. 964-967); and (7) breach of fiduciary duty (R. pp. 968-974). In support of the summary judgment motions, Respondent filed the affidavits of three people and filed supplemental affidavits of four expert witnesses. (R. pp. 980-1027).

Approximately November 15, 2019, the Circuit Court called a hearing on all pending motions for December 12, 2019. Prior to that hearing, Appellant filed nothing in opposition to Respondents' dispositive motions – he filed no deposition testimony, no discovery, no affidavits, and no briefing on the legal issues raised by Respondents' motions. Thus, Respondents' memoranda of law and evidentiary submissions constituted the only record before the Court. The Court heard oral argument on Respondents' dispositive motions based on charitable immunity, the statute of limitations, and the *res judicata* effect of the 2007 class action settlement. (R. pp. 594-677). On January 9, 2020, the Circuit Court granted Respondents' summary judgment motion based on charitable immunity (R. pp. 46-55). After the Circuit Court denied Appellant's Rule 59 motion (R. pp. 55-57), this appeal followed.

⁵ Respondents also pointed to the lack of admissible evidence required to satisfy *Moriarty v. Garden Sanctuary Church of God* regarding claimed repressed memory syndrome. (Supplemental Brief on Inadmissibility of Testimony (R. 1158-1178); Affidavits of expert witnesses Dr. Elizabeth Loftus (R. pp. 1040-1047), Dr. James Hudson (R. pp. 1048-1101), Dr. Janine Shelby (R. pp. 1102-1122), and Dr. Monica Applewhite (R. pp. 1123-1157).

B. Factual Background

Sacred Heart School operated as a ministry of Sacred Heart Parish and of the Roman Catholic Diocese of Charleston. The Diocese of Charleston, and its ministries and operations listed in the *Official Catholic Directory* are, and have been, recognized as charitable entities by the Internal Revenue Service (R. p. 985). There was no evidence in the record before the Circuit Court calling into question the Diocese's charitable status in 1970.

Appellant was a student at the Sacred Heart School. For the 1970 – 1971 school year, his 7th-Grade teacher was Chris Hartnett. Hartnett died many years ago. Another teacher at the school was Harold "Hal" Brooks. Brooks testified by affidavit that he only taught at Sacred Heart for the fall semester, 1970, before quitting to return to his father's business in Winnsboro (R. pp. 981-983). Thus, the only evidence before the Circuit Court established that the alleged abuse must have taken place during the fall of 1970.

Both Hartnett and Brooks had just graduated college, and teaching at Sacred Heart was the first full-time job for both men. While Brooks returned to his family business in late-1970, Hartnett became employed as a teacher at a middle school in Summerville, South Carolina, where he taught for much of the next 30 years. There is no record, nor any admissible evidence in the record, that either teacher was ever accused of sexual abuse of a minor or of any inappropriate behavior with a child before or after the alleged incidents. (R. pp. 981-983).

ARGUMENT

An appellate court reviews the grant of summary judgment under the same standard as the Trial Court.⁶

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.⁷

The Court cannot simply ignore facts that are unfavorable to the non-moving party, and must determine whether a verdict in favor of the party opposing summary judgment would be reasonably possible.⁸ It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine.⁹ The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.¹⁰ Rather, summary judgment should be granted when “plain, palpable, and indisputable facts exist on which reasonable minds cannot

⁶ *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

⁷ *NationsBank v. Scott Farm*, 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted)(emphasis added).

⁸ *Stewart v. State Farm Mut. Auto Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597, 600 (Ct. App. 2000).

⁹ *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984).

¹⁰ *Priest v. Brown*, 302 S.C. 405, 408–09, 396 S.E.2d 638, 639–40 (Ct. App. 1990).

differ.”¹¹ The fact that a case might present a novel issue does not render summary judgment inappropriate.¹² On appeal, the Court may affirm the grant of summary judgment on any ground found in the record.¹³

I. The Circuit Court properly granted summary judgment to Respondents based upon the common law doctrine of charitable immunity applicable at the time Appellant allegedly suffered sexual abuse – Fall, 1970.

The only evidence before the Circuit Court was that the Roman Catholic Diocese of Charleston was a charitable organization at the time Appellant claimed he was sexually abused by two teachers employed by Sacred Heart School in Charleston. The Diocese of Charleston has been a charitable organization since the Corporation Sole was created by the General Assembly in 1880.¹⁴ As the South Carolina Supreme Court, this Court, and the Circuit Courts have consistently ruled, the Diocese and its employees, agents, and officers, are all part of a charitable organization, and they are entitled to immunity from suit for torts that took place prior to 1981.¹⁵

For nearly all of the 20th Century, the law in South Carolina was that charities were immune from suit. The Supreme Court first adopted the rule of charitable immunity in *Lindler v. Columbia*

¹¹ See *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 617, 673 S.E. 2d 801, 803.

¹² See, *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Medical University of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004).

¹³ See *Moore v. Weinberg*, 373 S.C. 209, 229, 644 S.E.2d 740, 750 (Ct. App. 2007) and *Rule 220(e)*, *Rule 208(b)(2)*, *SCACR*.

¹⁴ Affidavit of John Barker and Act of the General Assembly, December 13, 1880 (R. pp. 934-989).

¹⁵ See i.e. *Orders of Hon. J.C. Nicholson in John Doe 193 v. Bishop of Charleston*, Civil Action 2013-CP-10-3733 (R. pp. 36-37); *Order of Hon. Deadra Jefferson in John Doe v. The Diocese of Charleston and Jane Doe*, Civil Action 02-CP-10-0770 (R. pp. 4-28).

Hosp. of Richmond Cnty.,¹⁶ which held that “a charitable corporation is not liable to injuries resulting from the negligent or tortious acts of a servant, in the course of his employment, where the corporation has exercised due care in his selection.”¹⁷ Two years later, in *Vermillion v. Women’s College of Due West* the Supreme Court expanded the doctrine of charitable immunity, holding that charitable immunity rendered charitable entities exempt from liability “for the torts of their superior officers, and agents as well as for those of their servants or employees whether these be selected with or without due care.”¹⁸ The Court stated that, in some instances, the rights of the individual must yield to the public good, and charities should not face ruin to compensate one or more individuals.¹⁹

Vermillion was a wrongful death case arising from the collapse of a wooden balcony in an auditorium on the college campus. Plaintiff’s estate claimed that the school or its superior officers and agents “failed to provide a safe place for an invited guest.”²⁰ The Court held that, while the injured person would have a remedy against the individual employee wrongdoer, she had no remedy against the charitable organization.²¹

The Supreme Court reaffirmed the defense of charitable immunity in *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, though it refused to extend immunity to

¹⁶ 98 S.C. 25, 81 S.E. 512 (1914).

¹⁷ *Lindler*, 81 S.E. at 512-13.

¹⁸ *Vermillion*, 104 S.C. 197, 201, 88 S.E. 649, 650 (S.C. 1916).

¹⁹ *Id.*

²⁰ *Id.*

²¹ It is worth noting that one of the alleged abusers is living and is known to Appellant’s counsel.

activities outside the scope of the charitable organization's mission.²² In 1966, the Supreme Court again reiterated the doctrine of charitable immunity from suit in *Decker v. Bishop of Charleston*.²³ In *Decker*, the Supreme Court applied charitable immunity to a tort claim against the Diocese and declared the Church to be a true charity entitled to immunity from suit altogether.²⁴ The Court further held that a charity's immunity from suit is unaffected by the fact that the charity procured liability insurance that would cover the loss.²⁵ Rather, the Diocese was immune from suit for torts committed by its employees. The *Decker* Court affirmed the dismissal of a negligence suit on the Diocese's demurrer. Importantly, the *Decker* Court was asked to overrule the doctrine of charitable immunity and declined to do so.

Prior to 1973, the law of charitable immunity was controlled by *Lindler* and *Vermillion*, which clearly held that charitable organizations could not be held liable for the torts or negligence of their officers, agents, or employees. Charitable organizations could be liable if they created a nuisance on their property that affected neighboring property owners; charitable organizations could be liable in tort if they became engaged in commercial ventures like parking lots. But, the rule itself held firm – charities were immune from suit for the torts committed by individuals affiliated with the organization.

²² *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, 111 S.E.2d 568 (1959).

²³ *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E.2d 264, 268 (1966).

²⁴ *Decker v. Bishop of Charleston*, 247 S.C. at 324-25, 147 S.E.2d at 268.

²⁵ *Id.* at 269.

In 1973, *Jeffcoat v. Caine*²⁶ addressed an allegation that South Carolina Baptist Hospital could be liable for false imprisonment, an intentional tort. The Supreme Court declined to extend charitable immunity to exempt charitable organizations from liability for that intentional tort. However, the Court refused to overturn its precedents, and *Lindler*, *Vermillion*, and *Decker* remained the law in South Carolina.

Four years later, in *Crowley v. Bob Jones Univ.*²⁷ the Supreme Court clarified its holding in *Jeffcoat*. *Crowley* involved allegations that Bob Jones was grossly negligent, reckless, and willful in failing to provide timely and prudent medical treatment to a minor plaintiff who sustained a severe eye injury while performing duties required of students at an elementary school operated by the university. The Court held that, under the *Jeffcoat* decision, if the plaintiff could prove that the defendant-organization itself committed an intentional tort, then the plaintiff could recover damages, even though the defendant was a charitable organization. The Court further held that charitable immunity was an affirmative defense that the charitable organization bore the burden of proving.

Jeffcoat and *Crowley* were issued years after the alleged abuse of Appellant. At the time of the events complained of, *Lindler*, *Vermillion*, and *Decker* controlled, and a charitable organization was immune from suit for the negligence and torts of individuals affiliated with the organization. As *Vermillion* made clear, “the injured person has his remedy against the actual wrongdoer,” as opposed to the charitable organization itself. But the Court also recognized that though the wrongdoer may be “financially irresponsible, . . . [t]he law does not undertake to provide a solvent defendant for every wrong done.” The Court then provided many examples where an injury cannot

²⁶ *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973). In relying nearly exclusively on *Jeffcoat v. Caine*, Appellant has effectively conceded that summary judgment was properly granted as to all claims except for Outrage/Intentional Infliction of Emotional Distress.

²⁷ *Crowley v. Bob Jones Univ.*, 268 S.C. 492, 234 S.E.2d 879 (1977)

be compensated under the law, noting that the State is “most deeply interested in the preservation of public charities.” The Court’s strong affirmations of charitable immunity held firm at the time Appellant alleges he was molested.²⁸

On the same day in 1977 the Supreme Court issued its decision in *Crowley*, it also issued *Brown v. Anderson Cnty. Hosp. Assoc.*²⁹ The defendant hospital was a charitable entity, and the plaintiff’s decedent was a patient at the time of his death caused by a fire in his hospital room. The plaintiff alleged that the fire and the hospital’s failure to protect the patient were due to the negligent and reckless acts of the hospital’s employees. The Court again summarized the state of the law of charitable immunity as it stood in 1977 as follows:

The decisions of this Court indicate that the present state of the law in South Carolina with respect to charitable immunity is the following: It is contrary to public policy to hold a charitable institution responsible for the negligence of its servants selected with due care, *Lindler v. Columbia Hospital*, 98 S.C. 25, 81 S.E. 512 (1914), or for servants, agents, employees, or superior officers selected without due care. *Vermillion v. Woman’s College of Due West*, 104 S.C. 197, 88 S.E. 649 (1916). The fact that a patient in a charitable hospital pays for a room and attendance does not render the hospital liable for injuries to the patient caused by the negligence of its servants. *Lindler v. Columbia Hospital*, *supra*. The relation of the injured person to the charity is of no importance so that it is immaterial whether the injured person is an employee or invitee of the institution. *Vermillion v. Woman’s College of Due West*, *supra*. A charitable institution, however, is not exempt from liability for trespass and nuisance arising out of its activities as a lessee. *Peden v. Furman University*, 155 S.C. 1, 151 S.E. 907 (1930). Nor does immunity extend to a situation where the activity out of which the liability arises is primarily commercial in character and wholly unconnected with the charitable purpose for which the corporation was organized. *Eiserhardt v. State Ag. and Mech. Soc. of S.C.*, 235 S.C. 305, 111 S.E. (2d) 568 (1959). Churches have also been exempted from liability for negligence, *Decker v. Bishop of Charleston*, 247 S.C. 317, 147 S.E. (2d) 264 (1966), holding additionally that procurement of liability insurance by the charity does not create liability to the person injured where the charity is otherwise immune from liability. Finally, where the charity commits an

²⁸ *Vermillion*, 104 S.C. at 201-2; 88 S.E. at 650.

²⁹ *Brown v. Anderson Cnty. Hosp. Assoc.*, 268 S.C. 479, 234 S.E.2d 873 (1977).

intentional tort, it may not interpose the defense of charitable immunity. *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E. 2d 258 (1973).³⁰

The Court then engaged in a lengthy discussion of the public policy reasons behind the doctrine of charitable immunity and the gradual erosion of the doctrine in other jurisdictions. Ultimately, the Court rejected the argument that charitable immunity should be abrogated altogether.³¹ The Court adopted an intermediate ground and abolished charitable immunity *only* “for a hospital’s heedless or reckless disregard for the plaintiff’s rights.”³² The Court then added that “[w]e do not extend it so as to abrogate or modify the defense of charitable immunity as to churches, rescue missions, orphanages, colleges, and other institutions which are charitable in nature, purpose and operation.”³³

Not until 1981 did the South Carolina Supreme Court abrogate the doctrine of charitable immunity.³⁴ However, the Court only did away with charitable immunity going forward. The abrogation, like any other modification to charitable immunity, could not be applied

³⁰ *Brown v. Anderson Cty. Hosp. Assoc.*, 268 S.C. 479, 483-84, 234 S.E.2d 873, 874-75 (1977)

³¹ *Id.* 68 S.C. at 487, 234 S.E.2d at 876-77.

³² *Id.*

³³ *Id.*

³⁴ *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981).

retrospectively.³⁵ Thus, a Court must apply charitable immunity as it existed at the time of the allegedly tortious activity.³⁶ *Jeffcoat* and *Crowley* are simply inapplicable to Appellant's claims.

As late as 1979, in *Douglass v. Florence Gen'l. Hosp.*, the Supreme Court reaffirmed the doctrine of charitable immunity for torts that occurred while the doctrine remained effective.³⁷ The plaintiff initiated that case prior to the Supreme Court's decision in *Brown v. Anderson Cty. Hosp.*, though the case was pending when the *Brown* decision was issued. The trial court dismissed the plaintiff's Complaint based upon charitable immunity and determined that *Brown* applied only prospectively and could not give life to plaintiff's claims. The Supreme Court affirmed that decision because *Brown* created liability where, before, there had been none. Thus, in that case, Florence General Hospital was immune from suit for its employees' negligence, even if heedless or reckless.³⁸ Clearly, therefore, changes to *Lindler*, like those in *Eiserhardt*, or *Jeffcoat* can only be applied prospectively.

In the present case, Appellant's own allegations and testimony establish that his alleged abuse could only have taken place sometime during the 1970-71 school year. One of the accused, Hal Brooks, testifies in his affidavit that he only taught at Sacred Heart School until December,

³⁵ See *Hupman v. Erskine College*, 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984), *Hasell v. Medical Society of S.C.* 288 S.C. 318, 342 S.E. 594, 595 (1986) see also *Brown v. Anderson Cty. Hosp.*, 268 S.C. 479, 234 S.E.2d 873 (S.C. 1977) (modifying charitable immunity as to hospitals only to render them liable for heedless and reckless acts and prospectively only).

³⁶ See *Laughridge v. Parkinson*, 304 S.C. 51, 403 S.E.2d 120, 120 (1991) (holding that charitable immunity law in existence at the time of tortious conduct in 1979 must be applied).

³⁷ 273 S.C. 716, 259 S.E.2d 117 (S.C. 1979).

³⁸ *Douglass v. Florence Gen'l Hosp.*, 273 S.C. 716, 720, 259 S.E.2d 117, 118.

1970.³⁹ Therefore, the alleged abuse, which Brooks denies, would have taken place when common law charitable immunity was absolute. – As a result, the Diocese is completely immune from suit, and the Circuit Court properly granted summary judgment.⁴⁰

As previously noted, what matters for purposes of the present appeal is the law of charitable immunity as it existed in 1970-1971. At that time, *Jeffcoat* had not been decided, and prior to *Jeffcoat*, the Supreme Court had never held that charitable organizations could be liable for intentional torts such as false imprisonment. To the contrary, the Court had always granted sweeping tort immunity to charities before the erosion process started in *Jeffcoat* in 1973. Thus, Appellant's argument that *Jeffcoat* represents the state of the law when his alleged abuse occurred is clearly erroneous. Had that alleged abuse taken place on or after the date of the *Jeffcoat* opinion, Appellant's position might have merit. But as things stand, *Jeffcoat* was not the law of South Carolina in the years relevant to the present case. *Jeffcoat* altered the common law in a manner that created liability where none had previously existed. Accordingly, *Jeffcoat* only affected future claims, and it is irrelevant to this appeal.

³⁹ See Affidavit of Hal Brooks submitted with the Diocese's motions for summary judgment (R. pp. 981-983).

⁴⁰ The Diocese is, and has been, a charity entitled to common law charitable immunity, which was the established law at the time of any alleged tort. It is without question that both South Carolina and federal authorities have long determined the Diocese to be a charitable institution. South Carolina law does not permit the courts of this state to substitute its judgment for the judgment of an agency. Unlike the legislatively created limitation on liability for charities, immunity from suit is *not* an issue to be applied after a jury verdict. Rather, pre-1981 charitable immunity shields charities from this suit altogether.

Yet, even if Appellant were correct, and *Jeffcoat*'s exception for intentional torts applies, the Circuit Court's decision is still correct because Appellant has not presented evidence sufficient to support the one and only intentional tort he alleges, *i.e.* outrage and intentional infliction of emotional distress. The record before the Circuit Court was bereft of any evidence that the Diocese intended harm toward Appellant or that the Diocese engaged in any egregious, extreme, or outrageous conduct whatsoever.⁴¹

II. As independent sustaining grounds, the Circuit Court could properly have granted summary judgment based upon the statute of limitations or based upon the *res judicata* effect of the 2007 class action.

A respondent "may raise on appeal additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled upon by the lower court."⁴² In the present case, Respondent presented additional summary judgment grounds to the Circuit Court. Due to the decision on the charitable immunity issue, the court found it unnecessary to reach those additional grounds. Yet, even if this Court were to disagree with the Circuit Court on charitable immunity, Respondent's other issues serve as sufficient additional sustaining grounds to support the summary judgment granted below.

a. Respondent was also entitled to summary judgment based on the Statute of Limitations / Lack of Admissible Evidence regarding Repressed Memory Syndrome.

⁴¹ Respondent moved for summary judgment on Appellant's claim of Outrage/Intentional Infliction of Emotional Distress, pointing out that there was no evidence to support the essential elements of the claim. The record contains nothing in opposition to that motion.

⁴² *I'On, LLC v. Town of Mt. Pleasant*, 330 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

Respondent moved for summary judgment based upon the statute of limitations (R. pp. 843-848). Appellant claims to have been molested at age 14 in 1970. Appellant further claimed that “his memory was repressed” and later recovered as a result of other litigation, news reports and other circumstances. (R. p. 64, ¶ 16).

Both the South Carolina Supreme Court and this Court have expressed deep concerns regarding so-called “repressed memory syndrome” in their respective decisions in *Moriarty v. Garden Sanctuary Church of God*.⁴³ As both courts acknowledged twenty years ago, the theory of repressed memory syndrome was controversial among psychiatrists and psychologists. According to the Supreme Court, there was, even then, no consensus among the psychological, medical, and legal communities regarding the validity of the theory of repressed memory.⁴⁴ 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 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.”⁴⁵ Because of these concerns, the Supreme Court requires

⁴³ *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (S.C. 2000).

⁴⁴ *Moriarty*, 341 S.C. at 331 534 S.E.2d at 677.

⁴⁵ *Moriarty*, 534 S.E.2d at 680 citing *Roe v. Doe*, 28 F.3d 404, 408-409 (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. v. R.V.*, 933 S.W.2d 1, 7-15 (discovery rule applies in repressed memory case only when claim is “inherently undiscoverable” and “objectively verifiable” through corroborating evidence; court

that a plaintiff claiming repression must present both at summary judgment stage and at trial: (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.⁴⁶ This corroborating evidence is a prerequisite for application of the discovery rule to toll the statute of limitations.

There was no admissible evidence before the Circuit Court supporting the requirement of objectively verifiable evidence that Appellant was sexually abused. There was no evidence that he reported the abuse to anyone. There was no evidence that he went to a doctor or any other health care provider. There was no evidence that either accused teacher was ever convicted, nor was there any evidence that either teacher confessed to abusing Appellant. 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 were no photographs or eye witnesses. There was no evidence that either teacher has ever been

assumed plaintiff's injury was inherently undiscoverable, but rejected application of discovery rule because she offered no corroborating evidence).

⁴⁶ *Moriarty*, 341 S.C. at 336-7, 534 S.E.2d at 680, *quoting* 334, S.C. at 171, 511 S.E.2d at 710.

accused of molesting any other child. There is a complete absence of contemporaneous circumstantial evidence that Appellant was abused in 1970.

In addition, Appellant failed to present admissible expert testimony to establish the abuse, the fact of the repressed memories, and that those memories were repressed between Appellant's 18th birthday (May 28, 1975) and sometime after August 8, 2015 (three years prior to filing the Complaint). There was no admissible expert testimony before the Circuit Court regarding repressed memory syndrome. There are no neuropsychiatric tests that would confirm Appellant ever experienced actual repression of childhood memories. There was no expert testimony that Appellant's so-called recovered memories are even accurate. There was no expert testimony establishing when Appellant began to repress any memory or when he recovered them, or that he had them at all.

In short, Appellant did not come forward with a shred of admissible evidence that satisfies the heavy burden placed upon him in *Moriarty v. Garden Sanctuary Church of God*.⁴⁷ Appellant's inability to satisfy that burden places him in exactly the position that gave both this Court and the Supreme Court such grave concern – i.e. the only evidence of repressed memory is self-reporting by Appellant. There is no objectively verifiable evidence, nor is there admissible expert testimony as the *Moriarty* Court demanded. Failing that, the discovery rule does not – and cannot – apply.

⁴⁷ Importantly, Respondent filed a motion to exclude testimony by Appellant's treating therapists, none of which was in the record before the Circuit Court at the time the Court entered summary judgment in Respondent's favor. The motion challenged the qualifications of the expert witnesses identified by Appellant and argued that their testimony should be excluded as inadmissible under Rule 702 SCRE. See R. pp. 843-848 and R. pp. 1158-1179; R. pp. 1038-1158. Appellant did not file any testimony of the treating therapists in any event.

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.⁴⁸ The statute of limitations is tolled until a person reaches his or her majority. As the Supreme Court has explained:

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).⁴⁹

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.”⁵⁰

In the present case, Appellant was born in 1957, and he alleges that the sexual abuse occurred during the 1970-71 school year. He reached his majority at in 1975, when he turned 18.⁵¹

⁴⁸ 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*, 354 S.C. 349, 352, 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*, 279 S.C. 382, 385, 308 S.E.2d 778, 780 (S.C. 1983); *U.S. Rubber Co. v. McManus*, 211 S.C. 342, 349-350, 45 S.E.2d 335, 338 (S.C. 1947); *Stoddard v. Owings*, 42 S.C. 88, 91, 20 S.E. 25, 26 (S.C. 1894).

⁴⁹ *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (S.C. 1996).

⁵⁰ *Id.* (internal citations omitted).

⁵¹ S.C. Code Ann. § 15-1-320 changed the age of majority to 18 effective February 6, 1975, just prior to Appellant’s 18th birthday.

Thus, the statute of limitations ran on Appellant's claims no later than 1978. As discussed above, the discovery rule cannot operate to save those claims from the effect of the statute of limitations. Accordingly, Appellant's claims are long since time-barred, and this serves as an additional basis for this Court to affirm the grant of summary judgment to Respondent.

b. Respondent was further entitled to summary judgment based upon the *res judicata* effect of a 2007 class action settlement.

Respondent additionally moved for summary judgment based upon the 2007 class action settlement and judgment entered in Dorchester County. The Diocese of Charleston entered into a Class Action Settlement of all potential claims that employees or agents of the Diocese sexually abused minors.⁵² The Settlement Agreement addressed the claims of two classes of individuals:

- All individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by the Diocese of Charleston's personnel ("primary class"), and
- those individuals' spouses and parents ("consortium class").

A Fairness Hearing was held before the Honorable Diane S. Goodstein, on March 9, 2007, and the Court gave final approval to the Settlement Agreement by Orders dated July 30, 2007 and August 31, 2007.⁵³ The Circuit 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

⁵² See 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).

⁵³ See Order Certifying Classes and Giving Preliminary Approval to Settlement; July 30, 2007 Order; August 31, 2007 Order.

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 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. 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 that judgment entered, Appellant’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 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.”⁵⁴ “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 that party a right to a remedy of one form or another based thereon.”⁵⁵

⁵⁴ *Judy v. Judy*, 403 S.C. 203, 677 S.E.2d 213, 217 (Ct. App. 2009); citing *Plott v. Justin Enter.*, 374 S.C. 504, 511-512, 649 S.E.2d 92, 95 (Ct. App. 2007).

⁵⁵ *Judy*, 677 S.E.2d at 218 quoting *Plum Creek Devel. v. City of Conway*, 334 S.C. 30, 34-35, 512 S.E.2d 106, 109 (1999).

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 actually litigated and as to issues that might have been litigated in the first action.”⁵⁶ Because the class action judgment is binding upon all those for whom the notice program was reasonably calculated to reach, Appellant’s claims are now barred by *res judicata*. All three elements of *res judicata* are present – the Appellant’s claims of sexual abuse are identical to the claims asserted in the court-approved class action settlement; Appellant alleges he was a minor who suffered sexual abuse by an employee, agent, or priest of the Diocese of Charleston; and the allegations of abuse are the same as the conduct defined in the Class Action settlement. Appellant 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.⁵⁷ 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.⁵⁸ There is no dispute that Appellant’s claims were encompassed by the Class Action Settlement and Order Approving Settlement. Appellant neither participated in, nor opted out of the Class Action Settlement.

⁵⁶ *Treadaway v. Smith*, 325 S.C. 367, 376-378, 479 S.E.2d 849, 855 (Ct. App. 1996).

⁵⁷ *Cooper v. Fed. Res. Bank of Richmond*, 467 U.S. 867, 874 (1984).

⁵⁸ See Orders of Class Action Court.

Appellant'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 action is binding on the class members in any subsequent litigation."⁵⁹ On the face of his Complaint, Appellant 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. Respondents likewise are identical – the Catholic Diocese of Charleston and the Bishop of Charleston. Therefore, the identity of parties cannot be disputed.

Finally, Appellant could have raised his other claims in the approved Class Action claims process. Appellant claims to have been sexually abused as a minor by agents, employees, or priests of the Diocese. The Diocese litigated and resolved all claims of past sexual abuse in the Class Action Court, ultimately buying its peace through the Class Action Settlement Agreement. 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 Appellant had a full and fair opportunity to litigate the issues raised in his Complaint.

Appellant is barred from re-litigating 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

⁵⁹ *Id.*

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 circumstances to apprise interested parties of the pendency of the action and to give them an opportunity to present objections.⁶⁰ The Class Action court had great flexibility in determining what was the most practical notice under the circumstances to meet the requirements of due process.⁶¹ 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 further took specific note of the national and international publicity regarding the Class Action Settlement.

The Due Process Clause does not require inquiry into whether any individual received notice of class settlement. Rather, the Constitution merely requires that notice be reasonably calculated to reach absent parties.⁶² 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*. Therefore, regardless of how this Court rules on the charitable immunity issue, summary judgment for Respondent was still proper and should be affirmed.

III. All of Appellant's separate causes of action likewise failed due to lack of any evidence supporting the essential elements of each claim.

Respondents also filed separate summary judgment motions highlighting the lack of any genuine issue of material fact regarding the required elements of each claim and asserting that they

⁶⁰ See *Phillips Petroleum v. Shutts*, 472 U.S. 797, 812 (1985) (internal quotations omitted).

⁶¹ Protecting the Members of the Class: Notice, 7B *Fed. Prac. & Proc. Civ.* § 1793 (3d. ed. 2014).

⁶² *Newburg on Class Actions* § 8:35 (5th. Ed. 2014).

were entitled to judgment as a matter of law. Appellant did not submit anything in response to the Circuit Court prior to the hearing on all pending motions on December 12, 2019. As such, summary judgment was proper as to each claim and these unopposed motions stand as independent sustaining grounds. *See I'On v. Town of Mt. Pleasant, supra*.

a. Summary judgment was warranted as to Appellant's fraud and fraud-based claims and contract claims.

Appellant came forward with no admissible evidence regarding the essential elements of his claims for Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, or Fraudulent Concealment. Without any evidence to support the elements of these claims, Appellant's Fourth, Seventh, and Eighth causes of action failed as a matter of law.

i. Fraudulent Concealment

A claim for fraudulent concealment arises only where a party is under a duty to disclose information based upon a fiduciary relationship between the parties. As the Supreme Court has 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.⁶³

Appellant has never pointed to any admissible evidence that he entered into any transaction with the Diocese that would give rise to a duty to disclose. There is no evidence that Appellant and

⁶³ *See Ardis v. Cox*, 314 S.C. 512, 341 S.E.2d 267, 270 (Ct. App. 1993); *quoting Jacobson v. Yaschik* 249 S.C. 577, 155 S.E.2d 601, 605 (1967).

Respondent entered into any fiduciary relationship that would trigger a duty to disclose any facts known to Respondent. Likewise, there was no admissible evidence that Respondent even knew anything that it could have disclosed to Appellant or anyone else. Thus, Appellant's fraudulent concealment claim was fatally deficient.

ii. Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act

Appellant failed to point out any material fact to support his allegations that he entered into any contract with the Respondents; that Respondents breached that contract; or that any fraudulent act accompanied the breach.⁶⁴ Further, Appellant failed to plead fraud with the specificity required under Rule 9, SCRCP, and he failed to submit any evidence that Respondent engaged in any fraudulent intent relating to some breach of contract.

The Circuit Court could properly have entered judgment as a matter of law on Appellant's fraud and contract claims, as there is quite simply no evidence to support the essential elements of any such claim. Appellant did not establish any fraud or fraudulent intent, nor did he establish that Respondents under any duty to disclose to him information about anything. Further, Appellant failed to establish the essential elements of his claims for breach of contract or breach of contract accompanied by a fraudulent act.

b. There was no genuine issue of material fact regarding Appellant's claims for Breach of Fiduciary Duty, and summary judgment was appropriate.

i. Breach of Fiduciary Duty

⁶⁴ *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 53-55, 336 S.E.2d 502, 503-504 (Ct. App. 1985).

Appellant contended that, by virtue of his attendance at Sacred Heart School, as well as his status as a parishioner at Sacred Heart Church, he entered into a fiduciary relationship with Respondents in this matter. Appellant alleged that Respondents (and their agents, including the accused teachers) assumed a duty *in loco parentis*, owing students at the school a safe environment based on a relationship of confidence and trust. Appellant pleaded that Respondents' agents negligently breached this duty through their predatory actions and that the Respondents negligently breached this duty by virtue of their alleged failure to respond properly to the agents' acts. However, South Carolina courts have routinely held that the student-school relationship does not give rise to a fiduciary duty under the theory of *in loco parentis* or any other theory.⁶⁵ Given that no such duties exist between a school and student, no such duty could be attributable to the Respondents in relation to the school either. As a result, Appellant's claim for Breach of Fiduciary Duty failed as a matter of law.

Appellant claimed a Breach of Fiduciary Duty as a result of negligent acts. In order to successfully recover for damages on a cause of action sounding in negligence, three basic elements must be met: (1) a duty of care must be legally owed by the alleged tortfeasor to the plaintiff; (2) the tortfeasor must have breached that duty; and, (3) the breach must have caused the plaintiff's damages.⁶⁶ An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.⁶⁷ The question of whether a duty exists is a matter of

⁶⁵ See *e.g. Hendricks v. Clemson Univ.* 353 S.C. 449, 578 S.E.2d 711 (2003); and *Doe v. Greenville Cty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007)(affirming trial court's dismissal of breach of fiduciary duty claim).

⁶⁶ *Huggins v. Citibank, N.A.*, 355 S.C. 329, 585 S.E.2d 275 (2003).

⁶⁷ *Id.*

law for the court's determination, not an issue of fact for a jury.⁶⁸ Without a duty, there can be no actionable negligence.⁶⁹

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 most recent and oft-cited case is that of *Doe v. Greenville County Sch. Dist.*⁷⁰ In *Doe*, a substitute teacher engaged in a sexual relationship with a 14-year old student. The student's parents 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 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."⁷¹ Ultimately, the Supreme Court agreed that the plaintiffs had not alleged any facts "under which this Court could find another duty owed."⁷²

⁶⁸ *Id.*

⁶⁹ *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998).

⁷⁰ *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007).

⁷¹ *Doe v. Greenville*, 375 S.C. at 72, 651 S.E.2d at 310.

⁷² It should be noted that in the *Doe v. Greenville* case, the Court recognized a duty to supervise under the South Carolina Tort Claims Act, which applied to the School District given its status as a state entity. However, the Court explicitly declined to recognize any duties beyond those

Appellant in the case at bar has similarly failed to establish any facts that would overcome South Carolina's explicit rejection of a fiduciary duty (*in loco parentis* or otherwise) between a student and a school.⁷³ Appellant essentially restated his Negligent Supervision claim and couched it in terms of an even greater duty than what he alleged in that claim. Yet, based on *Doe v. Greenville*, the claim could not survive against the school itself, much less against entities even further removed from the relationship such as the Bishop and the Diocese. There is no evidence that, as Appellant alleged in his Complaint, Respondent directly or indirectly entered into any relationship that could be considered fiduciary in nature. In fact, prior to *Doe v. Greenville*, South Carolina's highest court had refused to recognize a fiduciary duty existing between a school and a student in part because of the very nature of fiduciary duties as primarily related to business and financial dealings.⁷⁴

In *Hendricks v. Clemson Univ.*, a junior college student transferred to Clemson University in order to play Division I baseball. Upon reporting to Clemson, the student met with his academic advisor, who recommended that the student declare Speech and Communications as his major. His advisor also provided guidance as to how many hours the student should take, as well as the types of classes to be completed. Later in the semester, the advisor realized she had recommended a set of classes that would not satisfy the NCAA's eligibility requirements, and the NCAA ultimately

provided under the Tort Claims Act. Further, there is no indication that (nor any plausible reason why) a private or parochial school would be treated any differently under the common law.

⁷³ In John E. Rumel's *Back to the Future: The In Loco Parentis Doctrine and Its Impact on Whether K-12 Schools and Teachers Owe a Fiduciary Duty to Students*, 46 Ind. L. Rev. 711 (2013), the *Doe v. Greenville* case is listed under the section titled "Cases Categorically Refusing to Recognize the Existence of a Fiduciary Relationship Between K-12 Schools and School Supervisory Personnel and Students."

⁷⁴ See: *Hendricks v. Clemson Univ.* 353 S.C. 449, 578 S.E.2d 711 (2003)

declared the student ineligible to play baseball for Clemson. The student then filed suit on claims including negligence, breach of fiduciary duty, and breach of contract. The trial court dismissed all claims on summary judgment; however, this Court reversed and found that there were genuine issues of material fact with regard to each cause of action.

Upon review, the Supreme Court first noted that the existence of a duty between two parties is a legal determination, which rests with the court as opposed to a jury.⁷⁵ In determining no fiduciary duty exists between an academic advisor and a student, the Court explained:

This Court has recognized certain relationships are by nature fiduciary, such as the attorney client relationship. [Citation omitted]. The relationship between advisor and student has not been so recognized thus far... Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters. We decline to recognize the relationship between advisor and student as a fiduciary one.⁷⁶

The Supreme Court is clear in its categorization of the types of relationships that qualify as fiduciary in nature as well as its preference to confine such duties to those types. In *Hendricks*, the advisor-student relationship was not considered to be of the type associated with fiduciaries, even though the advisor testified in her deposition that her job consisted of making sure the student was academically successful and remained NCAA-eligible while on a path to graduate. Those responsibilities, however, did not lead to the existence of a fiduciary duty between the student and his advisor or the student and the school.⁷⁷

⁷⁵ *Hendricks*, 353 S.C. at 458, 578 S.E.2d at 715 (2003).

⁷⁶ *Id.*

⁷⁷ It must be noted that, although the opinion in *Hendricks* talks about the student-advisor relationship, the suit is against the University. As such, the claims that were dismissed were for breach of fiduciary duty as to Clemson University.

Other jurisdictions have addressed this issue under facts nearly identical to the case at bar and found no duty *in loco parentis* and no fiduciary duty existing between students and a diocese that governed the area of their parochial school.⁷⁸ In *Bernie*, a number of students filed claims against a litany of parties with regard to alleged sexual abuse at St. Paul's School, a boarding school located within the Yankton Sioux Reservation in South Dakota. Included in the suit was the Catholic Diocese of Sioux Falls, which the former students allege was a quasi-operator of the school during the time in which the alleged abuses were carried out by nuns and monks of various Orders teaching at the school.⁷⁹ The former students alleged that the Diocese of Sioux Falls had a duty of protection *in loco parentis* as well as a fiduciary duty of protection.

The Supreme Court of South Dakota affirmed the dismissal of the claims regarding the above-mentioned duties of protection because the former students had provided no evidence to show that the Diocese took on a custodial or protective role with regard to the students at the school.⁸⁰ Rather, the Court reasoned, any such duty would have existed between the monks, nuns, and other staffers actually working at the school.⁸¹ There was no evidence to suggest that the Diocese had undertaken such responsibility, even though the Diocese placed the students at the school.⁸²

⁷⁸ *Bernie v. Catholic Diocese of Sioux Falls*, 2012 SD 63, 821 N.W.2d 232 (2012).

⁷⁹ The former students were apparently unable to show that the Diocese had any role in the creation of the school or in the day-to-day operation of the school. However, the former students alleged that the school could not have existed or operated without the approval and participation of the Catholic Diocese of Sioux Falls.

⁸⁰ *Bernie*, 2012 SD 63, 821 N.W.2d at 242.

⁸¹ *Id.*

⁸² *Id.*

This reasoning applies equally to the case at bar. There is no evidence to support a fiduciary relationship between the Respondent and the Appellants in this case. Therefore, there was no genuine issue of material fact, and the claim fails as a matter of law.

South Carolina's Supreme Court has unequivocally denied that a fiduciary duty exists between a student and a school, whether *in loco parentis* or otherwise. The common law of this State recognizes fiduciary duties as arising out of business, legal, and financial dealings among others. However, when given opportunities to expand the concept of fiduciary duties to the students of a school (or its agents), the Court has specifically declined to do so. Other jurisdictions have similarly failed to find that a Diocese would even owe such a duty with regard to a school operated by those under its governance. As a result, Appellant's allegation of breach of fiduciary duty is in contravention to the law of South Carolina and must fail.

c. Appellant's claims for conspiracy also fails as a matter of law.

Appellant's Complaint contains only the barest allegations of the alleged conspiracy. Paragraph 46 contains the sum total of the conspiracy allegations— that two unnamed employees were “aware of Hartnett and Brooks’ sexually deviant propensities with minors” and that these employees failed to report their knowledge of those propensities. Appellant alleges that the two unnamed employees engaged in a “conspiracy of silence.” Appellant pointed to no admissible evidence of who these two alleged employees were, what they allegedly knew, or when anyone reached some agreement to harm Appellant. Further, there was absolutely no evidence that anyone took any action intended to harm Appellant, nor is there any admissible evidence that anyone took any action in furtherance of the agreement.

Appellant's allegations of damages are virtually the same throughout the Complaint:

47. As a direct and proximate result of the conspiratorial 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 damages in a sufficient amount to deter such similar conduct by these Defendants or others.

Appellant does not plead special damages with any particularity, nor does he identify how he was damaged by the alleged conspiracy that was different from his general allegations of damages.

The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.⁸³ The difference between civil and criminal conspiracy is, in criminal conspiracy, the focus of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design.⁸⁴ Moreover, “because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Id.* “If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.”⁸⁵ The primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the Appellant.⁸⁶ The focus of a civil conspiracy claim is the manner in which the plaintiff suffers

⁸³ *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009).

⁸⁴ *Id.*; see also *Pye v. Estate of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006) (“The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.”).

⁸⁵ *Id.*

⁸⁶ *Pye* 369 S.C. at 567–68, 633 S.E.2d at 511 (2006).

damage as a result of an overt action done pursuant to a common design.⁸⁷ A civil conspiracy claim must be supported by facts independent of the other causes of action in the complaint, and the plaintiff may not simply incorporate allegations that support other causes of action.⁸⁸

Appellant failed to come forward with any evidence that there was an agreement between two or more persons to harm him. Importantly, under the intracorporate immunity doctrine, a corporate entity cannot conspire with itself; an entity cannot conspire with its employees or agents; and corporate employees cannot conspire with each other when acting in the scope of their employment.⁸⁹ Where employees are acting outside the scope of their employment, then those individuals must be named in the complaint.⁹⁰

Quite simply, there is no admissible evidence in this case of a combination of two or more persons. There is only the allegation in the Complaint that two unnamed and unidentified employees agreed to keep quiet about the alleged perversions of Hartnett and Brooks – though there is not a shred of admissible evidence to support this allegation. Neither is there a shred of evidence that these unnamed co-conspirators intended to harm Appellant or that there was any overt act in furtherance of the agreement. Rather, the mere allegations of the Complaint are that the conspirators' silence about the alleged perversion of Hartnett and Brooks allowed the teachers to molest Appellant. There is no evidence that the conspirators intended for Appellant to suffer harm from the agreement, or that they engaged in some affirmative act in furtherance of it.

⁸⁷ *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91, 95 (Ct. App. 1989).

⁸⁸ *Todd v. S.C. Farm Bureau Mut. Ins. Co.* 276 S.C. 284, 278 S.E.2d 607 (1981).

⁸⁹ *See Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 701 S.E.2d 39, 46 (Ct. App. 2010).

⁹⁰ *Id.* at 46 citing with approval *Garza v. City of Omaha*, 814 F.2d 553, 556 (8th Cir. 1987).

The law requires that Appellant prove special damages that were proximately caused by the civil conspiracy itself, and that go beyond the damages alleged in the other causes of action contained in the Complaint. A plaintiff cannot recover damages both for the wrongful act and for conspiracy to commit the wrongful act.⁹¹ Where the damages alleged were the same as the damages alleged elsewhere in the complaint, the conspiracy claim must be dismissed as a matter of law.⁹² Appellant cannot carry this burden and cannot present any genuine issue of material fact in support of his claim. Therefore, the civil conspiracy cause of action must fail, and regardless of any other decisions, this Court should affirm summary judgment as to that claim.

CONCLUSION

The Circuit Court's judgment was correct in all respects and should be affirmed. The law of charitable immunity in effect at the time of the alleged abuse barred claims against charitable organizations for the torts of their employees or agents. As such, Respondents were entitled to judgment as a matter of law on all claims and the case properly was dismissed in its entirety.

In the alternative, Respondents were entitled to judgment as a matter of law on all claims based upon the absence of any admissible evidence to satisfy the heavy burden established under *Moriarty v. Garden Sanctuary Church of God* regarding assertions that the statute of limitations should be tolled where a plaintiff claims to suffer from repressed memory syndrome. Absent the required proof, Appellant's claims fail because they are barred by the applicable statute of limitations. Similarly, Appellant's claims fail because they are barred by the *res judicata* effect of the 2007 class action judgment. The record contains no evidence contradicting Respondents'

⁹¹ See *Todd v. S.C. Farm Bureau* and *Vaught v. Waites*, *supra*.

⁹² *Todd v. S.C. Farm Bureau*, 276 S.C. at 292, 278 S.E.2d at 611; see also *Vaught*, 387 S.E.2d at 95.

assertion that Appellant was a member of the class as defined in the judgment and is thus barred from asserting any claim.

Finally, each of Appellant's separate causes of action fail as a matter of law and Respondent is entitled to judgment on each. Appellant failed to establish the requisite elements of each claim and, in the absence of any specific proof, Respondent is entitled to summary judgment.

For the foregoing reasons, the Circuit Court's judgment should be affirmed.

Respectfully submitted,

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

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ATTORNEYS FOR DIOCESE RESPONDENTS

February 8, 2021

EXHIBIT B

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

John Doe, Petitioner,

v.

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

Appellate Case No. 2023-001491

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
Bentley Price, Circuit Court Judge

Opinion No. 28252
Heard December 10, 2024 – Filed January 15, 2025

REVERSED AND REMANDED

Lawrence E. Richter, Jr., of The Richter Firm, LLC, and
David K. Haller, of Haller Law Firm, both of Charleston;
and James B. Richardson, Jr., of Columbia, all for
Petitioner John Doe.

Richard S. Dukes, Jr., of Turner Padget Graham &
Laney, PA, of Charleston, and R. Hawthorne Barrett, of

Turner Padget Graham & Laney, PA, of Columbia, both
for Respondents.

JUSTICE HILL: The question in this case requires us to embark upon some legal time travel in search of the answer. The question is whether the doctrine of charitable immunity, which we abolished prospectively in *Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n*, 277 S.C. 1, 4, 282 S.E.2d 230, 231–32 (1981), shields Respondents, the Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity (collectively, the Diocese), from being sued for intentional torts that allegedly occurred in 1970. We conclude South Carolina has never extended charitable immunity to cover intentional torts. We therefore reverse the decision of the court of appeals and remand this case to the trial court.

I.

Petitioner alleges numerous causes of action against the Diocese, including the intentional torts of intentional infliction of emotional distress, breach of fiduciary duty, fraudulent concealment, and civil conspiracy. The allegations arise from Petitioner's claims that he was sexually assaulted by two of his teachers in 1970 while attending seventh grade at a school operated by the Diocese. Petitioner's claims are not against the teachers or based on respondeat superior. Rather, he alleges the Diocese has direct, independent tort liability for certain conduct that caused his harm. He also claims he suffers from a repressed memory condition that entitles him to toll the statute of limitations, though that issue is not now before us. The circuit court granted the Diocese summary judgment, reasoning Petitioner could not recover because all of his claims were barred by the charitable immunity doctrine. The court of appeals agreed, concluding the doctrine, as it existed in 1970, immunized charities from all tort liability, including intentional torts. *Doe v. Bishop of Charleston*, 440 S.C. 640, 648, 891 S.E.2d 522, 527 (Ct. App. 2023).

Joining other states, South Carolina adopted charitable immunity in *Lindler v. Columbia Hosp. of Richland Cnty.*, 98 S.C. 25, 81 S.E. 512 (1914). The doctrine was controversial even then, as illustrated by Justice Fraser's lengthy dissent. The doctrine arose in England in 1846. Before charitable immunity reached American shores, the House of Lords had killed it off in England. *Prosser and Keeton on the Law of Torts* § 133 (W. P. Keeton et al. 5th ed. 1984). That did not stop us and most

states from adopting it, justifying it on various grounds of public policy. Over time, logic and experience discredited all these grounds. Note, *The Quality of Mercy: "Charitable Torts" and Their Continuing Immunity*, 100 Harv. L. Rev. 1382 (1987); see also *Picher v. Roman Cath. Bishop of Portland*, 974 A.2d 286 (Me. 2009). See generally Restatement (Second) of Torts § 895E (Am. L. Inst. 1979) (declining to adopt charitable immunity and canvassing its history and policy rationales). By the time we decided *Fitzer*, the disfavored doctrine was beating a steady retreat from many jurisdictions.

With this history in mind, we move to the dispositive issue: the state of charitable immunity in South Carolina as of 1970, the date of Petitioner's alleged injury at the Diocese's hands.

The Diocese takes the view that, as of 1970, charitable immunity extended to all torts, including intentional ones. This view can prevail only if we agree with the Diocese that our decision in *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973), changed the law of charitable immunity by cutting back the reach of the doctrine to negligent torts only. Because Petitioner's causes of action arose in 1970, before *Jeffcoat* was decided, the Diocese contends the doctrine as it existed in 1970 cloaks it with blanket immunity for all the torts Petitioner pleads. The court of appeals agreed with the Diocese.

We disagree. Justice Lewis, writing for the unanimous Court in *Jeffcoat*, was careful to explain the charitable immunity doctrine had never extended to intentional torts. 261 S.C. at 80, 198 S.E.2d at 260. He pointed out the Court had refused to apply immunity in a case where a charitable institution was sued for trespass and nuisance. *Id.* at 79, 198 S.E.2d at 259–60 (citing *Peden v. Furman Univ.*, 155 S.C. 1, 151 S.E. 907 (1930)). Justice Lewis explained the idea that charitable immunity covered all torts was a mirage formed by the mists of dicta from certain decisions following *Lindler*. The core of the holding in *Jeffcoat* is the following two sentences:

[T]his Court, while adhering in the past to the rule that charitable institutions are exempt from liability for mere negligence, has in every instance refused to further extend the rule. Therefore, the application of the immunity doctrine in a case of intentional tort is not required by precedent, nor, we conclude, by reason or justice.

Id. at 80, 198 S.E.2d at 260.

Jeffcoat did not change the law. It confirmed what the law had always been: that charitable immunity never extended to intentional torts. Nothing in our decisions in the half century since *Jeffcoat* shakes that judgment. The doctrine of charitable immunity therefore does not bar Petitioner's intentional tort claims against the Diocese. We reverse the decision of the court of appeals. We decline to address any alternate sustaining ground for summary judgment, and we remand Petitioner's claims to the trial court.

REVERSED AND REMANDED.

KITTREDGE, C.J., FEW, JAMES, JJ., and Acting Justice Jessica Ann Salvini, concur.

EXHIBIT C

The South Carolina Court of Appeals

John Doe, Respondent,

v.

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

and

Richard Roe, Respondent,

v.

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

Of which the Bishop of the Diocese of Charleston, in his
official capacity, is the Appellant.

Appellate Case No. 2019-001470

ORDER

This appeal arises out of two circuit court orders denying the appellant's motion for summary judgment and granting the respondents' motion to compel. The appeal is dismissed as interlocutory. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 461, 814 S.E.2d 643, 659 (Ct. App. 2018) (holding the denial of summary judgment is not appealable); *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330 [(2017)]."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

The appellant's motion to consolidate is granted. Any future filings should feature the caption above.

H. Bruce Wilkins, J.
FOR THE COURT

Columbia, South Carolina

cc:

Richard S. Dukes, Jr., Esquire
Lawrence E. Richter, Jr., Esquire
Jennifer Sue Ivey, Esquire
R. Hawthorne Barrett, Esquire

FILED

December 2, 2019

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001470

John Doe,.....Respondent,

v.

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

and

Richard Roe,.....Respondent,

v.

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

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONERS

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Pursuant to Rule 242, SCACR, the Petitioners, Bishop of Charleston, a Corporation Sole, and the “the Bishop of the Diocese of Charleston, in his official capacity” (“the Diocese”) hereby petition this Court to issue a writ of certiorari to the Court of Appeals and to review that Court’s decision in this matter. In making this petition, the Diocese respectfully submits that the Court of Appeals erred in dismissing this appeal as interlocutory. The Court filed that Order on December 2, 2019, and the Diocese timely petitioned for rehearing. The Court of Appeals denied rehearing on February 14, 2020, which counsel received on February 18, 2020. This petition is timely under Rule 242(c), SCACR.

STATEMENT OF ISSUES ON APPEAL

1. **Does an Order compelling production of the names of victims of childhood sexual abuse present an exceptional circumstance warranting issuance of a writ of certiorari to review a discovery order?**
2. **Should a contempt order for failing to comply with a discovery order be required before an appeal may be taken to review a discovery order?**
3. **Does an Order disregarding the well-established First Amendment liberties of a religious organization merit immediate appellate review?**

STATEMENT OF THE CASE

These consolidated appeals arise from multiple orders in civil actions brought by the Respondents “John Doe” and “Richard Roe.” The Respondents commenced those actions against The Diocese of Charleston, a Corporation Sole¹ and “the Bishop of the Diocese of Charleston, in his official capacity” based on allegations of past sexual abuse. John Doe alleged he was molested by two teachers at Sacred Heart School in 1970 and 1971. Richard Roe alleged he was molested by Fr. Frederick Hopwood in 1954 or 1955.² The Diocese timely moved to

¹ The true name of the Corporation Sole is “Bishop of Charleston, a Corporation Sole.”

² The Doe claims occurred during the time Bishop Ernest Unterkoeffler served as Bishop of Charleston. Bishop Unterkoeffler retired as Bishop in 1990 and died in 1993. The Roe claims occurred during the service of Bishop John Russell who was appointed Bishop of Richmond in 1958. Bishop Russell retired in 1973 and died in 1993. The current Bishop, Bishop Robert Guglielmone, was appointed Bishop of Charleston in 2009.

dismiss the two Complaints based upon common law charitable immunity and the *res judicata* effect of the 2007 class action settlement with (1) all individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by the Diocese of Charleston personnel and (2) those individuals' spouses and parents.

The circuit court heard the motions to dismiss on December 14, 2018, and denied those motions in orders filed on March 4, 2019. The Petitioners then answered the Complaints, raising First Amendment defenses and pleading that "the Bishop of the Diocese of Charleston, in his official capacity" was not a proper party. On March 29, 2019, 14 days after answering the Complaints, the Diocese moved for partial summary judgment seeking dismissal of all claims against "the Bishop of the Diocese of Charleston, in his official capacity." Prior to the hearing on the motions, the Diocese submitted additional authority in support, including the Bylaws of Bishop of Charleston, a Corporation Sole and the deposition testimony of Bishop Robert E. Guglielmone. Both clearly establish for the record that the ecclesiastical office of Bishop of Charleston is not a civil law office and does not have a presence in the civil law arena.

Early in the cases, the Respondents served extensive discovery requests that sought, among other things, information about past victims of sexual abuse. The Petitioners filed a Motion for a Protective Order as to those requests. Subsequently, on April 2, 2019, the Petitioners provided responses to the discovery requests, but objected to the requests for information and documents about past victims of abuse. The Respondents then served additional discovery requests. The Petitioners responded to those requests, but again objected to any and all requests seeking that confidential information and materials. The Petitioners also filed a motion for a protective order that would prevent the release or production of the names of any past sexual abuse victims.

On July 17, 2019, the circuit court conducted a hearing on several pending motions, including the Petitioners' Motions for Summary Judgment and motions by the Respondents to compel production of the materials and information that the Petitioners claimed were confidential. At that hearing, the judge ordered the Petitioners to respond to plaintiffs' overly broad discovery requests and ruled that the Court would hold a hearing on Petitioner's objections to the discovery requests in short order. However, the Court further noted that Petitioner must be prepared to provide full responses to any ruling within 24 hours of that review. The Court also denied summary judgment to "the Bishop of the Diocese of Charleston, in his official capacity," by written order dated July 24, 2019.

The Petitioners filed timely motions asking the circuit court to reconsider and reverse its decisions regarding production of confidential information and materials and the denial of summary judgment. After the denial of those motions, the Petitioners commenced separate appeals. The Respondents moved to dismiss the appeals, claiming the challenged orders were not immediately appealable. The Petitioners filed returns in opposition, which set forth the reasons why the orders are, and must be, subject to immediate appellate review. The Court granted the motions to dismiss in an Order filed on December 2, 2019. In that Order, the Court also consolidated the two appeals.

ARGUMENT

- I. The Court should grant certiorari because the discovery order requiring the Petitioners to produce confidential and personal information is immediately appealable inasmuch as an appeal after a final judgment would not provide any meaningful recourse for the Petitioners or innocent victims of sexual abuse impacted by the order.

The circuit court has ordered the Petitioners to produce information and documents (with no redactions or other protections) that are highly confidential, and production of which will

subject the Petitioners, as well as innocent third parties, to immediate harm. Specifically, the order requires the Petitioners to reveal the identities of adults who were sexually abused as children. The circuit court did not enter any sort of protective order regarding these documents which personal identifying information regarding victims of sexual abuse. The Petitioners have a duty, both legal and moral, to keep those names confidential and private, especially where those victims have chosen to guard their identities and to shun any publicity of their past trauma. The challenged order forces the Petitioners to violate that duty, and once that proverbial genie has left the bottle, no appellate review would be of any consequence.

Numerous victims of sexual abuse have come forward over the years and the Petitioners have respected and guarded their anonymity. Most, if not all, of those victims reached some type of confidential resolution with the Petitioners, and many have received psychological counseling to help them deal with their abuse. The fact that victims are encouraged to report past sexual abuse and the counseling and pastoral support provided by Petitioners could be drastically undermined if victims know that their identities will be provided to lawyers, who plan to contact them and ask about their traumatic pasts. Furthermore, complying with this order will force the Petitioners to violate confidentiality provisions in the settlements reached with most, if not all, of those past victims. This would, in turn, subject the Petitioners to the threat of legal actions and damages for that breach. Thus, the order creates a real and immediate threat of harm to the Petitioners.

Simply put, the challenged order must be appealed now if appellate review is to have any meaning. If the Petitioners are forced to comply with that order before appealing, the confidential information will be disclosed. Even if the Court were later to agree with the Petitioners on the merits of their arguments against the order, such a post-disclosure reversal of

the order would be no remedy at all. At that point, the damage would be done and irreversible. In the truest sense, these cases present a “now or never” scenario for purposes of an appeal.

Furthermore, there is ample authority in South Carolina to support the immediate appealability of orders that compel a party to reveal or produce confidential information. As former Chief Justice Toal states in her treatise, “If an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity.” Toal, et al. *Appellate Practice in South Carolina* (2nd Ed.) at 94. Unless such an order is immediately appealable, it would be effectively unreviewable on appeal from a final judgment, as a reversal at that late stage would be no relief at all.

The Court of Appeals’ decision in *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354, 355 (Ct. App. 2004), is instructive. In *Doe*, a former client sued his attorney and moved to proceed anonymously because the underlying civil action involved allegations of sexual abuse. The circuit court denied that request, and the client appealed. This Court noted that an order is appealable if it “(1) conclusively determines the question, (2) resolves an important question independent of the merits, and (3) is effectively unreviewable on appeal from a final judgment.” 362 S.C. at 216, 607 S.E.2d at 356. The Court then held that the challenged order met the appealability criteria because it “ha[d] the effect of revealing [the client’s] identity, the very thing he was seeking to keep confidential.” *Id.* at 217, 607 S.E.2d at 356.

In granting the motion to dismiss as to the discovery order, the Court of Appeals cited only *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986), for the proposition that “[a]n order directing a party to participate in discovery is interlocutory and not directly

appealable under S.C. Code §14-3-330.” Although *Whetstone* does contain that language, the discovery order in the present appeal is significantly different than the one involved in *Whetstone*. Therefore, that case is readily distinguishable and does not support any decision to dismiss these appeals.

In *Whetstone*, the circuit court ordered a non-party witness to appear for a deposition and to produce certain documents. The Supreme Court dismissed the witness’ appeal, stating that a non-party ordered to participate in discovery could either comply with the order, thereby waiving any right to appeal, or refuse to comply, be held in contempt, and then appeal the contempt order. The Court further supported its decision by noting that the witness was a non-party, who could not suffer any “legal injury” (which would create the right to appellate review) unless and until there was a finding of contempt.

Significantly, there is no indication whatsoever that the witness in *Whetstone* claimed the testimony and documents compelled by the order were confidential or privileged. For all the opinion shows, the witness simply did not want to participate in the deposition or to produce the documents. Thus, the Supreme Court was not asked to consider, and made no ruling on, the issue of whether a discovery order is immediately appealable if it compels the production of confidential information.

Petitioners’ situation stands in stark contrast to the facts presented in *Hensley v. South Carolina Dep’t. of Soc. Svcs.*, Shearhouse Advance Sheets Op. 27941 (Jan. 29, 2020). In that case, this Court determined that the parties had not established that the discovery order actually involved disclosure of confidential information at all. The present case is on par with *Doe v. Howe* as the record clearly reflects Petitioners’ effort to protect the identities of victims of sexual

abuse from disclosure and to avoid the possibility of humiliation and social stigmatization resulting from that disclosure.

Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 8, 630 S.E.2d 464, 468 (2006) is likewise instructive. In that case, a company attempted to unseal the divorce records of an employee who admittedly embezzled from it. The lower court entered an order allowing the company to examine the divorce records to inspect the employee's financial representations, and the employee appealed. The Supreme Court concluded that the order "determined a substantial matter forming the whole or part of the family court proceedings in which [the company] sought access to the record of the [employee's] divorce." 369 S.C. at 5, 630 S.E.2d at 466. "Moreover, [the Court] agree[d] with courts which have been included to find such an order immediately appealable because, after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure." *Id.* at 8, 630 S.E.2d at 468 (emphasis added). "Compelling a party that disputes an unsealing order to forego an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the [lower] court's directive was ultimately found to be erroneous." *Id.* (quoting *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)) (emphasis added).³

The principles applied in *Doe* and *Ex parte Capital* are also controlling in the present appeals. Just as in those cases, the challenged order requires the production and release of highly confidential information. Whether or not the circuit court should have ordered that production

³ See also *Knight Publishing Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) ("[a]n order allowing discovery of documents that a newspaper ultimately sought disclosed as the subject of [a] FOIA action was immediately appealable because it in effect determined the action and prevented an appealable judgment."), *overruled on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994).

and release is a question that an appellate court must answer now. Otherwise, the Petitioners will be denied any opportunity for meaningful review of the order. A post-judgment appeal would have been too late in *Doe* and *Ex parte Capital*, and such an appeal would be equally moot here.

The Court of Appeals' brief Order granting the motions to dismiss gives no indication that the Court considered or applied *Doe* and *Ex parte Capital*. The Petitioners respectfully submit that in failing to take those controlling authorities into account, the Court overlooked or misapprehended the key factor that makes the challenged order much more than the granting of a garden variety motion to compel.

This case is parallel to a matter currently before the Court. The Supreme Court has recently granted an extraordinary writ and has requested briefing as to whether a finding of contempt is a necessary prerequisite to appellate review of a discovery order. *See* Order in *Mark C. Mosley v. Christine Alston*, Appellate Case No. 2019-001056 (filed October 3, 2019).⁴ Thus, to the extent it relied on a "contempt first" rule in granting the motions to dismiss, the Court of Appeals erred in dismissing Petitioner's appeal and this Court should grant certiorari to review the Court of Appeals' decision.

II. A party resisting an order compelling production of confidential information regarding victims of sexual abuse as minors should not be required to be held in contempt in order to appeal the discovery order.

Under the Court of Appeals' ruling, the only way Petitioners could effectively challenge a discovery order would be to subject themselves to an order finding them in contempt. However, it would seem holding a party in contempt for seeking to protect the identities of victims of sexual abuse would be inconsistent with the very purpose of the contempt power. Contempt is an extreme remedy with a specific purpose. "Courts exercise contempt power . . . to

⁴ A copy of the Order is attached as an exhibit to this petition.

punish those who show disrespect for the court or its orders, and to enforce its judgments.” 17 Am. Jur 2d Contempt § 4. Contempt normally is reserved for willful acts with bad purpose behind them – either to defy the law, or to fail to do something the law requires. *See State v. Bevilacqua*, 316 S.C. 122 447 S.E.2d 213, 217 (Ct. App. 1994). In contrast to the criminal nature of a contempt citation, a litigant seeking to protect the identities of victims of childhood sexual abuse is not engaging in lawless behavior and is not seeking to undermine the administration of justice. There is no “bad purpose” behind following the wishes of victims to remain anonymous. Thus contempt would seem inappropriate and a direct appeal more efficient and just.

By the same token, requiring a “contempt framework” for review of discovery orders, undermines the purpose of the contempt authority. If parties are required to sustain contempt findings and sanctions in order to seek appellate review, then risking contempt becomes more a tactical procedure available to the parties rather than an ultimate punishment to be levied by the courts. The court’s authority is thereby weakened.

Rather than undermining and weakening the judiciary’s powerful contempt authority, the better course is to recognize an immediate appeal when a discovery order requires a party to reveal the identities of victims of sexual abuse.

III. The denial of the summary judgment motion is immediately appealable because it impacts the Petitioners’ substantial rights under the First Amendment to the United States Constitution.

In light of the clear authority supporting immediate appellate review of the discovery orders in these cases, the Court need not conduct a thorough review of the reasons why the denials of the summary judgment motions are immediately appealable. Rather, the Court can simply review those orders in conjunction with the discovery orders, regardless of the former’s

appealability. “An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court, and a ruling on appeal will avoid unnecessary litigation.” Toal, et al. *Appellate Practice in South Carolina* (2nd Ed.) at 88 (citing *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998)).

The circuit court’s orders ignore the very fundamental freedom of religion enjoyed by religions and enshrined into the First Amendment’s Free Exercise and Establishment clauses. The circuit court’s decision overturns both the Church’s determinations of how the Catholic Church exists in the civil, rather than the ecclesiastical, context. This constitutes a veritable attack on the Church’s First Amendment rights and causes the Court to engage in an impermissible inquiry into canon law and Church doctrine. The ruling stands in stark contrast to nearly 150 years’ of precedent that civil courts must accept, and give full effect to, the decisions of religious organizations regarding how the church will be organized and structured. The Petitioners have demonstrated beyond any conceivable doubt or dispute that the Diocese of Charleston operates in civil law as the Corporation Sole, and that Corporation Sole is the only proper defendant in this action.

As with the order to produce confidential material regarding victims of sexual abuse, the circuit court’s denial of summary judgment to the ecclesiastical office of Bishop is more than it seems. The substance of the challenged ruling means that an ecclesiastical office, and just the office not an individual holding that office, is being forced to engage with the civil law even though the ecclesiastical office does not have any civil law presence. The diocesan bylaws distinctly and expressly spell out that the Bishop of Charleston is not a civil law title, and “Bishop of Charleston, a Corporation Sole” is the one and only civil law entity with the legal name of “Bishop of Charleston.” The circuit court’s decision reorders the allocation of both

ecclesiastical and civil authority and constitutes governmental establishment of religion – determining how a church must function under state authority. This is true regardless of whether or not the circuit court intended that result.

Thus denial of summary judgment to the ecclesiastical office of Bishop of Charleston, which exists only in canon law, erroneously trod on the First Amendment rights of the Roman Catholic Diocese. The circuit court ignored the Church’s own determinations regarding its presence in civil law, as well as the state’s own law recognizing the Corporation Sole and the civil law presence of the Bishop of Charleston and the Catholic Diocese. In doing so, the circuit court engaged in its own reordering of the Catholic Diocese and interfered in a realm in which the civil government has no proper role.

Although it is true that the denial of a summary judgment motion is generally not appealable, the preceding discussion demonstrates that these orders are more than just summary judgment denials. Granted, the orders are called denials of the Petitioners’ summary judgment motions, but that label is not determinative. It is not the name or the type of an order that matters for purposes of appealability, but rather the order’s overall impact. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded that an order was immediately appealable, regardless of what it was called, because it implicated the appellant’s substantial rights.⁵ As the Court stated, “Our review of the trial court order is not constrained by how the order is styled.” *Id.* at 539, 773 S.E.2d at 147 (emphasis added). The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that “an appellate court should look to

⁵ Specifically, the order granted a request to bifurcate trial proceedings. The plaintiffs argued, and the Supreme Court agreed, that the order was immediately appealable because it impacted the plaintiffs’ ability to pursue their direct liability claims against a corporate defendant.

the effect of an interlocutory order to determine its appealability.” *Id.* at 540, 773 S.E.2d at 147 (emphasis added).

Here, the effect of the challenged ruling is not merely to force the Petitioners to reassert a certain defense at a later stage of the proceedings.⁶ Rather, the effect is to have the civil government intrude upon the internal structure and affairs of a religious institution. This is a violation of the Petitioners’ First Amendment protections – an issue, it is worth noting, that has nothing to do with the Respondents’ claims or how they are eventually decided. The Petitioners have established a legitimate civil law presence for responding to cases such as this one; the Respondents and the circuit court simply ignored that decision and named an improper entity. Again, by doing so, the circuit court violated the Petitioners’ constitutional rights, which are not only substantial, but also fundamental. Therefore, the circuit court’s decision is far more than a typical denial of a summary judgment motion, and it is immediately appealable.

CONCLUSION

Both issues raised in this appeal involve orders that are immediately appealable. Yet, even if the Court were to determine that the ruling on the Petitioners’ summary judgment issue was not independently appealable at this time, it should nevertheless allow the entire appeal to proceed. The clearly established case law supports the appealability of the order forcing the Petitioners to disclose highly confidential information, and considering the other issue on appeal would promote judicial efficiency. For these reasons, the Court should grant the Petitioners’ petition, reverse the dismissal stated in the Order of December 2, 2019, and allow the entire appeal to proceed in the normal course.

⁶ The general rule against appellate review of a summary judgment denial stems from the fact that the moving party has later opportunities to reassert the grounds that supported the summary judgment motion.

Respectfully submitted,


for Richard S. Dukes, Jr. (SC Bar No. 16563)
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ATTORNEYS FOR PETITIONERS

February 21, 2020

EXHIBIT F

FAMILY NAME		FIRST		MIDDLE		PLACE OF BIRTH		DATE	
GRADE PROGRESS RECORD									
YEAR	GRADE	NAME OF SCHOOL		TEACHER	YEAR	GRADE	NAME OF SCHOOL		TEACHER
	5								
	4								
1920	6	Leland School		Mrs. Martha Nelson					
1921	7th	Leland School		Mrs. C. J. Nelson					

SCHOOL ACHIEVEMENT RECORD

DIOCESE OF CHARLESTON

[illegible]

MEANING OF MARKS			
82 - 100	Excellent	70 - 79	Passing
70 - 84	Very Good	Below 70	Failure
59 - 69	Good		

Any grade below 70 will not be honored for promotion.

HABITS AND ATTITUDES									
YEAR	18	19	19	19	19	19	19	19	19
GRADE	6	7							
COOPERATIVE in class and activities									
nearly always									
sometimes									
seldom	✓	✓							
DEPENDABLE faithful to assigned duties									
nearly always									
sometimes									
seldom	✓	✓							
COURTEOUS to teacher and fellow students									
nearly always									
sometimes									
seldom	✓	✓							
SINCERE in dealing with others									
nearly always									
sometimes									
seldom	✓	✓							
WORKS according to ability and steadily									
nearly always									
sometimes									
seldom	✓	✓							
NEAT a. appearance; b. work and material									
nearly always									
sometimes									
seldom	✓	✓							
COMES to school prepared for class									
nearly always									
sometimes									
seldom	✓	✓							
RESPECTS the property of others									
nearly always									
sometimes									
seldom	✓	✓							

ATTENDANCE RECORD

PERMANENT RECORD							
<u>YEAR</u>	1970						
<u>HALF DAYS ABSENT</u>	4						
<u>TARDY</u>	3						

PRESENT ADDRESS

[illegible]

CHARACTER AND ATTITUDE TESTS

GRADE	DATE	NAME OF TEST	RATING

INTELLIGENCE TESTS

[illegible]

STANDARDIZED ACHIEVEMENT TESTS

[illegible][illegible][illegible]

EXHIBIT G

CONFIDENTIAL

29 Timmerman Dr.,
Charleston, So. Carolina
29407

June 9, 1969

Dear Magr. Manning,

I recently read in the News and Courier your advertisement for qualified lay teachers for Sacred Heart Elementary School. I am interested in applying for a position in your school administration.

I was educated in the Parochial schools of Charleston, graduating from Saint Patrick School in 1961, and from Bishop England High School in 1965, as an honor graduate. I received the Bachelor of Arts degree from Erskine College, Due West, South Carolina, this month. While at Erskine I was a member of the Newman Club, German Club, Spanish Club, Concert Chorus (Vice-President), and was honored as the Euphemian Literary Society's "Student-of-the-Month" for May, 1969, a high honor at Erskine. I was the holder of a \$2,000 honor scholarship, and graduated with

- 2 -

approximately a 3.2 average (out of 4.0). My liberal arts course of study included a major in music, a minor field in English, and I excelled in Maths, Chemistry, and Languages.

I have taken the 1969 National Teacher's Examinations and received well over an "A" on both the Common as well as the Teaching Area Exams.

I would prefer Teaching either fifth or eighth grade students, although I would consider sixth or seventh grader as well. I have tutored a fifth grader and have worked well with children before. I am considered an excellent organizer, and present materials clearly, forcefully, and seem to captivate the attention and respect of those I have taught or worked with.

At present, I am answering letters I have received from Anderson, Charleston, and Darlington School Districts. But my teaching preference is Charleston.

I would appreciate hearing from you

CONFIDENTIAL

- 3 -

at your earliest convenience. I would also appreciate a personal interview, if you see fit to call one.

Yours very sincerely,
Christopher C. Hartnett, Jr.

P.S.

My reference credentials are on file, and available upon request from:

Guidance and Placement Center
Erskine College,
Due West, South Carolina

29639

CONFIDENTIAL

Dear Mr. Brennan and Members of the Sacred Heart School Board:

I am returning the contract you have recently sent me concerning teaching again at Sacred Heart for the 1970-71 school year. I cannot put my signature on a binding contract until I have had a chance to have several "petitions" heard, and hopefully, some revisions made.

- I. Although I am extremely well-pleased with the manner in which Sacred Heart School is run, it has been noticed by myself and several other faculty members that a need exists for an appointed disciplinarian. In no way is this word to denote any type of gestapo regimentation, but rather as an approach to teaching discipline instead of enforcing it. Father Manning is a strong upholder of discipline; however, he is not in any position to be contacted each time a need arises. On the other hand, it is the general consensus that Mrs. Runyon overlooks too frequently actions of students that warrant disciplinary action. It is true that each teacher is responsible for the discipline in his or her own classroom. I am referring to the incidents outside the classroom, as well as those in the classroom which are perhaps too serious to deal with in front of other students. I also feel the duties of disciplinarian should double as counselor. Each student at one time or another needs the advice or encouragement of a counselor. Most schools have this now; since we are operating more and more on a professional basis I think it should be given due consideration.

Furthermore I feel the school rules and policies should be printed and distributed in September. I personally believe this is the only way to professionally handle this aspect of administration. Especially since our school will be opening its doors to so many new students in the fall.

- II. Also in the line of new students. Would it be possible to investigate the chances of giving short standardized testing to incoming students. Many transcripts are not

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received until the year is well under way. It happened last September that the upstairs teachers spent nearly one month trying to "place" several transfer students. (Example: One 5th grader knew only how to write his name; no reading, spelling, basic math, etc... He eventually ended up in 3rd grade where Mrs. Powell performed a minor miracle on him, and he is just now beginning to come up to 3rd grade standards.) There are several more cases similar to this one. If we could get I.Q. scores or better, Grade Equivalents in Math, Language, and Reading it would alleviate some of the September confusion and embarrassment.

III.

The final topic I wish to bring up is one that I hesitate to, because it is something I give as little attention to as possible. I would also like to mention that there has, to my knowledge, been no discussion of this among faculty members at all this year.

I am aware of the close financial planning regarding the 1970-71 school year. Nevertheless, after giving it quite a bit of pencil work and thought, I do not feel I can continue at Sacred Heart without a salary increase sufficient enough for me to "clear" approximately \$375, preferably \$400 even, per month. At present I earn exactly \$315.82.

My reasons for asking this increase are as follows:

- (1) As a single, self-supporting male I require more money to operate than teachers who are wives of working husbands, and who teach for additional income.
- (2) I feel salary should be distributed on a scale commensurate with training, ability, experience, and above all, responsibility. I hold the Bachelor of Arts degree from Erskine, where I was an outstanding scholarship student. I can teach any subject in the upper grades, especially the more taxing ones like Math and Music. It is obvious that I have the heaviest schedule in the upper grades. My responsibilities exceed those of the average teacher: I am in charge of school productions, which require many hours of "overtime." I have sponsored pep rallies, dances, and am in charge of the office records for the 8th grade, which involves a good bit. I also enjoy representing the school as often as I can at diocesan curriculum meetings, as well as civic academic meetings; I feel I can represent the school well in any capacity.
- (3) I have been approached concerning being the full-time organist at Sacred Heart Church next year, in the event that the position is open-- and it has been surmised that there probably will be. I have consented to take the position, if I am at Sacred Heart at the time. I

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held this position for two years (1964-1965), on a salaried basis.

- (4) Lastly, because I feel the quality of my teaching is above average. I am interested in students personally. Personally enough to hold special afternoon classes for the slower students, or for those who can achieve but have failed to do the work. I insist that each student strive to work up to his capacity, because I earnestly try to determine each child's capacity, regardless of his past records or present environment.

In no way does my returning of this contract signify a refusal of it. I am deeply interested in Sacred Heart School. My first year has been one of personal fulfillment and self-enrichment. This is why I have sat down and tried to determine ways to make the school even better.

I am asking that this letter be read (or summarized) before a quorum of the board. I would appreciate a hearing before the board, if you wish me to clarify my thoughts or discuss any of the above points in further detail.

In fact, I heartily advocate each faculty member be invited to appear before the board on the same night, if for no other purpose than to say "no news is good news." It is to my understanding that the faculty gets to appear before the board anyhow in regards to recommendations and criticism of textbooks, the physical plant, or any other topic related to the school board.

Apologizing for the longevity and thanking you for your consideration, I am

Very sincerely yours,

Christopher C. Hartnett, Jr.

Christopher C. Hartnett, Jr.

29 Timmonsway Dr

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RECEIVED FROM CAULLEY/HILLERD--20220513 10:08 AM--CHARRLESTON--COMMUNICATIONS--CASE#2001007100339220



APPLICATION FOR TEACHING POSITION

DIocese of
CHARLESTON, S. C.

PERSONAL HISTORY

Name HARINETT, JR. CHRISTOPHER C.
 Family Name CHRISTIAN NAME
 Street 29 TIMMERMAN DR. City CHARLESTON, SC
 Place of Birth CHARLESTON Date of Birth 11-11-47
 Religion: specify denomination, if non-Catholic
 Parish to which you belong BLESSED SACRAMENT
 City CHARLESTON
 How applicant can be reached: Time — Phone 536-1764
 Address: (home)

Phone 536-1764 Sex: ☒ M ☐ F
 Race: ☒ White ☐ Negro ☐ Oriental
 Citizenship: ☒ American ☐ Naturalized
 Marital Status: ☒ Single ☐ Married ☐ Widowed ☐ Divorced
 Ages of Children —
 If married woman, husband's first name —
 Maiden Name —
 Social Security Number 247-80-4320

EDUCATIONAL BACKGROUND

Level	Name of School	City and State	Dates Attended		Date of Graduation	Kind of Degree
Elementary	<u>Saint Patrick School</u>	<u>Charleston, S.C.</u>	From <u>1953</u>	To <u>1961</u>	<u>1961</u>	<u>with honors</u>
Elementary						
High School	<u>Bishop England High</u>	<u>Charleston, S.C.</u>	From <u>1961</u>	To <u>1965</u>	<u>1965</u>	<u>College Prep. w/ Honors</u>
High School						
College	<u>Erskine College</u>	<u>Due West, S.C.</u>	From <u>1965</u>	To <u>1969</u>	<u>1969</u>	<u>A.B.</u>
College						

APPLICATION BEING MADE FOR

TEACHING EXPERIENCE

If elementary school, list grades in order of preference
 1. 5 2. 6 3. 7
 If high school, list subjects you are qualified to teach:
 1. — 2. — 3. —
 Specify: ☒ Full-time teacher ☐ Substitute
 School in which you are interested: SACRED HEART

Public School, Grade 1 - 8 — Years
 Public School, Grade 9 - 12 — Years
 Catholic School, Grade 1 - 8 — Years
 Catholic School, Grade 9 - 12 — Years
 Total — Years

SOUTH CAROLINA CERTIFICATES •

Name of South Carolina Teaching Certificates You Hold	Date Issued	Date of Expiration	Serial Number	Subjects or Grades Covered by Certificates

WORK EXPERIENCE

Place	Occupation (if non-teaching) Grade or Subjects (if teaching)	Dates	
		From	To

REFERENCES

Full Name of References	Address	Position
My reference credentials are on file and are obtainable upon request from:	Guidance and Placement Center	Your Pastor
	FRSKINE COLLEGE	Your Employer (if employed)
	Due West, S.C. 29639	

PLEASE NOTE: * Application should be accompanied by South Carolina teaching certificate. Request official transcripts of credit from all colleges you have attended. Have transcripts forwarded directly

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LAY TEACHER CONTRACT

THIS AGREEMENT:

Entered into this 20th day of June 1969 by and between
Christopher C Hartnett Jr
Teacher and the Sacred Heart Parish provides:

The teacher agrees to teach in the Sacred Heart Elementary School Charleston South Carolina for the 1969-1970 school term or for such portion thereof as may remain after the beginning date of service, subject to the following conditions:

1. The school term shall be one hundred and eighty days (180), the first school day for the term being August 27 1969. In addition, if necessary, ten days of assigned duties prior to the opening date of school and ten days of assigned duties after the closing date of school are to be added to the 180 school days to constitute 200 days of service.

2. The teacher shall serve this school in the position and in the specific duties assigned by the principal, and shall discharge this assignment to the satisfaction of the principal.

3. The teacher shall abide by all the rules and regulations of Sacred Heart School, and those of the Department of Education of the Diocese of Charleston.

4. Each teacher is allowed ten (10) days of sick leave in any one school year. The school shall pay the salary of the substitute teacher during such absence. Should the absence extend beyond the allowable ten days, the salary of the substitute teacher will be deducted from the teacher's salary on a per diem basis.

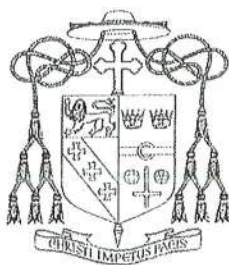
In consideration of such services, Sacred Heart Parish agrees to pay the teacher a yearly salary of \$ 4000.00, subject to deductions for Social Security, income tax, and local tax where operative. A day's salary shall be computed as 1/200 of the annual salary. Salary payments shall be made the last week of the ten school months beginning with September and ending with the month of June.

Pastor Sacred Heart Parish

Christopher C. Hartnett, Jr.
Teacher

HHHC1 FROM CACILITY FILED - 202257310108 1003FAM - CHARTERED ION - COMMUNION FILES - CASH#201804110033229

EXHIBIT H



HOMILY OF HEALING
ST. MARY'S CHURCH, GREENVILLE
JANUARY 15--16, 1994

I stand before you as your Bishop, with the high honor and awesome responsibility of being a Successor of the Apostles. Jesus chose his first Apostles by name. These names are recorded in four places in the New Testament: Matthew, Mark, Luke, Acts. Further, in Revelation, the names of the Twelve are inscribed on the twelve foundation stones of the wall of the Holy City. The twelve Apostles are the foundations stones of our Holy Church.

Christ Our Lord, after choosing the Twelve, gave them their commission. It was to do what he came to do: To tell the truth; to heal the sick and protect the weak; to raise the dead; to resurrect goodness in hearts; to cast out demons, to break the power of sin.

Strange how the more things change, the more they remain the same. The Vicar of Christ chose me by name to be your Apostle, the Bishop of Charleston. He gave me the same commission Jesus gave the Twelve; and, during the past "Twelve Days of Christmas," he asked me to fulfill that commission in every detail. How honored I am to be chosen to do this; how awesome for me to measure up to his trust: That I will tell the truth, heal, restore goodness, cast out demons.

Just before Christmas an allegation of sexual abuse of a minor was made against your revered pastor and my dear friend, Monsignor Frederick Hopwood. I was shocked, saddened, shamed; one of my precious priests was in serious straits and there was severe suffering. On December 2, I had spoken to all my priests about the horror and diabolical evil of pedophilia and ephebophilia, and I explained to them what my obligations are as their Bishop when allegations of sexual abuse of minors by priests, religious, laity serving the Church, even as volunteers, are presented to me. It is here that I had to measure up to Christ's mandate to his bishops: SPEAK THE TRUTH. I did, you know that I did, I will continue to speak the truth. There will be no cover up of this horrible abuse by the Successor of the Apostles. At the same time, let me assure you, that while I have been and will be completely truthful in such scandalous matters as these, I have protected and will protect the rights of Monsignor Hopwood to the extent afforded me by civil law and the requirements of honesty.

Christ also directed his first bishops, and me, to HEAL THE SICK, to protect the weak. To the alleged victims of sexual abuse by Monsignor Hopwood I have offered apology, compassion, support, abiding interest and concern. To Monsignor Hopwood I have expressed my love, my friendship, my looking out for his best interests. To you, St. Mary's Parish, I offer sympathy, understanding, and my positive efforts to provide for your pastoral care.

HOMILY OF HEALING

Page Two

I want publicly to thank Father Patrick Cooper for helping me in this healing ministry by serving as your administrator during this difficult time. I am also grateful to Father McPadden and Father Torm for their special efforts as well as the cadre of wonderful permanent deacons. I want to thank the office and domestic staffs, Sister Veronica and her staff at the school, and the members of the parish council and the finance council for their support and concern.

By his own resurrection from the dead, Jesus gave his bishops the power to RAISE OTHERS FROM THE DEAD, especially to revitalize the goodness that is within us all. I hope I can help all of you to a resurrection in spirit, in faith, in charity by my visiting with you and by sending you a precious priest as pastor, the Rev. Msgr. Robert J. Kelly. He is a gift from God to me; he is a priest among priests in the Church of Charleston; he is the very best any bishop could give you. Receive him, embrace him, support him, follow him, be proud of him, love him.

Pedophilia, ephebophilia, these are demons. They must be cast into exterior darkness. As a Successor of the Apostles, I must CAST THEM OUT. They masquerade. They are chameleons under the guise of moral turpitude in years gone by and psychological aberration in these our days. No matter what pedophilia and ephebophilia are, they are demons. They are the work of the devil attacking the Church from within, at its core, at its sacred priests. These demons are a scourge, a persecution. This type devil, says the Lord, is driven out only by prayer and fasting.

When the devil attacks, we dare not be servile slaves, but strong saints. This is not a time to run but to fight; this is not a time to apologize but to arise. We are members of the Mystical Body of Christ and we must overcome the weakness and affliction of some of our members. Health and holiness of the whole Body of Christ must be preserved. We know it will; Christ said so. While we are now all victims, we are destined all to be victors.

I come to you as your Bishop, to minister to you as I can. This is not a time for me to say "Woe is me." It is a time to say "Whoa!" We must stop the evil of the devil.

So many of you say one Hail Mary for me. Please, say it for me -- AND ALL MY PRIESTS. I love my priests; I need my priests; you need my priests.

Our tragedy came among us at Christmas; so did Christ. May he come among us now as Christ our Healer. We need him now!



Most Rev. David B. Thompson
Bishop of Charleston

January 14, 1994



THE DIOCESE OF CHARLESTON

119 BROAD STREET

CHARLESTON, SOUTH CAROLINA 29401

TELEPHONE: 723-3488

MAILING ADDRESS:

P. O. Box 818

CHARLESTON, S. C. 29402

CHANCERY OFFICE

- Fitz
Condon
W. J. J. J.
H. J. J.
C. J. J.

CONFIDENTIAL
MEMORANDUM

TO: Bishop Thompson, Msgr. Carter and Sr. Bridget Sullivan
FROM: Msgr. Miglarese
RE: January 24 Meeting w/Msgrs. Rowland and Duffy
DATE: January 18, 1994

→ Hoffman → 1985
→ call interlocks
→ Swache
→ need to case pro-nuncio
T. Carter
2. Ennis by a Han.

We need to carefully review our plans for the January 24th meeting with Msgr. Rowland and Msgr. Duffy. The participants will be as follows: Bishop Thompson, Sr. Bridget and myself from the Vicar Generals office, Msgr. Carter as the Vicar for Clergy, Norman Haft and Don Williams from Legal Affairs and Msgrs. Rowland and Duffy.

In one of my conversations with Dennis he mentioned that we really should not be asking questions for distinct answers unless we know what we are going to do with the information we receive. I think that the phrasing of the questions that we are going to ask is crucial. We do not want heresay or gossip, we want only that which you, Bishop Thompson, can move on. In other words, Bishop, you should not want to hear anything that you can not act on, but everything that you can act on where there are children at risk. We have a moral imperative on this children at risk issue. If there are abusers in the field, those folks are still in contact with children, and we want to be able to move them out of the positions that they are in.

Bishop, you should not seek gossip, the underground, heresays, inuendos, or unsubstantiated conjectors. Any of that could compromise our position legally. I think you should mention that as the new policies which call for a review board, go into effect, if there are credible accusations, if there is reasonable cause and if there is enough substance to what they know to present to a review board for action, now is the time to do it. That is the first issue which deals with moral imperative to protect children

at risk.

Secondly, we need to bring out the fact that we need to protect the assets of the diocese from massive liability charges. Where there might have been reasonable cause in the past for moving someone out of active ministry, and we did nothing but transfer them. It looks as though we are judging the past by present standards, but that is the arena of life that we are currently engaged in.

Thirdly, Bishop Thompson received a letter recently indicating that allegations had been filed against Fr. Hopwood in 1985. This is the first time that we have seen this and we need to talk about how it was handled.

SRM/bac

A News Clip From:
South Carolina Press
Services

The Herald
Rock Hill SC

Cir.: 28,871
Date of Clip:

JAN 09 1994

Compiled by Reginald Dogan

The Herald staff

Bishop: Abuse allegations must be dealt with openly

Thompson says
abuse is much more
than a moral issue

CHARLESTON (AP) — The Roman Catholic Church must deal with allegations of sexual improprieties — against priests — openly, instead of covering them up as it did in the past, Bishop David B. Thompson said.



Thompson, who as bishop for the Diocese of Charleston supervises priests in South Carolina, said the discovery of abuse or sexual improprieties cannot be dealt with as it used to be.

"We have to face up to it honestly and candidly and respecting everybody's rights," he told The Post and Courier of Charleston.

In the past, allegations were "definitely" covered up, and priests were sent to retreats for counseling, Thompson said. Eventually, they were reassigned to other parishes.

"But now it's much more than a moral issue," Thompson said.

"It's a psychopathic issue. It's a character-defect issue that has rendered it impossible for a bishop to

reassign somebody who has been so afflicted, caught up in this and guilty of it."

Thompson's comments come as two priests from South Carolina are being accused of sexual abuse of minors.

One case involves a Pickens County priest who may not face prosecution because the father of the youth has declined to go forward.

The Rev. John Bench, 55, resigned from his parish, although his attorney, Allvin Johnson of Pickens, said Friday Bench does not plan to quit the priesthood.

The other case involves Monsignor Frederick J. Hopwood, 68, of Greenville, who was accused by several Charleston men of abusing them between the 1950s and 1980s when they were in local Catholic schools and churches.

Diocese officials hope to give an update Monday on where the cases stand. Officials said Hopwood has been ordered by the church to undergo psychiatric evaluation.

Neither man has been charged with violating church or state law.

Solicitor David Schwacke said interviews would be scheduled this week with some of the people who say they were abused by Hopwood.

South Carolina has 97,501 Roman Catholics out of a state population of about 3.6 million.

CONFIDENTIAL

LAY TEACHER CONTRACT

THIS AGREEMENT:

Entered into this 13th day of April 19 70 by and between
Christopher C. Hartnett, Jr. and the Sacred Heart Parish provides:
Teacher

The teacher agrees to teach in the Sacred Heart Elementary School Charleston South Carolina for the 1970-71 school term or for such portion thereof as may remain after the beginning date of service, subject to the following conditions:

1. The school term shall be one hundred and eighty days (180), the first school day for the term being (as announced) 19 . In addition, if necessary, ten days of assigned duties prior to the opening date of school and ten days of assigned duties after the closing date of school are to be added to the 180 school days to constitute 200 days of service.

2. The teacher shall serve this school in the position and in the specific duties assigned by the principal, and shall discharge this assignment to the satisfaction of the principal.

3. The teacher shall abide by all the rules and regulations of Sacred Heart School, and those of the Department of Education of the Diocese of Charleston.

4. Each teacher is allowed ten (10) days of sick leave in any one school year. The school shall pay the salary of the substitute teacher during such absence. Should the absence extend beyond the allowable ten days, the salary of the substitute teacher will be deducted from the teacher's salary on a per diem basis.

In consideration of such services, Sacred Heart Parish agrees to pay the teacher a yearly salary of \$4,200.00, subject to deductions for Social Security, income tax, and local tax where operative. A day's salary shall be computed as 1/200 of the annual salary. Salary payments shall be made the last week of the ten school months beginning with September and ending with the month of June.

John L. Manning
Pastor Sacred Heart Parish

Christopher C. Hartnett, Jr.
Teacher

CONFIDENTIAL

29 Timmerman Drive
Byrnes Downs,
Charleston, S.C. 29407

April 27, 1971

Dear Msgr. Manning, Mr. Brennan,
and Members of the School Board,

I am sending this letter to notify you that I have already accepted a position with another school system for the coming school year.

My decision came as the result of several factors that came to be. First, I will be teaching fifth grade at James H. Spann Junior High in Summerville, S.C. I will also be taking some education courses at night at the Baptist College, since both schools are in the same area.

It is with mixed regret that I leave Sacred Heart. These two years have been more rewarding than you could ever know. My first teaching experience, made possible, showed me that I want a career in teaching. Your giving me this opportunity was the beginning of two fine years, and my only regret is that maybe I could have been better in some small way in my job. But as I do leave Sacred Heart, my feelings are 99% joyous, and only 1% regret, because working with such a fine faculty and cooperative parents has been my pleasure.

Wishing all of you happiness and success in your plans for the upcoming year, I remain

Very truly yours,

Chris C. Hartnett, Jr.
Chris C. Hartnett, Jr.

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CONFIDENTIAL

LAY TEACHER CONTRACT

THIS AGREEMENT:

Entered into this 6 day of June 19 70 by and between
Mr. Harold Brooks
Teacher and the Sacred Heart Parish provides:

The teacher agrees to teach in the Sacred Heart Elementary School Charleston South Carolina for the 1970-71 school term or for such portion thereof as may remain after the beginning date of service, subject to the following conditions:

1. The school term shall be one hundred and eighty days (180), the first school day for the term being As Announced 19 70. In addition, if necessary, ten days of assigned duties prior to the opening date of school and ten days of assigned duties after the closing date of school are to be added to the 180 school days to constitute 200 days of service.

2. The teacher shall serve this school in the position and in the specific duties assigned by the principal, and shall discharge this assignment to the satisfaction of the principal.

3. The teacher shall abide by all the rules and regulations of Sacred Heart School, and those of the Department of Education of the Diocese of Charleston.

4. Each teacher is allowed ten (10) days of sick leave in any one school year. The school shall pay the salary of the substitute teacher during such absence. Should the absence extend beyond the allowable ten days, the salary of the substitute teacher will be deducted from the teacher's salary on a per diem basis.

In consideration of such services, Sacred Heart Parish agrees to pay the teacher a yearly salary of \$ 4,000.00, subject to deductions for Social Security, income tax, and local tax where operative. A day's salary shall be computed as 1/200 of the annual salary. Salary payments shall be made the last week of the ten school months beginning with September and ending with the month of June.

Rev. John L. Manning
Pastor Sacred Heart Parish

Harold M. Brooks
Teacher

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CONFIDENTIAL

5. MC

Department of Education
Diocese of Charleston
119 Broad Street
Charleston, South Carolina 29401

November 26, 1969

Phone 723-6383

MEMO TO: REV. JOHN M. BOND, SUPERINTENDENT
FROM: SISTER MARIE CLAUDIA
SUBJECT: SACRED HEART SCHOOL, NOVEMBER 24, 1969
PRINCIPAL: MRS. RUNYON

The following is an account of an initial visit to Sacred Heart School in Charleston. It was my intention to visit the upper grades to become acquainted with the faculty; to determine the quality of teaching being done and to survey the school situation in a general way. This initial procedure I hope will enable me to see what needs to be done to insure quality education as well as to be of supportive help to the teachers.

My initial impression was that the school is a happy place. Mrs. Runyon and her faculty were gracious, friendly, and professionally at ease. The children were cheerful, industrious, eager, and well-disciplined. Good rapport seemed to prevail. Msgr. Manning, too, was busy at his job teaching religion (The Baltimore Catechism!).

The organization of these grades is "departmentalized" and the faculty is a dedicated one.

Mr. Hartnett (8th grade homeroom) teaches the Math, eighth grade history, science, and a seventh grade reading group. His strong point is math, which he teaches clearly, thoroughly, and well. In the class I observed, he was patient, and so thorough with every pupil that there were none who left the class not understanding the process being taught.

However, in the eighth grade history class, he conducted the lesson in the "Round Robin" reading style which is boring to the students. Although his comments on the material read

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CONFIDENTIAL

Father Bond
Page 2
November 26, 1969

revealed his grasp of the content, this manner of conducting a Social Studies class leaves much to be desired.

Mr. Parham (7th grade homeroom) specializes in the fifth, sixth and seventh grade Social Studies, but I observed his reading class in the fifth grade. His manner is relaxed and his teaching is clear and interesting. His own experiential background is rich and the children learn a great deal of information from him. (Here is a man to conduct a pilot study with an individualized reading class.)

Miss Mazzoli (6th grade homeroom) is the English teacher. Her "Spanish accent" definitely is not a hindrance to her teaching, for she speaks the English language very well.

I observed her teaching a seventh grade English class and immediately saw there was a problem. Technical grammar is emphasized in seventh and eighth grade programs and Miss Mazolli is attempting to teach it as she says "they do in her country" which is blind, rote drill without relating the content to anything very meaningful to our children. She has been told that this cannot be done. Her defensiveness makes me strongly suspect that she is not going to change her methods which are so confusing to the children.

My suggestion to Mrs. Runyon, and to Monsignor who wanted an opinion, was to give her something else to teach other than English--perhaps after Christmas. Mrs. Runyon and Monsignor suggested having her replace Mrs. Keenan (5th grade homeroom) in the library and to teach spelling, handwriting in this grade.

The organization and management of her classroom is good. I am quite certain she will do well in anything other than in teaching technical grammar to seventh and eighth grades. Both Monsignor and Mrs. Runyon seemed to think this would be a solution to the problem and give us an opportunity to help her become adjusted and the parents pleased.

Mrs. Keenan is a kind and capable teacher and the children respond satisfactorily.

I shall visit the primary grades on next Tuesday in order to observe these in a thorough fashion.

EXHIBIT I

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2 COUNTY OF CHARLESTON) COMMON PLEAS
3 CASE NO: 18-CP-10-3929

4 _____)
5 JOHN DOE,)
6 PLAINTIFF,)
7)
8 vs.)
9)
10 BISHOP OF CHARLESTON, A)
11 CORPORATION SOLE, AND THE)
12 BISHOP OF THE DIOCESE OF)
13 CHARLESTON, IN HIS OFFICIAL)
14 CAPACITY,)
15)
16 DEFENDANTS.)
17 _____)

18 DEPOSITION OF:

19 JOHN DOE
20 September 12, 2019

21 Given before Debbie Rayl, Court
22 Reporter and Notary Public in and for the State
23 of South Carolina, in the law offices of Turner,
24 Padgett, Graham and Laney, Greenville, South
25 Carolina, on Thursday, the 12th day of
 September, 2019 commencing at 2:03 p.m.

Job No. CS3521079

1 He would say, "What do you want to
2 talk about?" And I was so young, hell, I don't
3 remember.

4 Q. Okay.

5 A. I just remember his little bubble
6 light. He had this little gas bubble light.
7 Have you ever seen those things?

8 Q. Yes, lava lamp?

9 A. Lava lamp.

10 Q. Yes.

11 A. And that's what I remember about
12 that psychiatrist.

13 Q. My son's got one.

14 A. I hope he's not a psychiatrist

15 Q. No. Okay. Is there anything else
16 you can tell me about Jimmy Davis?

17 A. No.

18 Q. All right. Let's turn to Chris
19 Hartnett and Hal Brooks.

20 A. Okay.

21 Q. And truly I do understand how hard
22 it is for you and I appreciate it. We can go
23 as slowly as you want. And we can address this
24 however we need to or you need me to, okay?

25 MR. RICHTER: Let me

1 ask if you can to try to pose direct, narrow
2 questions. Let's see how -- if you can -- you
3 can give a direct, narrow response. You can
4 explain anything you need to, of course, and he
5 can then ask whatever follow up he may need to
6 do. I'm just worried about a narrative
7 being ---

8 MR. DUKES: I know.

9 MR. RICHTER: You know
10 what I mean?

11 MR. DUKES: I know. I
12 know.

13 BY MR. DUKES:

14 Q. Chris Hartnett was your homeroom
15 teacher when you were in the seventh grade,
16 right?

17 A. Sixth. Pretty sure it's the sixth.
18 Or at least the last half -- the latter of the
19 sixth.

20 I don't have a vivid knowledge of
21 been going there a whole year, whether it had
22 been one year or the next year or for a year
23 and then part of the next year. I can't
24 remember that. You'd have to get school
25 records for that one.

1 Q. Yes, I've got them, and I'll show
2 you.

3 A. Okay.

4 Q. It jumps around on you but in 1969
5 and 1970 you had a lady who taught you in the
6 sixth grade.

7 A. Okay.

8 Q. And then 1970, 1971, Chris Hartnett
9 was your seventh grade teacher.

10 A. Okay. Well, then I did go to
11 seventh grade. Hell, I didn't remember that.

12 Q. Okay.

13 A. I thought I only went as far as the
14 sixth grade. I'm just being honest with you,
15 man.

16 Q. That's okay. And that's why I went
17 over to the archives and ---

18 A. So F would have been failing?

19 Q. Yes. Yes.

20 A. Okay. What's a G?

21 Q. Good, I think.

22 A. Oh. What's a P?

23 Q. Pass. And this moves with your
24 finger. If you want to look over it we can do
25 that.

1 A. I'm just curious why I failed so
2 much in the sixth grade and passed so much in
3 the seventh.

4 MR. RICHTER: Let
5 me ---

6 THE WITNESS: Anyway,
7 it's okay.

8 MR. RICHTER: I can't
9 see it is what I'm trying to do.

10 MR. DUKES: And we
11 produced that in discovery.

12 MR. RICHTER: I know.
13 But I'm looking at the copy.

14 THE WITNESS: Days
15 absent, twenty-two. I think part of that was
16 that cutting out thing. That happened a lot.

17 BY MR. DUKES:

18 Q. When you ran away or cutting out --
19 cutting with your buddy?

20 A. Cutting with my buddy.

21 Q. Okay.

22 A. We used to go to the matinees. I
23 just wouldn't go back to class.

24 MR. RICHTER: I take
25 it you know this. This SS means summer school.

1 It looks like it's written in script ---

2 MR. DUKES: Yes.

3 That's summer school.

4 MR. RICHTER: We can
5 read it a lot better this way.

6 MR. DUKES: I know.

7 THE WITNESS: I saw
8 that.

9 BY MR. DUKES:

10 Q. And it says you went to summer
11 school after the seventh grade.

12 A. Yeah.

13 Q. Do you remember going to summer
14 school?

15 A. No.

16 Q. Okay.

17 A. I don't.

18 Q. All right.

19 A. I don't -- I'm not saying it didn't
20 happen. I'm just saying I don't remember it.

21 Q. Okay. What was -- describe Chris
22 Hartnett to me.

23 A. Short, pudgy, rosy cheeks -- what
24 do you call that when they get the red cheeks
25 all the time? What's that called?

1 MR. RICHTER: Rosacea.

2 THE WITNESS: Rosacea.

3 MR. RICHTER: Yes.

4 THE WITNESS: And

5 smiled all the time. That's about all I

6 remember.

7 BY MR. DUKES:

8 Q. Okay. What kind of teacher was he?

9 A. I don't remember.

10 Q. Tell me about Hal Brooks.

11 A. Brooks didn't really come into the
12 picture until after the trip to Columbia.

13 Q. Okay.

14 A. And Parham, I believe I saw him
15 right after the trip to Columbia. But Parham
16 never laid a hand on me.

17 Q. Okay.

18 A. I just thought he wanted to.

19 Q. I got you.

20 A. He was really nice. I went to his
21 house. I was going to do some work for him and
22 then I just don't remember what happened after
23 that. I think I just left.

24 Q. That's Parham?

25 A. Yeah, he used to live on Eden's

1 Alley in town.

2 Q. Okay. All right. When was the
3 first time Chris Hartnett molested you?

4 A. In school.

5 Q. Give me a -- without describing the
6 actions -- what, where, what time of day, that
7 sort of thing.

8 A. I can't remember the time of day.
9 Might have been after school. Maybe it was
10 during school. But it happened in the
11 lunchroom/hallway if you want to call it.

12 Q. If you're looking at the school
13 from King Street ---

14 A. To the right.

15 Q. --- over on the right?

16 A. Yes, sir.

17 Q. That kind of separate building or
18 has a breezeway over there?

19 A. I think it is a separate building
20 with a breezeway.

21 Q. Yes. And what did Hartnett do on
22 that occasion?

23 A. Fellatio.

24 Q. Okay. Did you tell anybody?

25 A. No.

1 Q. Did you ever tell anybody?

2 A. No.

3 Q. Did he pull your pants down? How
4 did that happen?

5 A. That's the part that's a little
6 fuzzy.

7 Q. I'm sorry?

8 A. I said that's the part that for me
9 is a little fuzzy.

10 Q. Okay.

11 A. But that was just the first time.

12 Q. Okay. Is that what you remember
13 Hartnett did most often is perform fellatio?

14 A. No. It went on from there.

15 Q. Okay. How did it escalate?

16 A. In Columbia.

17 Q. All right. Was it just the one
18 time in the lunchroom and then the trip to
19 Columbia?

20 A. No. I believe it happened on the
21 side of the school after the first time.

22 Q. And what did he do?

23 A. Same thing.

24 Q. Okay. Did you resist?

25 A. No.

1 Q. Why not?

2 A. I don't know.

3 Q. How did this trip to Columbia come
4 about?

5 A. Well, he said we were going up
6 there to see a museum or something and ended up
7 at a friend of his house and Brooks was there.

8 Q. Was it a school trip to the museum?

9 A. No.

10 Q. Okay. Did your parents ---

11 A. I was the only one.

12 Q. Did your parents know you were
13 going to Columbia?

14 A. Yes.

15 Q. And they'd given you permission to
16 go?

17 A. Yes.

18 Q. Did you want to go, not want to go?
19 Did they force you to go?

20 A. They didn't force me. No, sir.

21 Q. Okay. Where was this house?

22 A. To the best of my recollection
23 somewhere off of Gervais Street. I remember
24 Gervais Street very well.

25 Q. Okay.

1 A. Somewhere near the college.

2 Q. Describe the house for me.

3 A. Brick, two-story, old

, dark brick -

4 - maybe red brick.

5 Q. What kind of car did Hartnett have?

6 A. An Impala.

7 Q. Where did you ride -- front seat or

8 back seat?

9 A. Front seat.

10 Q. Was anybody else with you?

11 A. No, sir.

12 Q. Did anybody -- did your parents

13 question why you were going alone with a

14 teacher to Columbia?

15 A. I can't remember.

16 Q. Okay. What did y'all talk about on

17 the way up?

18 A. I don't remember.

19 Q. How many people were at the house

20 when y'all arrived at the party? And I say

21 it's a party -- I think you used that term.

22 A. A group.

23 Q. Okay.

24 A. I can't give you an exact number --

25 six maybe.

1 Q. All right. What happened at that
2 party?

3 A. Oral and anal sex.

4 Q. With how many people?

5 A. Myself, Hartnett and Brooks is all
6 I know about.

7 Q. Okay. Any of the other people
8 there?

9 A. I don't remember. Not that I
10 remember; not that I saw.

11 Q. Did you know Brooks then?

12 A. He was a teacher.

13 Q. Right. But he didn't teach you;
14 did he?

15 A. I don't think so. I don't think he
16 did. If he did I don't remember. But he was
17 one of the teachers.

18 Q. Okay. Did you know Hartnett from
19 the year before when you were in the sixth
20 grade?

21 A. Yes, I believe so.

22 Q. And he didn't do anything to you
23 when you were in the sixth grade?

24 A. I don't remember. I just remember
25 it was during my time at the school.

1 Q. Okay.

2 A. I didn't even know that I had --
3 you were just telling me that I went to the
4 seventh grade and I didn't know it.

5 Q. Okay.

6 A. So that's why I can't tell you.

7 Q. What time of year did this party
8 take place?

9 A. Somewhere in the fall. I'm sure of
10 that.

11 Q. Was it a football weekend?

12 A. I don't remember.

13 Q. Okay. What else happened at that
14 party?

15 A. Other than the sexual part?

16 Q. Yes.

17 A. We left. I was kind of drunk. I
18 was definitely high. There was marijuana and
19 alcohol involved.

20 And we went to someplace out on --
21 someplace in between Columbia and Sumter I
22 think it was Highway 378 and went into a
23 nightclub or a bar -- whatever you want to call
24 it.

25 And I remember being kissed by

1 another man. And I remember when the other man
2 realized that I was a male, he excused himself.

3 And by then Hartnett and Brooks
4 were gone and I ended up making my way back to
5 Charleston on my own.

6 Q. Okay. How did you -- how did you
7 get back?

8 A. Ran part of the way; hitchhiked the
9 rest.

10 Q. And how long did it take you to get
11 back?

12 A. Pretty much all night.

13 Q. When was -- during the rest of the
14 school year did you remember that as it
15 happened? Did you know what had happened?

16 A. I don't remember that either.

17 Q. Did Hartnett or Brooks molest you
18 again during that school year?

19 A. I don't remember that either.

20 Q. So after the party you just don't
21 know whether anything happened ---

22 A. Huh-uh (no).

23 Q. --- again? Did you tell anybody
24 about what had happened at that party?

25 A. This one right here and Ms. Whalen.

1 Q. But you didn't tell -- didn't go to
2 the doctor?

3 A. Huh-uh (no).

4 Q. Didn't tell your parents?

5 A. Huh-uh (no).

6 Q. Didn't tell anybody at the school?

7 A. No. I told my brother-in-law that
8 I was having problems and -- part wise I was
9 having problems and asked if the church would
10 help me.

11 Q. And that was Thomas?

12 A. Thomas.

13 Q. ___?

14 A. Yes.

15 Q. And when did you talk to Thomas
16 about that?

17 A. I don't remember.

18 Q. Was it shortly before you called
19 Louisa Storen?

20 A. I believe that it was around the
21 same time.

22 Q. Okay. Did Thomas give you Louisa's
23 phone number or did Larry?

24 A. No, Thomas did.

25 Q. Thomas did?

1 A. Yes, sir.

2 Q. Okay.

3 A. I do remember that.

4 He said he got
it from Peter Shahid.

5 Q. When did you begin remembering what
6 had happened to you?

7 A. Pretty close to the time I talked
8 to Thomas, but I just don't remember when that
9 was.

10 Q. Okay.

11 A. But it was after the last time I
12 sought ---

13 Q. Okay.

14 A. I just don't remember how long
15 after or -- I think it might have been a couple
16 of weeks.

17 Q. Okay. And you're telling me you
18 have -- between 1971 and 2015 or so, you had no
19 memory of this having happened to you?

20 A. I don't know.

21 Q. Okay.

22 A. I just know somewhere along the
23 line I -- it may have been when my kids died.
24 I just don't know. I can't answer that
25 question honestly. I can't answer that

1 question.

2 Q. All right. I appreciate your being
3 forthcoming about that.

4 A. I wish I knew.

5 Q. Yes. How did the memories start
6 coming back?

7 A. Pretty vivid, pretty -- pretty
8 rapidly within a couple of days. I remembered
9 it all.

10 Q. Had you been reading any news
11 stories about sexual abuse or watching any
12 movies about it? I'm trying to see if there
13 was a trigger.

14 A. I don't think so. I don't know,
15 but I don't think so.

16 Q. All right. And you may have
17 started remembering back as far as when your
18 wife and children died?

19 A. I don't know.

20 Q. Okay.

21 A. That's just a question. I can't
22 honestly give you an answer.

23 Q. Okay.

24 MR. RICHTER: Let me
25 object to that question -- the form of the

1 question.

2 BY MR. DUKES:

3 Q. Is there anything else that you
4 remember about Hartnett and Brooks?

5 A. Shame.

6 Q. Okay.

7 A. My shame.

8 Q. I understand. And I understand
9 you're working with Dr. Whalen on getting past
10 that and you hope to. And I hope you do too.
11 Because you don't have anything to be ashamed
12 of. You were just a kid.

13 A. Yeah, but I didn't say no and I
14 should have.

15 Q. Do you think you should have told
16 somebody afterwards?

17 A. Now, yeah. Yeah, I do. I think I
18 should -- I think I should have told Father
19 Manning.

20 Q. Yes.

21 A. That's who I think I should have
22 told.

23 Q. All right. Why don't -- why don't
24 I get your wife to come back in.

25 A. That's fine.

EXHIBIT J

EXHIBIT 11

Page 1

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 DEPOSITION OF JAMES A. CARTER

5 RICHARD ROE,
6 Plaintiff,
7 vs. CASE NO. 18-CP-10-4206

8 THE DIOCESE OF CHARLESTON, A CORPORATION SOLE,
9 AND THE BISHOP OF THE DIOCESE OF CHARLESTON, IN
10 HIS OFFICIAL CAPACITY,
11 Defendants.

12 DEPONENT: JAMES A. CARTER

13 DATE: AUGUST 15, 2019

14 TIME: 1:43 P.M.

15 LOCATION: RICHTER LAW FIRM
16 MOUNT PLEASANT, SC

17 REPORTED BY: RUTH L. MOTT, RPR, CRR
18 CLARK & ASSOCIATES, INC.
19 P.O. BOX 73129
20 CHARLESTON, SC 29415
21 843-762-6294
22 WWW.CLARK-ASSOCIATES.COM

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 RICHTER LAW FIRM
4 BY: LAWRENCE E. RICHTER, JR.
5 622 Johnnie Dodds Boulevard
6 Mount Pleasant, SC 29464

7 ON BEHALF OF DEFENDANT:

8 TURNER PADGET GRAHAM & LANEY
9 BY: RICHARD S. DUKES, JR.
40 Calhoun Street
Suite 200
Charleston, SC 29401

11 ---

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1 I N D E X

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3 WITNESS	PAGE
4 JAMES A. CARTER	4
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7 DEPONENT CORRECTION SHEET	

8 EXHIBITS

8 EXHIBIT	DESCRIPTION	PAGE
9 EXHIBIT NO. 01	NOTICE OF DEPOSITION	13
10 EXHIBIT NO. 02	COPY OF TRANSCRIPT	16
11 EXHIBIT NO. 03	REPORT ON DIOCESAN PRIESTS	20
12 EXHIBIT NO. 04	INSTRUCTION	56

13 ---

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1 JAMES A. CARTER,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. RICHTER:

5 Q. Would you state your full name, please.

6 A. James A. Carter.

7 (Discussion off the record.)

8 Q. Now, I am Lawrence Richter and I will be
9 taking your deposition today. I know that you've
10 been deposed previously because I deposed you
11 previously and I still have to tell you a few rules
12 of the road, rules of Court about the deposition
13 process.

14 You are now a sworn testifying witness,
15 which precludes you from talking to anybody about
16 your testimony. If you need to consult with your
17 lawyer and you discuss your testimony, we may have
18 a right to examine you even about your discussions
19 with your lawyer, which would otherwise typically
20 be private.

21 I will try to pose direct, narrow questions
22 to you. Please listen to them, then if you can
23 respond similarly in a direct and narrow way, you
24 can explain your response as fully as you want to
25 or need to. But if we can hit upon that method,

1 we'll fall in a track and it will go a lot faster,
 2 which everybody will be happy about.
 3 In addition to that, I have to ask if you
 4 are able to be deposed today. Are you influenced
 5 by any medication or are you unable for any health
 6 reason, for example, not to testify?
 7 A. No.
 8 Q. Okay. All right. If you have any
 9 questions, just say so. We'll try to make it
 10 clear. And if you have any needs, including
 11 bathroom breaks, just say that, and we'll quit
 12 about every -- break about every hour and 15
 13 minutes or so anyway, but I don't think it's going
 14 to take us real long to do this.
 15 So you also have the right to either read
 16 and sign your deposition when it is handed up for
 17 your review, or you can waive that and your lawyer
 18 will express his preference.
 19 MR. DUKES: I'll probably have him read
 20 and sign, but let's see how it goes. We may not
 21 need it.
 22 Q. Okay. Well, I'll try to shortcut some
 23 stuff, and let me see if we can do this. Let's
 24 quickly run through, first, please, your personal
 25 background. By that I mean where you're from, date

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1 of birth, Social Security number, driver's license
 2 number, where you grew up, that sort of thing.
 3 Then we'll do education in a similar way.
 4 A. I grew up in Charleston. I was born here,
 5 and that was in 1939. We lived west of the Ashley
 6 I guess until I was about five. Then we moved to a
 7 home on Broad Street and that's where I essentially
 8 grew up.
 9 Q. What number were you?
 10 A. 169, I think, 167. 167. I don't remember
 11 exactly. But I went to Cathedral School, and then
 12 my parents objected to, I guess, the education of
 13 the nuns at the Cathedral School, so I went to
 14 St. Patrick's, graduated from there and went to
 15 Bishop England.
 16 After Bishop England I went to college,
 17 Mount St. Mary's College in Emmitsburg, Maryland
 18 for two years and I kept getting this idea about
 19 the seminary. And I really didn't want to be a
 20 priest, so I figured I would ask the bishop if I
 21 could go to the seminary to get it out of my mind
 22 so that I could become an attorney, which you know
 23 that I did not. But anyhow, so then I stayed and I
 24 was ordained in 1966.
 25 Q. Here in Charleston?

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1 A. Mm-hmm.
 2 Q. You're being taken down by a stenotype
 3 method. You're also being recorded, so we can't
 4 talk over each other because the reporter can only
 5 get one of us at a time, so we just need to be
 6 mindful.
 7 She also can't get gestures, so you can't
 8 nod. You have to say yes or no, that sort of
 9 thing, okay? It's a little stilted process, but
 10 we'll get through it easily enough.
 11 A. Is that enough?
 12 Q. That's enough.
 13 Well, yes, what is your Social Security
 14 number? And let me tell you this won't be
 15 published. Last four digits are all that will be
 16 published.
 17 A. 8772.
 18 Q. Okay. Now, do you have any military
 19 background?
 20 A. No.
 21 Q. Do you have any criminal background?
 22 A. No.
 23 Q. Do you have any history of litigation? Have
 24 you been parties in lawsuits, been a party in a
 25 lawsuit?

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1 A. No.
 2 Q. Okay. Have you been witness -- a witness
 3 before in a lawsuit, any lawsuits?
 4 A. No, other than your time.
 5 MR. RICHTER: That was a short
 6 deposition we had. I deposed him.
 7 MR. DUKES: I know, I read it.
 8 MR. RICHTER: Okay. In the class
 9 matter, I want to say.
 10 MR. DUKES: It wasn't in the class
 11 matter.
 12 MR. RICHTER: Yes, I think you're
 13 right. It was in --
 14 MR. DUKES: It was Ranta.
 15 MR. RICHTER: That's right. That's
 16 exactly right. Well, I don't remember, to tell you
 17 the truth, but it was in some case.
 18 MR. DUKES: Yes, it was in that one.
 19 Q. Now, have you ever been a victim of priest
 20 sexual abuse?
 21 A. No.
 22 Q. Have you ever been accused of being a
 23 perpetrator of any kind of priest sexual abuse?
 24 A. No.
 25 Q. And have you ever functioned within the

1 diocese in any capacity which dealt in any way with
 2 those kinds of issues: Priest sex abuse
 3 allegations or issues?
 4 A. I was vicar general of the diocese.
 5 Q. That's right, yes. And what years were you
 6 vicar general?
 7 A. I think it had to be in the late '90's, I
 8 think. Sam Miglarese was vicar general. When he
 9 left, I took over.
 10 Q. Okay. Is he still at Duke, do you know?
 11 A. Yes.
 12 Q. Good. Is he happy?
 13 A. I think so.
 14 Q. Okay.
 15 A. He was at a funeral and he came up to me.
 16 He was with his wife and he said hello and he said
 17 something about we were about the same age. I
 18 said, no, Sam, we're not. I said, I'm, you know,
 19 whatever, 78 or -- and he said, oh, I didn't know
 20 that, but, yes, I took over from him.
 21 Q. Yes, you look younger than your
 22 chronological age. You have nice -- your skin
 23 looks nice.
 24 A. Well, it's from, I guess, Edisto. It's
 25 Edisto skin.

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1 (Discussion off the record.)
 2 Q. Anyway, I'm glad we got -- all got through
 3 that. I get checked now. I use dermatologists as
 4 I thought I never would in my life, but I do.
 5 A. Yes, I've got things all over me.
 6 Q. Yes, well, they whack everything off. I've
 7 never had any problem with anything, but they're
 8 quick to whack it off now.
 9 A. Yes.
 10 Q. Let's go forward then. I'd like to ask you,
 11 please, if you -- do you have any -- was there a
 12 position specifically devoted to or a task
 13 specifically devoted to a sexual abuse issue or
 14 multiple sexual abuse issues while you were vicar
 15 general that you had to deal with? Not concerning
 16 you, but was that part of your job description?
 17 A. I don't think I dealt directly with them. I
 18 was aware perhaps, but I -- I don't recall dealing
 19 directly.
 20 Q. Okay. Well, when you say you were aware,
 21 you mean you were aware of allegations or acts or
 22 sex abuse?
 23 A. Yes, because that came into the purview of
 24 the vicar general.
 25 Q. Okay. What was your relationship with

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1 Frederick Hopwood?
 2 MR. DUKES: Object to the form. You
 3 can answer.
 4 Q. Yes, I'm not implying any inappropriate
 5 relationship. I'm trying to ask you did you know
 6 him, how close were you all.
 7 A. I did because we lived in the cathedral
 8 parish down Broad Street and he was at the
 9 cathedral, I was told, from '52 to '55 or something
 10 like that. And I really didn't have any direct
 11 contact with him except once he was in the
 12 cathedral yard washing his Studebaker and I went
 13 and asked him how he liked his Studebaker. And
 14 that was the extent of my...
 15 Q. He's not going to know what you drove --
 16 A. I know exactly what I drove.
 17 Q. Do you still have that, the same car, the
 18 same kind of car?
 19 A. No.
 20 Q. You used to have that SL.
 21 A. I had an SL, and then I got Porsches and
 22 BMWs. I had them all. Now I've got a Subaru.
 23 It's an Edisto Island car.
 24 Q. I always drove foreign cars and I used to
 25 enjoy driving diesel Mercedes Benz because I worked

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1 on them. I just -- it was fun for me. It was
 2 simple enough that I could do it, and I enjoyed
 3 doing that.
 4 And -- but I've had, you know, high-powered
 5 foreign cars as well. And I've paid service bills
 6 that would just bring tears to your eyes.
 7 And so I went some years ago, got outside of
 8 Mercedes and bought a Chrysler when the style
 9 changed and it was wonderful. And since then I've
 10 stayed. I've got a GMC Yukon is what I have been
 11 driving for many years now and, you know, I go in
 12 and it cost me \$54 or something like that to get
 13 serviced.
 14 A. I had three diesel Mercedes, but I would
 15 change every three years so that it would still be
 16 under warranty.
 17 Q. Yes. I really enjoyed them. We have three
 18 daughters, you might remember, and we put each of
 19 our daughters in a nice, heavy used slow diesel
 20 Mercedes, talking with 240s. Then they moved up to
 21 300s. But each one of my daughters came to me and
 22 said, Daddy, this car is slow and it's real heavy
 23 to move.
 24 A. That's right.
 25 Q. There's something to that.

1 Anyway, and I apologize for reminiscing with
 2 you on the record. What I think we can do, there's
 3 some things I have to put in the record, and I'm
 4 going to --
 5 MR. RICHTER: Mark this as No. 1,
 6 please.
 7 (Exhibit No. 01 marked for
 8 identification.)
 9 Q. Let me ask you, Monsignor Carter, if you
 10 recognize the document that has been marked as
 11 Plaintiff's 1 to your deposition as being, you'll
 12 see this typed on the front page, notice of
 13 deposition of Reverend Monsignor James A. Carter,
 14 and attached to it as an exhibit, the last three or
 15 so pages, four pages, being a subpoena duces tecum
 16 and the last page of the subpoena requiring you to
 17 bring certain documents set forth there on what's
 18 called Exhibit A to the subpoena. Do you recognize
 19 all of that?
 20 A. As you pointed it out I do.
 21 Q. Yes, yes. You weren't just in the
 22 neighborhood and stopped by to say hello. I
 23 understand.
 24 What I want to ask you is, as to the
 25 documents that were requested, have you produced

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1 with you here today any of those documents?
 2 A. No.
 3 Q. Okay. Do you have any such documents?
 4 A. No.
 5 Q. It's right at the bottom if you look at the
 6 last just one little paragraph.
 7 MR. DUKES: The next page.
 8 MR. RICHTER: Yes, very last page, got
 9 a typographical error.
 10 MR. DUKES: This whole paragraph
 11 (indicating).
 12 THE WITNESS: I don't have any of those
 13 documents.
 14 Q. Okay. Thank you.
 15 Let me just ask a few questions about your
 16 knowledge of gambling activities in the various
 17 parishes and schools of the diocese over the years,
 18 let's say from 1950 to date. Are you aware of such
 19 activities having taken place?
 20 A. Yes, I'm aware.
 21 Q. And were those things like bingos, drawings,
 22 paddle wheels, different forms of gambling,
 23 raffles?
 24 MR. DUKES: Object to the form.
 25 Q. Is that what you are referring to that you

Page 16

1 recall?
 2 A. I -- yes.
 3 Q. Okay. All right. Now -- thank you.
 4 Did there come a time when one of the
 5 bishops of the diocese said we've got to stop doing
 6 that?
 7 A. Yes.
 8 Q. All right. And was that Ernest
 9 Unterkoefer?
 10 A. It was.
 11 Q. And since that time, to your knowledge, has
 12 that practice now been discontinued?
 13 A. Yes.
 14 Q. Okay. Thank you.
 15 MR. RICHTER: You know what I can do,
 16 Rich, that'll save us a lot of time?
 17 Q. You recall, Monsignor, that your
 18 deposition -- yes, it was in the case of Ranta --
 19 was taken in another matter back in 2009 by me?
 20 A. I recall that.
 21 Q. Yes. I'm going to hand you what I represent
 22 to you to be --
 23 MR. RICHTER: And I'll ask you to mark
 24 that as No. 2, please.
 25 (Exhibit No. 02 marked for

Page 15

1 identification.)
 2 Q. I'll ask you if you recognize this as being
 3 a copy of that brief deposition.
 4 MR. DUKES: And I'll just object to the
 5 admissibility of that document.
 6 MR. RICHTER: Yes, well, I understand
 7 if you want to do that. What I was going to
 8 suggest to you is that I think -- you know, I think
 9 I don't need to go over the same questions that I'd
 10 asked him before if his answers would be the same
 11 now, and I trust that they would be.
 12 THE WITNESS: Yes.
 13 Q. Let me pose that question to you. If I went
 14 from top to bottom, question by question,
 15 everything we did before, would you answer the same
 16 way that you did then?
 17 A. Yes.
 18 Q. Okay. Well, then, I'm not going to do that.
 19 If we could agree that this --
 20 A. If I remember now.
 21 Q. Yes.
 22 A. Because then...
 23 Q. Sure.
 24 MR. RICHTER: Does that trouble you,
 25 Rich? Do you still want to object to that?

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1 MR. DUKES: I'll just reserve my
2 objection to the admissibility of a deposition
3 transcript in an entirely different case about
4 different issues and a different -- and a case
5 involving a priest from the Diocese of Savannah. I
6 think -- you know, I think you probably have to
7 just ask him your questions. You need to.

8 MR. RICHTER: Okay. All right.

9 Q. All right. We'll proceed. I want to ask
10 you, please, what part, if any, you have taken in
11 making payments to or for the benefit of any
12 victims of priest sexual abuse in the diocese of
13 South Carolina.

14 A. Can you state that more directly?

15 Q. I don't know.

16 MR. RICHTER: Can you read it?

17 (The court reporter read back as
18 requested.)

19 Q. So what do you not understand about that,
20 Monsignor?

21 A. I'm trying to think now. When I was pastor
22 in Aiken, there was a priest by the name of Bill
23 Richardson and he abused a kid. And that kid -- he
24 was -- he had a single parent, a mother, and I
25 think he had an uncle that was a Jesuit.

Page 19

1 A. Yes.

2 Q. In fact, that's in that deposition. I
3 thought --

4 A. Is the guy's name in here?

5 Q. I don't -- yes, you may have said his name
6 in there.

7 A. Because I don't remember it now.

8 MR. RICHTER: Let's go off the record.

9 (Discussion off the record.)

10 Q. Can you tell me, please, what -- I think you
11 said that was in the '80s or something.

12 A. It might be.

13 Q. Approximately.

14 A. Probably around '85 or '86 maybe.

15 Q. When did you come to Christ Our King?

16 A. '89.

17 Q. Yes, and so you had left -- that's right,
18 and you left Aiken, came up here. That's when you
19 did the --

20 A. Yes, that's when he --

21 Q. Fronted the payments.

22 A. Mm-hmm.

23 Q. Okay. I understand. Thank you.

24 How about -- I want to jump forward and just
25 get this in the record so I can get the documents

Page 18

1 Nevertheless, they moved away and I -- I
2 moved on. So that was -- that had to be in the
3 '80s that there was this abuse.
4 And when I became pastor of Christ Our King,
5 I got a letter from him. He was living in Atlanta.
6 He had exhausted all of his savings by going to a
7 psychiatrist. And I -- he said could I help in any
8 way and I said yes. I said you get the
9 psychiatrist to send me your bills.

10 And then I went to Sam Miglarese who was
11 vicar general and I told him that I had this
12 request. I don't remember the kid's name now. But
13 anyhow, he said, well, he would reimburse the
14 parish for whatever we paid.

15 Q. Monsignor, then Monsignor Miglarese?

16 A. Yes, for whatever we paid for -- it lasted I
17 think about two years.

18 Q. So you paid the bills from Christ Our King
19 parish.

20 A. The parish. And he reimbursed.

21 Q. And you got -- in a circular way, you got
22 reimbursed from the diocese. That's the limit of
23 your involvement.

24 A. Yes.

25 Q. Okay. Thank you. I remember that.

Page 20

1 out of the way and then we'll come back and discuss
2 it.

3 (Exhibit No. 03 marked for
4 identification.)

5 Q. You have been handed what has been marked,
6 Monsignor, as Plaintiff's No. 3 to your deposition.
7 I want to ask you if you recognize that as being a
8 copy of the report on diocesan priests with a
9 credible allegation of child sexual misconduct or
10 abuse within the Diocese of Charleston. And it's
11 broken into subparts. This is the March 31st
12 report. Are you familiar with it?

13 A. I am.

14 Q. Okay. What I'd like to do --

15 A. I saw it in the paper.

16 Q. Yes, yes. What I'd like to do, and we can
17 do this very quickly, I think, I'd like to just go
18 down the list and if you could quickly tell us how
19 many of these people you know and whether or not
20 you were aware of their abusive conduct, I think we
21 can get through the about 40 names on this list.

22 MR. DUKES: And just to clarify, are
23 you asking if he knew about their abusive conduct
24 when it was taking place or later?

25 MR. RICHTER: Well, I will ask him

Page 21

1 that.

2 MR. DUKES: Okay. Fair enough.

3 MR. RICHTER: I don't know, may be

4 there are none that he knew about the conduct.

5 Maybe there are two, maybe there are 30. Let's

6 just see if that becomes a problem.

7 THE WITNESS: I didn't know -- I wasn't

8 aware of the abuse of any of these people.

9 Q. Okay. How about go down the list, please.

10 Did you know -- do you know, or did you know, he's

11 deceased now, Roy Aiken?

12 A. I did.

13 Q. All right. And were you aware of any --

14 A. No.

15 Q. -- during his life of any abusive conduct by

16 him?

17 Okay. John Bench?

18 A. You know, I know the background of some of

19 these people, but I -- I didn't...

20 Q. Well, do you know the abuse background or do

21 you know just the personal background of these

22 people?

23 A. No. Like when I was vicar general, I think.

24 Q. Oh, that's right, yes.

25 A. I knew the background of some of these

Page 23

1 Q. All right. Justin Goodwin?

2 A. No. Oh, wait a minute, I -- there were some

3 allegations that came in, and I can't tell you

4 when, but it seemed like it was about three kids or

5 something like that. Something, but I didn't think

6 it was credible, so...

7 Q. Okay. And you were not involved in it as a

8 case or anything like that?

9 A. No, no, no.

10 Q. Okay. Now we're down to Hopwood. Well, did

11 you know Fred Hopwood and did you --

12 A. I knew him, like, to the extent that I told

13 you about his Studebaker.

14 Q. He was a distinct personality is about as --

15 A. Yes.

16 Q. -- gently and accurately as I can say it.

17 A. I just -- I just would never have suspected

18 it for any of these people. You know, abuse was

19 not a word we ever used because I -- I'm not aware

20 of it.

21 Q. Well, about Hopwood, when did you come to

22 know of his abusive activities?

23 A. I think when he was at St. Mary's.

24 Q. In Greenville?

25 A. Yes.

Page 22

1 people. I did not know Aiken. Bench, I did know

2 about that case. Vaverek I did not know. Burn I

3 did not know. Condon I -- I did know Condon

4 because I was vicar general when that -- when that

5 case broke, I think.

6 Q. Did you know him personally, any of these

7 people that you knew personally too?

8 A. Yes, well, you know, professionally more

9 than anything else.

10 Q. Yes, I said personally. I really mean

11 professionally.

12 A. Yes, but -- and Congro, I didn't know

13 anything about any abuse, but I knew him.

14 DuMouchel I knew, but -- Evatt I knew. I just

15 didn't know any of these people were doing any

16 abuse things. The Hopwood thing was notorious.

17 Q. If you don't -- we'll come to that in just

18 one minute. Let me just ask you please to knock

19 out the names prior to Hopwood, Evatt and Goodwin.

20 I just want to run down the list so we can say

21 we've touched everybody.

22 Thomas Evatt, did you know him?

23 A. Yes.

24 Q. And any knowledge of his activities?

25 A. No.

Page 24

1 Q. I don't remember the years.

2 A. Yes, but -- yes, but he had been abusing

3 people before that, but that's when it all came

4 out, I guess.

5 Q. Yes, and that's when you came to know of his

6 history?

7 A. Yes.

8 Q. Do you remember how early his abusive

9 activity began?

10 A. I think it began when he was at the

11 cathedral.

12 Q. So back in the '50s, really?

13 A. Yes.

14 Q. Okay. Have you -- I failed to ask you this

15 a moment ago. Let me just inject it. Have you

16 ever served as a notary for any proceeding within

17 the diocese?

18 A. No.

19 Q. Okay. Have you ever been part of any effort

20 at laicization of any priest of the diocese?

21 A. No.

22 Q. Thanks. Anything else about Hopwood that

23 you can offer us testimonially as to his history of

24 abuse?

25 A. That's about it, no, yes.

1 Q. How did you learn it? How did you learn
2 about him?
3 A. I was going to say probably how I learned
4 about the allegations against the bishop, I read it
5 in the paper.
6 Q. And that was really at the end of his active
7 service in the diocese because he was moved out.
8 A. Yes, he was -- yes. He's dead now.
9 Q. All right. And having learned about it, did
10 you then have any involvement beyond that?
11 A. No.
12 Q. Okay. Thank you, sir.
13 How about Walter Pringle Lee; did you know
14 that person or anything about him?
15 A. I knew him. He was a strange guy. Again, I
16 wouldn't know whether he abused anybody.
17 Q. Okay. I'm not -- you may have knowledge,
18 you may not have knowledge. We just need to rule
19 you in or out as to various people as we go
20 through.
21 A. Okay.
22 Q. Next McLean, Frederick McLean?
23 A. No.
24 Q. I don't know Walter Pringle Lee, didn't know
25 Walter Pringle Lee. He's deceased I see here.

Page 25

1 Same thing McLean, I never knew him.
2 A. I think he was a convert, Walter Pringle
3 Lee.
4 Q. Did you even know the McLean guy?
5 A. No.
6 Q. Nor did.
7 What about George Frederick Moynihan?
8 A. Moynihan was my parochial vicar when I was
9 in Spartanburg.
10 Q. Okay. I went to school with someone or few
11 of the Moynihan family at Bishop England.
12 A. I think that's right, yes.
13 Q. I don't know if it's the same family or not.
14 A. I think it probably is. Big family.
15 Q. Okay. Daniel Francis Murphy?
16 A. Murphy, Frank Murphy, no.
17 Q. All right. Joseph Murphy?
18 A. I think he taught at Bishop England, didn't
19 he?
20 Q. Joe Murphy was at --
21 A. Oh, wait a minute, no, no, Joseph Murphy.
22 Q. Joe Murphy --
23 A. Daniel Francis Murphy taught at Bishop
24 England. I think he got killed.
25 Q. I don't know. I didn't know him and can't

Page 27

1 ever remember.
2 A. He got killed.
3 Q. How did he get killed?
4 A. I think he went over a railroad tracks and a
5 train hit the car.
6 Q. Oh, my Lord.
7 A. And he was -- it was wild. He was teaching,
8 I think, at Bishop England.
9 Q. He may have -- I just didn't know him.
10 A. Joe Murphy I did know.
11 Q. Yes, as I did.
12 A. Mm-hmm.
13 Q. Did you have any knowledge of his abusive
14 activities?
15 A. No, I didn't. Later on it was kind of
16 revealed and I -- it didn't surprise me.
17 Q. Yes. I -- I hate to say the term old man in
18 the presence of people my age and yours, but I came
19 to know Joe Murphy and who he was, but I came to
20 know him. We spent 25 years at St. Mary's and
21 he -- you know, he served at St. Mary's on Hasell
22 Street and he lived around the corner from us in
23 the village for -- in his sister's house I think --
24 A. Yes, yes.
25 Q. -- for a really good long time. But I

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1 only -- didn't know anything about his personal
2 life at all. Surprised me to see his name.
3 A. It didn't surprise me.
4 Q. Yes. Why do you say that?
5 A. Just the way he acted.
6 Q. Just did a read?
7 A. Yes, I didn't feel comfortable around him.
8 Q. I understand. I hate to talk about the dead
9 this way. I always thought Joe Murphy would be
10 glad to take a drink, you know, if he -- if you
11 offered.
12 A. He'd be what?
13 Q. Glad to take a drink.
14 A. Oh, yeah, I imagine he would.
15 Q. But I never had any reason to suspect
16 anything else about him.
17 Owens Howard, James Robert Owens Howard?
18 A. I know the name. That's all.
19 Q. All right. And Gerald Ryfinski?
20 A. Jerry Ryfinski.
21 Q. Oh, he was laicized, I see. Okay. Did you
22 know him?
23 A. Yes. I think -- I think he did something on
24 computers.
25 Q. Oh, that's right. There's a footnote by his

1 name that says his case involves possession of
2 child pornography.
3 A. Yes.
4 Q. Which I can't quite understand because if
5 you know anything about Gene Condon's case, there
6 were lots and lots of photographs of boys.
7 A. There was a trunk full of them.
8 Q. That's right. That's exactly right. Man
9 oh, man.
10 A. Seitz, Paul Seitz, he's still alive.
11 Q. I don't know him, never met him. Any
12 knowledge of his background or activities?
13 A. There was an allegation. I wasn't aware
14 that he got intimately involved with a kid, but I
15 think he -- I think it was that he saw a kid who
16 was taking -- changing from maybe clothes to a
17 bathing suit and he said something about his
18 genitals. That was the extent that I knew of that.
19 Q. Okay. That's Paul Seitz you're talking
20 about?
21 A. Yes.
22 Q. Okay. Charles Sheedy, he was at the orphan
23 house, if you remember.
24 A. I didn't remember. He had a sister.
25 Q. Yes.

1 A. Played the organ over at -- on Folly Beach.
2 Q. I don't remember that, but I do know that he
3 was at the orphan house. This is a lot of years
4 ago.
5 A. I didn't realize he was at the orphan house.
6 I do know that he became a priest and --
7 Q. No, no, he was at the orphan house during
8 his service, not as a resident.
9 A. Oh, oh, I thought you meant as a kid.
10 Q. I don't know where he was a resident, but he
11 served there.
12 A. He may have been there.
13 MR. DUKES: Try not to talk over each
14 other, please.
15 THE WITNESS: He -- he had a problem
16 with alcohol.
17 Q. Yes, yes.
18 A. And Tom Duffy was vicar general, and so they
19 were going to send him off somewhere in Georgia for
20 rehab and Duffy took him there. And Duffy said he
21 wanted to stop a couple times along the way and he
22 knew he was going to try to get a drink or
23 something like that.
24 Well, anyhow, they got to the facility and
25 Sheedy went in, ran in ahead of Tom Duffy and told

1 the people that he was Tom Duffy and Duffy was
2 Sheedy. And Tom Duffy said he had a terrible time
3 trying to explain to them that was not the case.
4 Q. Oh, man. I thought you were going to say he
5 went in ahead of Duffy and bought up all the big
6 stogie cigars.
7 A. Oh, no, no. He went in and told them he was
8 Duffy and not Sheedy.
9 Q. Okay. Who else is on this first page?
10 A. Simonin, I knew Simonin.
11 Q. Oh, Jack Simonin.
12 A. Yes.
13 Q. Who --
14 A. He was at Camp St. Mary's and all that
15 stuff.
16 Q. I knew, I can't tell you how many years, you
17 know, the whole family, the whole Simonin family.
18 A. Yes.
19 Q. Went to school with some and just knew the
20 whole Simonin family.
21 A. I think some of these names are a little
22 surprising.
23 Q. That one surprised me.
24 A. Yes.
25 Q. Did you have any prior knowledge of any

1 activity on his part?
2 A. No.
3 Q. Are you aware of what that was? We learned
4 this from the bishop when we took his deposition.
5 I didn't know any details, never heard, never heard
6 anything except praise for Jack Simonin.
7 A. Yes, yes.
8 Q. And he was very close to our family. The
9 bishop was going to offer his funeral mass and the
10 phone rang. Someone else answered it and it was
11 someone calling up the day of Monsignor Simonin's
12 funeral to say I had a relationship with
13 Monsignor Simonin many years ago. It was a woman
14 is what the bishop told us. But it just surprised
15 me.
16 A. Was that an abuse thing?
17 Q. That was abuse.
18 A. Saying as a child, she was younger?
19 Q. No, I don't know. He -- I say that. I
20 don't know anything about the actual -- if there
21 was actual abuse. We didn't learn anything about
22 that from the bishop. We just learned that an
23 adult woman called up.
24 A. Well, if we're talking about abuse, aren't
25 we talking about adults abusing children?

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1 Q. Yes. Yes. 2 A. And so this child must have been a girl. 3 Q. Clearly an adult, though, when she called 4 in. 5 A. Oh, when she called. Okay. 6 Q. But whatever, they included him on this 7 list. 8 Vaverek, Hayden Vaverek, did you know him? 9 A. Yes. 10 Q. He was laicized also. 11 A. He was. 12 Q. But you were not a part of any of that 13 process in any way. 14 A. No. 15 Q. Okay. 16 A. Although I did know that it was not -- he 17 was laicized not because of a sexual abuse 18 allegation but because he broke the seal of the 19 confessional. 20 Q. I didn't know. I didn't know anything about 21 him or that. 22 A. I understand that that was an easier way to 23 go with that case to get him laicized. 24 Q. I'm sorry, say that again? 25 A. It was an easier way to go to incriminate	1 him with this breaking the seal of the confessional 2 than -- 3 Q. The abuse. 4 A. -- the abuse thing. 5 Q. Yes. Wow, and you -- I take it that was 6 true that the seal of confession was broken by him. 7 Do you know? 8 A. I don't know that, but I -- that's what I 9 heard that that was the way they went with his 10 laicization. 11 Q. That's amazing. 16 -- well, that would be 12 16 would have been Bishop -- 13 MR. DUKES: Guglielmone. 14 MR. RICHTER: No, yes, since '09 it 15 would have been. 16 THE WITNESS: Yes. 17 Q. Wow. 18 A. Yes, he... 19 Q. Okay. Let's turn the page, quickly, please. 20 That was the only page that has a lot of names on 21 it. I'd like to do the same thing. 22 A. Are you aware that as far as Hayden Vaverek 23 is concerned that -- 24 Q. I'm sorry, I couldn't hear you. 25 A. Are you aware that as far as Hayden Vaverek
Page 35	Page 36
1 is concerned that there was a pending allegation 2 against him. 3 Q. I am aware of that, but only by a third -- 4 A. By a priest who is no longer a priest. 5 Q. No. Oh, yes, yes. 6 MR. DUKES: He's still a priest. 7 THE WITNESS: Well, forever. 8 MR. DUKES: Yes, he hadn't been 9 laicized yet. 10 THE WITNESS: Oh, yes. 11 MR. DUKES: But he will be. 12 THE WITNESS: Yes. Yes. 13 Q. And I don't want to confuse this with 14 somebody else. 15 A. He's not an acting priest. 16 MR. DUKES: It's Michael Cassabon. 17 MR. RICHTER: Michael? 18 MR. DUKES: Cassabon. 19 Q. Yes, I know that. But this is an upstate 20 matter. 21 Did you know the Tawes family? 22 A. The what? 23 Q. Tawes, T-A-W-E-S? 24 A. Tawes, yes, Creston Tawes. 25 Q. Yes.	1 A. Yes. He was also at camp. He was Jack 2 Simonin's replacement there. 3 Q. Yes, I know. 4 A. Okay. That was a surprise to me too. Was 5 he on here, Tawes? 6 Q. Yes, you'll see it. We'll get to it in a 7 minute. Let's run through this. 8 A. I don't know the first one. 9 Q. Juan Carlos? 10 A. No. 11 Q. Roger Collettert? 12 A. No, I don't know him. 13 Q. Anthony William Johnson? 14 A. No. 15 Q. And James Nyhan. Nyhan was nativity. He 16 came down from Massachusetts for awhile. 17 A. Yes, just what I read about him, that's all 18 I know. 19 Q. Okay. I know something about those cases. 20 But beyond that, you didn't have any involvement 21 with it, just read it in the paper? 22 A. Hm-mm. 23 Q. Okay. Cesare Palatore -- 24 A. No. 25 Q. -- Belfiore?

1 And James Sharples?
 2 A. No.
 3 Q. Next page, please. Robert Joseph Kelly,
 4 now, there's a footnote. That's not Robert Justin
 5 Kelly; that's Robert Joseph Kelly.
 6 A. No, I didn't know him.
 7 Q. Robert Justin Kelly at one point preceded
 8 you at Christ Our King.
 9 A. Yes, he did. He was the first pastor there.
 10 Q. Yes, I guess he was because
 11 Father McLaughlin sort of troubleshooter for -- that's
 12 a long time ago. Wow.
 13 A. Yes.
 14 Q. So you didn't know Robert Joseph Kelly in
 15 any way?
 16 A. No.
 17 Q. Okay. Robert Justin Kelly was a dear friend
 18 of mine, dear friend of mine.
 19 A. Oh, he was a character.
 20 Q. Oh, man. You know, he -- I don't know if he
 21 ever did this to you: He loved to touch somebody
 22 here on their chest and when you looked down to see
 23 what had touched you, he would catch you, you know,
 24 with his finger coming up and hit you in the nose.
 25 A. The other thing he liked to do was come up

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1 and say, your fly is unzipped.
 2 And you'd say, well, you shouldn't be
 3 looking there anyhow.
 4 Q. That's a great response.
 5 A. But he always -- he was always a character.
 6 He was always doing something.
 7 Q. Yes, he was -- he was very close to me and I
 8 to him. He -- I was too smart for him to pull that
 9 trick on me --
 10 A. Oh, yeah.
 11 Q. -- but -- hitting my nose. But in the
 12 hallway at Bishop England High School, the new
 13 Bishop England High School when he was confined to
 14 a wheelchair, he called me over and I had to lean
 15 down because he was sitting in a wheelchair and I
 16 leaned down --
 17 A. He got you then.
 18 Q. And sure enough he got me good. And he was
 19 not well enough to be doing that, you know?
 20 A. He was rector of Bishop England and I was
 21 rector of Cardinal Newman, so we...
 22 Q. How long were you at Cardinal Newman?
 23 A. Just a couple of years.
 24 Q. Okay. Let's run through the rest of these.
 25 Landwermeier, Francis Landwermeier?

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1 A. I didn't know him.
 2 Q. John Mitchell?
 3 A. Nope.
 4 Q. Austin Park?
 5 A. No, but he was at Christ Our King with
 6 Burt Connor. They were both Jesuits, before I --
 7 when I came.
 8 MR. DUKES: Now I'm going to tell a
 9 story. You all have been telling stories. Burt
 10 Connor --
 11 MR. RICHTER: Father Connor.
 12 MR. DUKES: He was my parish priest in
 13 Mobile, Alabama when I was probably six or seven.
 14 I served mass for him many times, and at
 15 St. Ignatius in Mobile there was a Jesuit parish
 16 and it was much like Christ Our King, plenty of
 17 people with plenty of money, but the Jesuits were
 18 so cheap that they would not build a church until
 19 they had collected enough old bricks from torn down
 20 schools or buildings and Father O'Neal had this
 21 enormous brick pile, it was the size of this
 22 building, sitting out in the parking lot.
 23 And we had to -- we had mass all
 24 growing up until I was in the ninth grade, we
 25 had -- the altar boys had to go and crank the

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1 basketball goals up for mass. We had mass in the
 2 gym, but Burt Connor was my childhood parish
 3 priest.
 4 THE WITNESS: Isn't that something.
 5 Q. You know, we used to have mass in the hall
 6 at Christ Our King.
 7 A. Yes.
 8 Q. And Chuck Dawley was telling somebody, maybe
 9 Greg West about this, but Chuck Dawley was a member
 10 of the Church and active in the community and chief
 11 of police ultimately over here and sheriff
 12 ultimately.
 13 Anyway, he had a little crew that he called
 14 every -- I was on the crew and if they had bingo
 15 the night before, you'd get a late call, a late
 16 assignment to go take down the bingo and set up the
 17 church for mass, you know, Sunday morning. We've
 18 come a long way since then.
 19 A. Yes.
 20 Q. Okay. Let's scoot on. So who got us off
 21 there?
 22 MR. DRAKE: We were on Landwermeier.
 23 Q. Or Park, Park, yes.
 24 But beyond that, nothing about Park, just
 25 cheap Jesuits is what that led into.

1 How about Gabe Smith?

2 A. I knew something.

3 Q. He was at St. Joseph most recently, west of

4 the Ashley.

5 A. I know. There was an allegation I think

6 that came in against him. He was raised in an

7 orphanage and he went back there once he was

8 ordained a priest and was the priest there at the

9 orphanage and it was supposedly during that time

10 that he abused a kid.

11 Q. Okay. Where was that? Not here.

12 A. No. It was in Pennsylvania somewhere, I

13 think.

14 Q. Yes, yes. And he has reached retirement age

15 and tendered his letter, which the Bishop accepted,

16 and we talked with a couple of people who I refer

17 to as a flap. A flap developed about all that,

18 within the parish at least. I don't know about

19 within the diocese, but there were -- there were

20 quite upset parishioners because he had come with

21 whatever that allegation was or that offense was,

22 he had come with that when he came down here and

23 apparently his parishioners loved him very much

24 and...

25 A. He was -- he was also in Spartanburg.

1 Q. I didn't remember that.

2 A. Yes, I attended Spartanburg and he was there

3 in Spartanburg, but that's the only thing I know

4 about him.

5 Q. I don't really know him. I've met him and

6 that's all.

7 Robert Spangenberg?

8 A. I don't know him.

9 Q. And Thomas Tierney?

10 A. Nope.

11 Q. He was a Paulist. We've come to learn that

12 the Paulists were at Clemson up there.

13 A. That's right, yes.

14 Q. And this is the last page, just a few names

15 on it. John Eccleston?

16 A. No.

17 Q. I think John Eccleston served at Blessed

18 Sacrament at one time.

19 A. Did he?

20 Q. And he was a choir master or a music teacher

21 or something beyond something like that?

22 Leon Joseph Hubacz?

23 A. Leon Hubacz, I just know the name.

24 Q. Yes, I know the name too. I don't know

25 Hubacz, but I do know the name from other --

1 A. Oh...

2 Q. Go ahead.

3 A. He was at Blessed Sacrament, I think.

4 Q. Hubacz was, that's right.

5 A. And then he went to St. John's in North

6 Charleston.

7 Q. North Charleston, that's exactly right.

8 A. Because the bishop transferred him there. I

9 don't know whether you remember. He had a -- a

10 girlfriend and she lived over opposite the crescent

11 over there, in whatever that area was. And he had

12 a -- he would stay over at her house, I think, and

13 he had the telephone transferred, the rectory

14 telephone transferred over there so he could answer

15 the phone.

16 Q. As if he --

17 A. As if he was in the rectory.

18 And they had -- it was a child, and the

19 child was named Leona, after Leon, I guess. And

20 the bishop, I guess, got wind of this or whatever

21 and transferred him from there to St. John's, and

22 he objected to it. So he got one of those big

23 signs out front and said the bishop was unfair and,

24 you know, those things that -- on two wheels.

25 Q. Yes, I know what you're talking about.

1 A. Yes, yes.

2 Q. I didn't know that story and I don't

3 remember anything about that event.

4 A. He also -- after he left St. John's, he went

5 up to somewhere around -- oh, it was in the upper

6 part of the state. Anyhow, he was in a parish

7 there. She was with him. And the bank account was

8 depleted and the bishop found out -- the bank

9 people called the bishop and asked if they were

10 unhappy, he was unhappy with them to take all the

11 money out. So he had taken all the money. And it

12 was during the time that I was in Spartanburg

13 because he no longer was a priest, but he would

14 come to church in Spartanburg sometime.

15 Q. Wow. Never heard those stories before, but

16 that's a good example of why the bishop said the

17 other day, you said it the other day, we were

18 asking the bishop his age and his retirement date

19 and that -- his 75th birthday and Rich commented,

20 the bishop didn't even correct this. He said he

21 can tell you the number of days and to the hour.

22 A. Yes, yes.

23 Q. Now I -- now, I didn't know anything about

24 the other stuff that's in the paper.

25 A. This was Joanna is where he was up around

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1 Joanna.
 2 Q. Joanna, yes. All that area up there, I
 3 don't know if you go upstate anymore, but, man,
 4 it's unbelievable what the growth is. You think we
 5 see growth here? They see industrial growth as
 6 well as just growth of the populus and it's
 7 prosperous looking and they have good roads and
 8 it's -- it's quite a difference than what the
 9 upstate used to be.
 10 Okay. Let's run on down to the rest of
 11 them. So I've got to ask you about Leona. Did she
 12 stay or did she go?
 13 A. I don't know what happened to Leona or the
 14 wife. I don't know what happened to them.
 15 Q. Ernie Kennedy, did you know -- I knew him.
 16 Did you know him?
 17 A. I knew Ernie, yes.
 18 Q. Yes, he --
 19 A. Yes, he sent me -- when I was ordained, he
 20 sent me a letter and he said -- and you just use
 21 the enclosed however you see fit, but there was
 22 nothing enclosed.
 23 Q. Well, I guess you keep looking. He -- I
 24 want to say, I can't keep it quite straight, he was
 25 apart from the Church for a considerable time.

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1 in a while around -- I held court a fair amount in
 2 Berkeley County and I would run into him up there
 3 over the years as well.
 4 A. Yes.
 5 Q. Anyway --
 6 A. He was always very affable, in my
 7 relationship with him.
 8 Q. I knew only -- I knew about an allegation, I
 9 don't know how it -- I do know how it was resolved.
 10 In any event --
 11 A. I didn't know anything about that.
 12 Q. I'm not surprised. And he was away for a
 13 good little while.
 14 Okay. Let's do McElroy, James McElroy?
 15 A. I don't know him.
 16 Q. All right. And Anthony Plikunas?
 17 A. Plikunas.
 18 Q. Yes, Plikunas. I want to say Plikunas was
 19 somewhere like Divine Redeemer or somewhere, but
 20 I'm not sure of that.
 21 A. I don't know.
 22 Q. I don't know him either, but I remember his
 23 name.
 24 A. Yes.
 25 Q. Bill Richardson is the guy you were just

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1 A. He got very angry with the bishop and I
 2 think it was Unterkoefler.
 3 Q. He's probably the only guy who did.
 4 A. Yes, right. Yes.
 5 But, no, he -- and he just dropped out, but
 6 he was -- he would go to the monastery and help out
 7 at the monastery --
 8 Q. Yes.
 9 A. -- working in the garden and all that sort
 10 of stuff because he lived --
 11 Q. In Moncks Corner.
 12 A. Yes.
 13 Q. Or in that area, anyway.
 14 A. Yes.
 15 Q. I had in my mind, I mean, I knew him from
 16 here, from the island and I had in my mind that he
 17 did some kind of either counseling or set up a
 18 center or did something about drug abuse.
 19 A. Alcohol.
 20 Q. Alcohol abuse. Okay.
 21 A. There's a facility named after him.
 22 Q. That's right. That's right.
 23 A. Because he worked with -- he worked with
 24 alcoholics, I guess. That's right.
 25 Q. Yes, I mean, I would still run into him once

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1 talking about.
 2 A. Yes. Yes.
 3 Q. In Aiken.
 4 A. Mm-hmm. I think he might be dead now, but I
 5 don't know that.
 6 Q. I don't know.
 7 A. I don't know why I would say that because
 8 when he left he became -- worked at the hotel down
 9 in Florida.
 10 Q. I never knew him.
 11 MR. DUKES: Last I heard he was still
 12 alive, but...
 13 THE WITNESS: You did?
 14 MR. DUKES: Mm-hmm.
 15 Q. Frederick Suggs?
 16 A. Suggs. I knew him. He was kind of a
 17 strange character, little man.
 18 Q. You're the third person who said he was this
 19 little squirt of a guy.
 20 A. And collected all sorts of things, like
 21 Gene Condon collected insulators.
 22 Q. Electrical insulators?
 23 A. Oh, I mean, he had a whole bunch of them.
 24 And this guy would have -- he'd have furniture, I
 25 mean, he collected just everything.

1 Q. Yes. Where did he serve, do you know?
2 A. He ended up there in -- outside of Columbia
3 or in Columbia right there. I forget the parish,
4 but he...

5 Q. We've got one more name to do, Tawes,
6 Creston Tawes, did you know him?

7 A. I knew him.

8 Q. And did you know, during his lifetime, did
9 you know about the difficulties, I mean about his
10 improper activities?

11 A. No.

12 Q. Okay. Now, there are I'll tell you if you
13 read this thing, you know, critically you'll see
14 that there are a number of priests who are not
15 dealt with, I want to say it's seven or eight, I
16 don't remember, we've totaled it up from time to
17 time, who have either pending actions or matters
18 still under investigation or whatever, so there may
19 be some supplement to this.

20 Do you have any knowledge that you can share
21 with us of anybody else that we need to know about?

22 A. No, all I know is the ones I read here
23 (indicating).

24 Q. What was your relationship with
25 William Croghan?

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1 A. I was his parochial vicar.

2 Q. Where?

3 A. In Columbia.

4 Q. At St. Peter's?

5 A. Yes.

6 Q. Okay.

7 A. Yes, when I left Cardinal Newman. And I
8 left Cardinal Newman because of conflict with some
9 of the teachers. I had just been ordained and I
10 was somewhat progressive and they were very
11 conservative and then so we got into a big row.

12 Q. Yes. Lay people?

13 A. Lay people.

14 And so the bishop came to me and he said, if
15 you resign, you can come down here at the chancery
16 and that will indicate my support of you.

17 And I said, no, I don't want to do that.

18 And I said, I will resign, but I don't want to come
19 down to the chancery.

20 So Duffy, I think, was head of the priest
21 personnel board and he said, well, why don't you
22 just go on vacation and then when you come back, we
23 can decide where you'll go, what you'll do,
24 whatever.

25 So I went on vacation. So then I came back

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1 and I said, I went on vacation and I'm back.

2 And they said, well, why don't you take
3 another vacation.

4 Q. Little longer.

5 A. I said I don't want to take another
6 vacation. And by that time Croghan had been very
7 much a defender of me at Cardinal Newman and there
8 was St. Peter's versus St. Joseph's. They're two
9 different parishes and I had those --

10 Q. Oh, I know that.

11 A. Yes, it was St. Joseph's teachers and all
12 that got after me.

13 And so anyhow, I said that I wanted to go to
14 St. Peter's and they said, no, the bishop doesn't
15 want you to go there. This is when I'm on the
16 second vacation. And so I went to Croghan and I
17 said, I think I'll just move in, and I did.

18 And the bishop wasn't very happy and I guess
19 it was six weeks after that that he belatedly
20 assigned, belatedly assigned me to St. Peter's. So
21 I knew Croghan there and I found him delightful.
22 Of course I knew the family --

23 Q. Yes, here.

24 A. -- here.

25 Q. Who was the bishop in those years?

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1 A. Cardinal Unterkoefler.

2 Q. I don't know why I have in my mind that
3 Unterkoefler came later.

4 A. No, he was there because of the other thing
5 that we did too was Croghan went to him and asked
6 him if we could move out of the rectory and get our
7 own places and he begrudgingly, after Croghan went
8 to him three or four times, said okay. It was
9 Lehocky and Croghan, myself, we moved out and --

10 Q. Lehocky, boy, I haven't thought about him in
11 a long time.

12 A. Yes. And I had an apartment and I bought a
13 dozen eggs and we were there for a year and we got
14 ready to go back into the rectory, I still had
15 those dozen eggs. They were a year old.

16 Q. Well, that's a good -- I'm glad I asked you
17 about that. That's a good story.

18 Croghan, and I can't remember the details of
19 it, but he didn't delight over something like music
20 or vestments or the trappings of the Church after
21 Vatican II or something. Do you know what I'm
22 talking about?

23 A. He was at St. Peter's.

24 Q. Yes.

25 A. And he redid the entire church, he kind of

1 gutted the thing, and it looked like a -- it looked
2 like a spaceship.
3 And then Lehocky went in after that. He was
4 assigned as pastor there years later and took it
5 all back to what it was.
6 The people ought to be so confused by us.
7 One goes in and changes it. Another one comes in.
8 Yes, he was -- he was avant-garde.
9 Q. That's the word I was looking for. That's a
10 good way to say that.
11 A. He didn't want anything to do with the
12 Latin. He wanted it in English because they said
13 it was in English now.
14 Q. You're not a canon lawyer, are you?
15 A. No, I'm not. Thank God I'm not.
16 Q. Have you studied Latin?
17 A. Yes.
18 Q. Just in the seminary or otherwise?
19 A. In the seminary because our books were in
20 Latin.
21 Q. Yes. What about in high school; did you
22 study?
23 A. Yes, I took some Latin.
24 Q. When did you finish?
25 A. I finished in 1957.

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1 Q. Okay. I finished in '64.
2 A. You're just a kid.
3 Q. Glad to hear you say that.
4 MR. DUKES: You're not hearing that
5 from me.
6 Q. The reason I asked you if you -- do you
7 consider yourself fluent in Latin?
8 A. No.
9 Q. Are you...
10 A. And I've forgotten most of it.
11 Q. Did you study Greek as well?
12 A. Yes, and Hebrew.
13 Q. Oh, boy. Oh, boy. Now, had you become a
14 canon lawyer, would you have had to study even more
15 Latin to become more proficient in it?
16 A. Probably. And I wanted to be a canon
17 lawyer. I asked Unterkoefer at one point if I
18 could go and study canon law. He said no.
19 Q. Your timing was bad, that's all.
20 A. Yes. And the other thing was that I wanted
21 to be chaplain at the University of South Carolina.
22 We had some priests that came in from, I forget,
23 the Redemptorists or something that had the -- took
24 care of the chaplaincy.
25 Q. At the campus?

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1 A. Mm-hmm. So he said no to that too.
2 Q. Did you have -- when you were at
3 Cardinal Newman, did you have parish duties as
4 well?
5 A. No.
6 Q. Okay. So where did you live then?
7 A. I lived in the convent.
8 Q. I don't even know where it is.
9 A. It was right behind the school.
10 Q. Okay. All right.
11 A. They had priest quarters there in the
12 convent.
13 Q. Well, William Croghan used to live in the
14 convent behind the cathedral, if you can remember
15 that old wooden --
16 A. Mm-hmm.
17 Q. -- structure, spooky-looking kind of. Do
18 you know what I'm talking about?
19 A. Yes.
20 Q. The spooky-looking structure.
21 A. That's where the Carteret Home started too,
22 right there on the side of there.
23 Q. I didn't realize that.
24 A. That's my grandmother.
25 Q. Well, that's a few years ago.

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1 The reason I asked you about the Latin, just
2 so you can understand where we're coming from, I
3 want to ask you if you're familiar with a document
4 commonly referred to as the instruction, dealing,
5 it's often said, with -- it's also sometimes
6 referred to as Crimen Sollicitationis. Are you
7 familiar with that at all?
8 A. No.
9 Q. Okay. Let me -- I've got two copies. The
10 difficulty -- I've got a Latin copy here. How long
11 would it take you to read this thing, explain to us
12 what it...
13 A. About the rest of my life.
14 Q. Then I'll give you the English version.
15 (Exhibit No. 04 marked for
16 identification.)
17 Q. All I want to do is ask you if -- I'm going
18 to lead you here a little bit and go faster. Let
19 me ask you if you recognize document labeled
20 Plaintiff's 4 to your deposition as being a copy of
21 what is titled at the top Instruction.
22 A. Patriarchs, archbishops, bishops.
23 Q. I'm sorry?
24 A. In the manner concerning cases of
25 solicitation.

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1 Q. That's right. And I want to --
 2 A. Is this in the confessional, solicitation?
 3 Q. What do you mean by that?
 4 A. One of the things that in the seminary was
 5 brought up was that it was criminal or whatever if
 6 there was solicitation in the confessional.
 7 Now, why they would have brought that up
 8 then, I don't know, unless they -- I mean, this is
 9 years ago -- unless they were aware that priests
 10 were doing that. I don't know. But solicitation
 11 otherwise, I don't know in what context that is.
 12 Q. I think your understanding of the act of
 13 solicitation --
 14 A. Right.
 15 Q. -- is that I think I hear you saying that
 16 that is the act of a priest soliciting a sexual
 17 favor from a penitent.
 18 A. And it could be sexual. It could be
 19 otherwise I guess, yes.
 20 Q. Soliciting something?
 21 A. Yes.
 22 Q. Yes, we deal with it normally in the context
 23 of sexual relationships.
 24 A. Yes.
 25 Q. But yes, I mean, it could be money,

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1 A. I -- I don't know. You know, I think a
 2 person from the beginning may be oriented in that
 3 direction. I don't know how to account for it
 4 otherwise. And they just, like, you know, if I
 5 would find a woman attractive, they would find
 6 little boys attractive, little girls or whatever, I
 7 mean little people.
 8 Q. Yes, I understand what you're saying exactly
 9 and let me -- you'll, I think, understand this as
 10 well, with the same parochial educational
 11 background and history that I have, just separated
 12 by a few years. I know what we learned and I want
 13 to ask you, did you learn to respect and defer to
 14 and really revere the clergy, the hierarchy within
 15 the Church?
 16 A. Yes, yes.
 17 Q. We -- when we finish, I'll tell you about
 18 being in politics, a couple of funny stories. Good
 19 stories.
 20 What do you understand ontological to mean?
 21 MR. DUKES: When was the last time the
 22 word ontological was used anywhere on Edisto?
 23 THE WITNESS: Or anywhere where I was.
 24 Q. What I'm referring to is the process of
 25 ordination, lifting up or separating or enhancing

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1 whatever.
 2 A. Right, yes.
 3 Q. Okay.
 4 A. Dealing, making deals in the confessional.
 5 Q. That's it. I don't want to go through this
 6 with you and I don't want to certainly argue it
 7 with you, but I will tell you that there are, as
 8 about other things in life, there are other views
 9 about what the ban on solicitation extends to in
 10 the confessional, outside the confessional, before
 11 confession, after confession, at other times.
 12 All of those things are -- if you're a
 13 reader and you want to stay up some night, reading
 14 some of that literature will make you dose off.
 15 A. Make you go to sleep?
 16 Q. Yes, I think. It won't --
 17 A. Keep you awake.
 18 Q. -- keep you awake, yes.
 19 All right. Now, I think I can quit.
 20 Oh, I do want to ask you something else.
 21 Let's talk about a victim of priest sexual abuse.
 22 I'd like to pick your brain a little bit, if you
 23 don't mind. I'd really like to know if you can say
 24 it, why is -- why are there so many cases of priest
 25 sexual abuse of particularly young boys?

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1 the stature, the status, the being of the person
 2 then ordained so as to make that ordained person
 3 somehow --
 4 A. Untouchable.
 5 Q. That or -- and clericalism comes -- you know
 6 what I'm referring to?
 7 A. Mm-hmm.
 8 Q. I just wonder in this whole abuse thing, I
 9 wonder if that also -- that mindset doesn't also
 10 plug in with the other factors like parochial
 11 education. We were learning so that -- and the
 12 mere separation of power position versus the
 13 nonpower position of a child and the age, age
 14 differences, as well as perhaps even the perceived
 15 power that a child has about forgiveness of sin,
 16 and I guess the other side of that being damnation
 17 being some sort of a power that a perhaps children
 18 perceive a priest as having. I don't know the
 19 answer to all of this.
 20 MR. DUKES: And I'd just object to the
 21 form generally.
 22 Q. Wasn't really a question, yes, we're just
 23 kind of talking, but I mean that as an inquiry, if
 24 it makes any sense to you.
 25 A. Yes. I think, as I look back on my growing

1 up, a priest was on the pedestal. We've since
2 fallen off of the pedestal with the things that
3 have happened. And we did it -- I think we did it
4 more than anything trying to become one with the
5 laity, to show them we were like them, we were
6 human like them.

7 Because as a child growing up, the priest,
8 you know, if there were an accusation of sexual
9 abuse, or if there were in fact sexual abuse, the
10 kid wouldn't -- 8- or 9- or 10- or 12-year-old kid
11 in those days wouldn't tell a parent about it
12 because the priest, you're going against a priest?
13 So, you know.

14 Q. Yes, I understand your explanation. Thank
15 you for having such a succinct response to that not
16 very succinct question I tried to frame for you.

17 MR. DUKES: I'll agree that was not a
18 succinct question.

19 Q. Guys our age sort of communicate on
20 wavelengths anyway, you know?

21 I can wind up by asking you just a couple of
22 things and I wanted to kind of read your mind a
23 little bit as I indicated, because I want to ask
24 you, we've got it, it's upon us, it's been as
25 widely exposed and written about and covered and

1 fussed over and everything else, priest abuse, sex
2 abuse cases, particularly with boys. It's not
3 strictly with boys but particularly with boy
4 victims.

5 So you've indicated at least your idea of
6 where it comes from at least in part where it comes
7 from. How do we stop it?

8 A. Are you speaking of specifically in the
9 Church?

10 Q. Yes, yes, yes, I mean to confine this to the
11 Church.

12 A. I don't know how we stop it other than
13 being -- monitoring more the candidates for the
14 priesthood, but I think that a person who is a
15 pedophile would be very clever and would be able to
16 defeat some of the systems that we would use.

17 Q. The effort to detect.

18 A. Yes. I think what we have to do is come
19 down hard on it so that it would deter maybe
20 somebody who is inclined to become a priest to see
21 what the consequences would be, and we'd have to
22 have some very severe consequences.

23 Q. Did you ever report to any civil authority
24 any abusive activity that you learned of during
25 your years as an active priest?

1 A. No.

2 Q. Okay. The last thing I want to ask you
3 about is, if you can articulate this, what is --
4 one of the things we have to do is measure what it
5 does to -- let's use that same little boy example,
6 10-year-old altar boy who gets raped by his pastor.
7 Do you agree, first of all, that he is harmed by
8 that?

9 A. Of course.

10 Q. Yes. Then what do we -- I say we, what does
11 the Church do to make that child -- to compensate
12 that child for what he has now been through?

13 MR. DUKES: Object to the form.

14 Q. You understand what I'm trying to ask you?
15 Go ahead and answer it, please.

16 A. You know, you can talk about monetary,
17 giving them money for what they've suffered, but
18 how do you measure that? How do you -- and is
19 money going to make that all right? I think we
20 have to do something, just the same way I did with
21 Richard, in that case with Richard, Wayne Morris.

22 We certainly have to give them help
23 psychologically so that they might overcome some of
24 the suffering, some of the abuse that they've
25 suffered, but I'm not sure that just giving them

1 money is going to do it and I think how do you
2 determine anyhow this versus the money.

3 Q. Yes, and the depth of the injury.

4 A. Yes. I don't know how you do that.

5 Q. To do that, somebody's going to ask you,
6 well, what's the value of a childhood, you know,
7 happy childhood?

8 MR. DUKES: Object to the form.

9 Q. These are hard -- these are hard questions
10 to answer. I'm not suggesting I know the answer to
11 all of the questions by any means. I can tell you
12 this that will help you, and I'll make it into a
13 question so your lawyer can relax a little over
14 there before we quit: At our system of justice, we
15 only allow one form of damages, one form of
16 compensation, and it's a monetary form.

17 The idea that it's based on, the broad
18 concept, we don't -- you do me wrong, I don't call
19 you out into the street and we have a gunfight, you
20 know. We have a process that allows compensation
21 in a deliberate, measured and uniform and fair way
22 is what we're shooting for under our system of
23 justice.

24 Now, I don't remember who we did this with,
25 Rich, but I explained to somebody in one of these

1 depositions that if -- and this will help you
 2 understand why you can't just spout out the
 3 definitive answer most precisely reached: If I cut
 4 your finger off, just half of your index finger, by
 5 something I do wrong to you, you have the right to
 6 have me compensate you for that loss. You've lost
 7 half a finger, but I can't give you half a finger.
 8 I can only give you the monetary compensation for
 9 what you've lost. Here it's measurable as half a
 10 finger. If I made you lose your mind, that's, you
 11 know, another thing altogether.
 12 But we can do that and we don't fight in the
 13 street. We do that in a civil way and that's what
 14 you're entitled to be compensated for.
 15 But I do the same thing to your brother,
 16 maybe simultaneously and same half of an index
 17 finger, now, you make your living one way so that
 18 that finger perhaps doesn't impact you so fully as
 19 it would your brother who is a concert pianist,
 20 let's say.
 21 So it's not an -- I mean, I want to tell you
 22 that we all acknowledge we wish you could just say
 23 the precise answer, but it takes a little more
 24 analysis than that. So if you ever figure out the
 25 answer, my question is will you call us and tell us

1 that?
 2 Now it's a question. He hasn't said a word.
 3 MR. DUKES: And I'll just object to the
 4 form. Any question that takes more than two pages
 5 in a transcript is per se objectionable.
 6 Q. See, he's lost sight of the fact that we've
 7 known each other since we both had dark hair. If
 8 he'd realize that, he'd understand the exchange.
 9 A. You know, I think you can go back to the old
 10 testament, an eye for an eye and a tooth for a
 11 tooth. And they came up with that remedy, if you
 12 will, because the tendency was in human nature if
 13 you cut off my finger, I'll cut off your arm. So
 14 that was the measure.
 15 Q. The finger, we limit it to the --
 16 A. You could not do any more retaliation than
 17 cut off -- I could cut off your finger because you
 18 cut mine off.
 19 Q. I understand.
 20 A. And that's the way that they measured
 21 justice.
 22 Q. Mm-hmm.
 23 A. I think that it's become very complicated
 24 with us. And you're right, you know, a concert
 25 pianist that loses a finger or whatever it is, is

1 going to indeed need to be compensated more than a
 2 day laborer that loses a finger, but, again, I
 3 don't know -- it's like in the confessional and
 4 somebody comes in and confesses a sin and you try
 5 to decide what an equal penance would be for that.
 6 You can't do it. You can't do it.
 7 And one of the things that I did, you know,
 8 I always would be very gentle with penitents and
 9 let God take care of the rest.
 10 Q. That's the wisest and safest bet I've heard
 11 about that.
 12 I don't think I need to examine about
 13 anything else. Do you want to at all?
 14 MR. RICHTER: Thank you.
 15 (Deposition concluded at 3:14 p.m.)
 16 ---
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1
 2 CERTIFICATE OF REPORTER
 3 I, Ruth L. Mott, Registered
 4 Professional Reporter, Certified Realtime Reporter,
 5 and Notary Public for the State of South Carolina,
 6 do hereby certify that the witness in the foregoing
 7 deposition was by me duly sworn to testify to the
 8 truth, the whole truth and nothing but the truth in
 9 the within-entitled cause; that said deposition was
 10 taken at the time and location therein stated; that
 11 the testimony of the witness and all objections
 12 made at the time of the examination were recorded
 13 stenographically by me and were thereafter
 14 transcribed by computer-aided transcription; that
 15 the foregoing is a full, complete and true record
 16 of the testimony of the witness and of all
 17 objections made at the time of the examination; and
 18 that the witness was given an opportunity to read
 19 and correct said deposition and to subscribe the
 20 same.
 21 Should the signature of the witness not
 22 be affixed to the deposition, the witness shall not
 23 have availed himself of the opportunity to sign or
 24 the signature has been waived.
 25 I further certify that I am neither
 related to nor counsel for any party to the cause
 pending or interested in the events thereof.
 Witness my hand, I have hereunto
 affixed my official seal on September 9, 2019 at
 Charleston, Charleston County, South Carolina.
 Ruth L. Mott,
 Registered Professional Reporter
 Certified Realtime Reporter
 and Notary Public
 My Commission expires
 February 23, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CA No. 2018-CP-10-4206
	)	
Richard Roe,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF DEPOSITION OF
	)	REV. MSGR. JAMES A. CARTER PA
	)	
The Diocese of Charleston, a Corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	

TO: Rev. Msgr. James A. Carter PA c/o Richard S. Dukes, Jr., Esq., attorney for Defendants

PLEASE TAKE NOTICE that the attorneys for Plaintiff will take the oral testimony by deposition of the below named individual at the time and date listed below. Said deposition will be taken before a qualified notary public in the offices of **The Richter Firm, LLC, 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464**. This deposition is to be taken pursuant to Rule 30 of the South Carolina Rules of Civil Procedure.

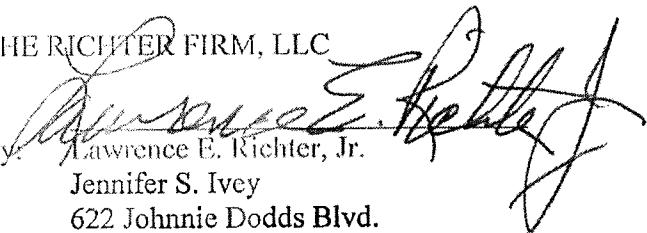
Said deposition is being taken for pre-trial discovery, for use at trial and for such other purposes as may be permitted by law. The deposition will continue from day to day until completed.

Rev. Msgr. James A. Carter PA
August 5, 2019 at 2:00pm

Signature block to follow on next page



THE RICHTER FIRM, LLC

By: 
Lawrence E. Richter, Jr.
Jennifer S. Ivey
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

2-19, 2019
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF CHARLESTON

Richard Roe, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

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

Case Number: 2018-CP-10-04206

Pending in Charleston County

TO: Rev. Msgr. James A. Carter PA
c/o Richard S. Dukes, Jr.
Turner Padgett Graham & Laney, P.A.
40 Calhoun Street, Suite 200
Charleston, SC 29401

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION The Richter Firm, LLC 622 Johnnie Dodds Blvd. Mt. Pleasant, SC 29464	DATE AND TIME August 5, 2019, 2:00PM
---	--------------------------------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

See attached Exhibit A.

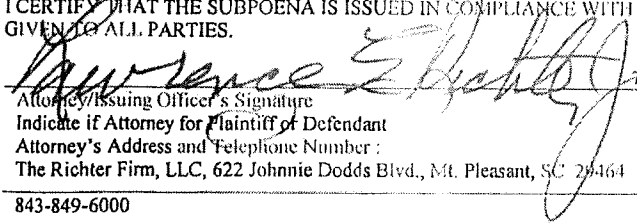
PLACE The Richter Firm, LLC 622 Johnnie Dodds Blvd. Mt. Pleasant, SC 29464	DATE AND TIME August 5, 2019, 2:00PM
---	--------------------------------------

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 7/19/19 Lawrence E. Richter, Jr.
Attorney/Issuing Officer's Signature Date Print Name
Indicate if Attorney for Plaintiff of Defendant
Attorney's Address and Telephone Number :
The Richter Firm, LLC, 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464
843-849-6000

Clerk of Court/Issuing Officer's Signature Date Print Name
Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A**The following definitions apply to the requests below:**

The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and all the duplicates, carbon copies or any other nonidentical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, e-mails, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to you.

The term "electronically stored information" shall mean information recorded in a form that requires a computer or other machine to process it and that otherwise satisfies the definition of a record, and should be afforded the broadest possible definition.

Documents Requested:

1. Any and all documents in your possession or control or that of your counsel evidencing gambling operations promoted or sponsored by any affiliate of the Diocese of Charleston, including, without limitation, any such relating to any bingo, lotter, drawing or any other game of chance.

Transcript of Monsignor James Carter

Page 1

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 JASPER COUNTY

4 DEPOSITION OF MONSIGNOR JAMES CARTER
5

6 ALLAN CARL RANTA,

7 Plaintiff,

8 vs.

CASE NO. 2006-CP-27-143

9 THE ROMAN CATHOLIC DIOCESE OF
10 SAVANNAH, A CORPORATION SOLE;
11 MOST REV. RAYMOND W. LESSARD;
12 J. KEVIN BOLAND, IN HIS
13 CAPACITY AS THE BISHOP OF THE
14 ROMAN CATHOLIC DIOCESE OF
15 SAVANNAH, A CORPORATION SOLE;
16 AND WAYLAND YODER BROWN,
17 Defendants.

COPY

18 -----
19 DEPONENT: MONSIGNOR JAMES CARTER

20 DATE: JULY 28, 2009

21 TIME: 10:00 A.M.

22 LOCATION: THE RICHTER FIRM
23 622 Johnnie Dodds Boulevard
24 Mount Pleasant, South Carolina 29464
25 -----

26 REPORTED BY: TERI L. HORIHAN
27 NCRA Registered Professional Reporter
28 CLARK & ASSOCIATES, INC.
29 P.O. Box 73129
30 North Charleston, SC 29415
31 (843) 762-6294
32 WWW.CLARK-ASSOCIATES.COM

Clark & Associates, Inc.
843.762.6294

000367



Transcript of Monsignor James Carter

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Page 4

1 APPEARANCES
2
3 ON BEHALF OF THE PLAINTIFF:
4 THE RICHTER FIRM
5 BY: LAWRENCE E. RICHTER, JR.
6 622 Johnnie Dodds Boulevard
7 Mount Pleasant, SC 29464
8
9 ON BEHALF OF THE DEFENDANTS:
10 SHAHID LAW OFFICE
11 BY: A. PETER SHAHID, JR.
12 89 Broad Street
13 Charleston, SC 29401
14
15
16
17
18
19
20
21
22
23
24
25

1 MONSIGNOR JAMES CARTER,
2 being first duly sworn, was examined and testified as
3 follows:
4 EXAMINATION
5 BY MR. RICHTER:
6 Q State your full name, please.
7 A James A. Carter.
8 Q I have to explain, pursuant to our rules,
9 a few things to you. Have you ever been deposed
10 before?
11 A I think I have, yeah.
12 Q The rules require that we tell you
13 certain things. This is a deposition. I will
14 direct questions to you. I'll try to do that
15 narrowly and in an understandable way. If you can
16 respond the same way, it makes things go faster.
17 You have a right to explain, you know, as fully as
18 you want to any answer.
19 Are you under the influence of any drugs
20 or alcohol today?
21 A Huh-uh.
22 Q Taking any kind of medication that would
23 impair you in any way, keep you from understanding
24 this process?
25 A No.

Page 3

Page 5

1 INDEX
2 EXAMINATION
3 By MR. RICHTER
4
5
6
7 Certificate of Reporter 30
8
9
10
11 EXHIBITS
12 (There were no exhibits marked.)
13
14
15
16
17
18
19
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21
22
23
24
25

Page 4

Page 12

1 Q In addition to that, you have the right
2 to read and sign your deposition prior to it being
3 submitted in this case or any case, and you also
4 have the right to waive that. This lady is an
5 independent court reporter, and it's entirely up to
6 you. Do you want to read and sign it?
7 A No.
8 Q If you need anything, just say so, and
9 your needs will be met. I don't think we're going
10 to be here long enough for you to need much.
11 Can you tell me, please, your date of
12 birth?
13 A March 1st, 1939.
14 Q Place of birth?
15 A Charleston.
16 Q What is your current address?
17 A 1149 Russell Drive, Mount Pleasant.
18 Q 29464?
19 A Right.
20 MR. SHAHID: She may need you to
21 speak up just a little bit.
22 Q Yeah. I didn't tell you one thing I
23 should have. Everything's being recorded. She also
24 takes it down by stenotype, so one of the things we
25 have to be careful of is not to talk over each other

2 (Pages 2 to 5)

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000368

Transcript of Monsignor James Carter

Page 6

1 because she can only get one of us at a time. And
 2 do speak loud enough for her.
 3 And don't -- the other thing I didn't
 4 tell you, don't use gestures like nods. You have to
 5 say yes or no because she is taking it down.
 6 A Okay.
 7 Q What is your current position?
 8 A Pastor of Christ Our King Church.
 9 Q How long have you been in that position?
 10 A 20 years.
 11 Q When were you ordained as a Catholic
 12 priest?
 13 A 1966.
 14 Q Place of ordination?
 15 A Charleston.
 16 Q Who ordained you in '66?
 17 A Unterkoefler, Bishop Unterkoefler.
 18 (Off-the-record discussion.)
 19 Q So you were ordained in 1966 here in
 20 Charleston. Since that time, have you been
 21 continuously active in your role as a Catholic
 22 priest?
 23 A Yes.
 24 Q Okay. Has all of your service been in
 25 the Diocese of Charleston?

Page 7

1 A Yes.
 2 Q Can you tell me, please, your history of
 3 assignments? Do you remember? Just go backwards, I
 4 guess.
 5 A My first assignment was at St. Mary's in
 6 Greenville. My second assignment was St. John's in
 7 North Charleston. My third assignment was director
 8 of Cardinal Newman High School in Columbia. Fourth
 9 assignment was St. Peter's in Columbia. Fifth
 10 assignment was Holy Spirit on Johns Island. Sixth
 11 was St. Paul's in Spartanburg. Seventh was
 12 St. Mary's in Aiken. And the eighth was here at
 13 Christ Our King.
 14 Q So you've been here from '89 or so till
 15 now?
 16 A Uh-huh.
 17 Q How long were you at St. Mary's?
 18 A Nine years. From '80 to '89.
 19 Q In the role of pastor?
 20 A Uh-huh.
 21 Q Did you have -- in Aiken, did you have a
 22 support staff? Did you have other priests available
 23 to you?
 24 A Yes. Ray Sommerfeldt was one -- well,
 25 there were a number of them. But yeah, there was

Page 8

1 also an associate.
 2 Q Were you ever in Aiken when Father Roy
 3 Aiken was there?
 4 A No. I replaced Nick Biod who replaced
 5 Roy Aiken. And Nick Biod was only there a year.
 6 (Off-the-record discussion.)
 7 Q What is your educational background,
 8 please?
 9 A You mean graduate education?
 10 Q Well, if you mind --
 11 A Bishop England High School.
 12 Q What year?
 13 A I graduated '57. Went to Mount
 14 St. Mary's College in Emmitsburg for two years. I
 15 was prelaw and was transferring to Dartmouth, and
 16 then I thought, well, I am -- I had this notion
 17 about being a priest but I didn't really want to.
 18 So I figured that would be the opportunity to get it
 19 out of my mind. So I went and asked the Bishop if I
 20 could go in the seminary, and I did. And I never
 21 went to Dartmouth.
 22 Q Didn't get it out of your mind?
 23 A No. And he sent me to St. Mary's in
 24 Kentucky. It was a year -- it was more than a year,
 25 but I went there especially for Latin 13 times a

Page 9

1 week, Latin, Greek, and Hebrew. After I went there,
 2 then I was at St. Mary's University in Baltimore.
 3 Q Is that where you actually matriculated?
 4 A That's right.
 5 Q With what degree?
 6 A I had an undergraduate degree with a
 7 major in -- minor in Latin and a major in -- I guess
 8 it was a degree in theology from St. Mary's.
 9 Q Do you have any military background?
 10 A No.
 11 Q Do you have any criminal background?
 12 A No. Other than speeding tickets.
 13 Q Have you got any history of litigation?
 14 Have you been involved in lawsuits?
 15 A Huh-uh.
 16 Q All right. I'd like to go back to the
 17 time period, please, when you were at St. Mary's and
 18 ask you if during your time of service there you had
 19 under your supervision a man named William
 20 Richardson?
 21 A Yes.
 22 Q Where is he now?
 23 A I don't know. The last I heard he was in
 24 Florida, I think.
 25 Q Has he been laicized?

3 (Pages 6 to 9)

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000369

Transcript of Monsignor James Carter

Page 10

1 A I don't know.
 2 Q When you last had contact with him, was
 3 he still an active priest?
 4 A Yes.
 5 Q Did you have him as a deacon first and
 6 then as --
 7 A Yes.
 8 Q And then he become -- when he was
 9 ordained, I guess, he became your assistant pastor?
 10 A Right, yeah.
 11 Q How long was he there while you were
 12 there in Aiken?
 13 A Two years. Because he was there a year
 14 as a deacon and then a year as a priest.
 15 Q Do you remember what years he was there?
 16 A It was the early '80s, but I
 17 specifically -- maybe -- it could have been '81 and
 18 '82 or something.
 19 Q All right. Did you have any difficulty
 20 with any of his activities while he was at
 21 St. Mary's in Aiken?
 22 A Yes, I did.
 23 Q What was the nature of that difficulty,
 24 please?
 25 A Bishop Unterkoefer had sent him to me

Page 11

1 because he had reservations about ordaining him, and
 2 he wanted me to observe him. At the conclusion of
 3 his year of diaconate, the bishop asked me what I
 4 thought. And I said, I don't have anything factual,
 5 but there's something about him that I can't put my
 6 finger on.
 7 Well, he went and ordained him anyhow.
 8 It was a year later that Tom Duffy of the personnel
 9 board came to visit Richardson about a move, and I
 10 confronted Duffy. I said, why are you moving him?
 11 I mean, what is it? And he said, he's asked for a
 12 move. I said, oh. It surprised me because I
 13 thought we got along well.
 14 So after they left, I said to him, I
 15 said, it surprises me that you are requesting a
 16 leave from here. And he said he thought that it was
 17 time for him to leave.
 18 So he got an assignment, and the
 19 assignment was St. Joseph's in Columbia. And then a
 20 lady in the parish who was a single mother called me
 21 up and said she needed to see me.
 22 Q Was that Ms. Thomas?
 23 A No. Her name was Morris.
 24 Q Morris. I'm sorry. I said Thomas. I
 25 meant to say Morris.

Page 12

1 A Morris. And then she went into the fact
 2 that her son had been abused.
 3 Q Sexually abused?
 4 A Yes. And I guess it didn't astound me
 5 because he was in charge of altar boys and whatever
 6 it was, and he seemed to get along with them well.
 7 But I guess I was shocked because he tried to -- he
 8 tried to tell the kid -- to keep the kid away from
 9 me, and disclosing this to me -- he told the kid
 10 what a wretched person I was.
 11 And his mother said that when I was ever
 12 away that he would bring the kid into the rectory.
 13 Well, I called up the bishop, and I said, you know,
 14 he can't have another assignment.
 15 And so we got all that -- and the bishop
 16 called him in, said, you know, you go to the
 17 monastery and you stay there for six weeks or
 18 whatever it is, or you can just leave. So he left.
 19 That was my last connection with him, and that's why
 20 I said my last connection with him was as a priest.
 21 Q Yeah. When he left, he left the Diocese
 22 or the priesthood?
 23 A He left the priesthood. He had
 24 already -- his things had already been taken to
 25 St. Joseph's and so forth, but he never got there.

Page 13

1 Q Who was the pastor of St. Joseph's then?
 2 Do you remember?
 3 A No, I don't. No, I don't remember.
 4 Q Okay. Did you confront -- he was then
 5 Father Richardson. He wasn't Deacon Richardson, was
 6 he?
 7 A He was Father.
 8 Q Did you confront Father Richardson about
 9 his transgression or transgressions?
 10 A I did, but I did it with Duffy because
 11 Duffy was the emissary of Unterkoefer in this
 12 matter.
 13 Q Okay. What response did you get from
 14 Father Richardson?
 15 A I don't remember. I think he was -- I
 16 think he couldn't refute it, but I don't remember
 17 what he said.
 18 Q Do you know whether he had any sexual
 19 relationship with any priest of the Diocese of
 20 Charleston?
 21 A No, I don't.
 22 Q Do you know whether he had any sexual
 23 relationship with priests of any other Diocese?
 24 A No, I don't.
 25 Q Do you have any reason to suspect that he

4 (Pages 10 to 13)

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000370

Transcript of Monsignor James Carter

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1 did?
 2 A No. Because I saw him as a pedophile,
 3 and I thought that was probably his interest. I
 4 mean, he could have, but I'm --
 5 Q When you use the term pedophile, do you
 6 limit that in any way, such as to prepubescent
 7 victims?
 8 A No. Because this kid -- it seems to me
 9 this kid was like 14 or 15, the Morris kid.
 10 Q Okay. Did you ever have an occasion to
 11 have priests from the Diocese of Savannah either --
 12 well, perform any religious services in Aiken at
 13 St. Mary's or on behalf of St. Mary's?
 14 A No. I didn't really know -- while they
 15 were right across the border, I didn't know many of
 16 the priests there. And I can't remember bringing
 17 anybody in.
 18 Q I realize this was 19 -- the early 1980s.
 19 A Yeah, yeah.
 20 Q Let me ask you, please -- let me ask you
 21 if you recognize the people in those photographs.
 22 A This is Gorski.
 23 Q I'm sorry?
 24 A Father Gorski.
 25 Q Do you know how to spell that?

Page 15

1 A G-o-r-s-k-i. This is Richardson. This
 2 is Bill Richardson here. And this could be Wayne
 3 Morris.
 4 Q The victim?
 5 A I think so, yeah.
 6 Q Now, did you ever have any interaction
 7 with Mr. Morris, who I realize then was a minor
 8 still? Did you have any interaction with him
 9 concerning his abuse by Father Richardson?
 10 A I did.
 11 Q What was the nature of that interaction?
 12 A When I got here in 1989, I had a letter
 13 from Wayne Morris, who as I recall was at the -- he
 14 was in college in Georgia, in Atlanta, I think.
 15 And he wrote me a letter and identified
 16 himself and said that his life had been just a mess
 17 as a result of Richardson. And he had, I think,
 18 used all of his funds with counseling and so forth,
 19 and could I help him? So I wrote him back and told
 20 him how sorry I was for the whole matter, and yes, I
 21 would help him.
 22 And if he would give me the name of the
 23 doctor that was counseling him and have the doctor
 24 send me the bills, and I would take care of that,
 25 which I did.

Page 16

1 Sam Miglarese was the Vicar General, and
 2 I -- the letter that I wrote, I remember I gave Sam
 3 a copy of it. And he checked with an attorney to
 4 make sure that I had been appropriate in my
 5 response, which he said it was very appropriate.
 6 And Sam said that he would reimburse me,
 7 the Diocese would reimburse me. Not me personally
 8 because I took it out of an account I had, a charity
 9 account.
 10 Q At the parish?
 11 A At the parish. And I paid the doctor
 12 that would send the bills, and I think it lasted for
 13 two years. And finally I said, you know, we'd have
 14 to terminate that.
 15 Q When you quit paying, did the Diocese
 16 then pick up payments directly?
 17 A No, I don't think. I think that was the
 18 end of it, but they reimbursed me.
 19 Q So the payments that you made were to
 20 health care providers, not to Mr. --
 21 A No, no, not to Morris.
 22 Q -- Mr. Morris.
 23 Okay. Did you get reimbursed?
 24 A Yes.
 25 Q Now, how is -- so that was payment to a

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1 victim of sex abuse?
 2 A Uh-huh.
 3 Q Or on behalf of a victim of sex abuse?
 4 A Uh-huh.
 5 Q How does that get declared in the
 6 financial declarations of the Diocese?
 7 A I suppose it would be the same way that
 8 they would declare any assistance given to somebody
 9 as far as sexual abuse is concerned.
 10 Q Well, is it declared? I mean, is it
 11 identified in that way?
 12 A Oh, yeah. I would think it would be.
 13 Again, that would be one of Sam's responsibilities.
 14 Q You may find yourself surprised.
 15 A Is that right?
 16 Q Can't find it, yeah.
 17 A Well, now, I don't know -- I don't even
 18 know what account that would have come out of, but I
 19 just know that I was reimbursed.
 20 Q Let me tell you that I have your records.
 21 I do not have at this point the diocesan
 22 reimbursement records, but I have your own.
 23 A Okay.
 24 (Off-the-record discussion.)
 25 Q Okay. Now I'd like to please show you a

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1 letter, a copy of a letter, signed by then Father
 2 Wayland Brown and ask if you've ever seen that
 3 before.
 4 A '82. No, I have not seen this.
 5 Q Okay. Having read it now, can you tell
 6 us substantively what the letter is about or what it
 7 says?
 8 A Well, he said he had mass noon at
 9 St. Mary's. I don't know whether he means
 10 St. Mary's on the Hill in Augusta, but he does
 11 identify evening confessions and mass Saturday at
 12 St. Mary's in Aiken and the 10:45 and 12:15 mass at
 13 St. Mary's.
 14 Q Again, I understand this was 1981 or '82
 15 when this is. I'm not -- I don't mean to challenge
 16 your memory as to mass times and those things. I
 17 know what my memory is good for. Can I see it back
 18 for a minute?
 19 A Uh-huh.
 20 Q Thank you. My question is, ultimately,
 21 do you recall Wayland Brown, a priest of the Diocese
 22 of Savannah, coming over and helping or covering or
 23 whatever it was?
 24 A I do not.
 25 Q Okay. And you don't know him?

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1 A I know -- I met Wayland Brown, and the
 2 reason I remember is because his name Wayland was
 3 kind of strange. I will tell you what I know about
 4 him.
 5 Q Okay. Thank you.
 6 A He liked trains, and he was constantly
 7 riding trains because his father had been a
 8 conductor or something on trains, and I just thought
 9 that really strange. I mean, of course we all have
 10 different hobbies, but that's --
 11 Q Was that the limit of your knowledge?
 12 A Yeah.
 13 Q How did you meet him?
 14 A Pardon?
 15 Q How did you meet him?
 16 A I don't even know. It could have been --
 17 I don't know.
 18 Q Does Aiken have a train yard?
 19 A Yeah. As a matter of fact, the train --
 20 Roosevelt, when he would go south, he had a
 21 paramour, the woman in Aiken, and he would get off
 22 the train there.
 23 (Off-the-record discussion.)
 24 Q Other than having met Wayland Brown and
 25 recalling the little you've indicated, have you had

1 any other interaction with him, or do you know
 2 anything more about him?
 3 A Yes. First of all, let me respond to
 4 that, the fact that if he said he was in Aiken. It
 5 could have been that I wasn't there and Richardson
 6 may have been there, and Richardson may have engaged
 7 him, but I don't know that.
 8 Q Nor do I, definitely.
 9 A There was a kid in the parish, Dougie
 10 Turno, T-u-r-n-o. His mother's name was Carol.
 11 Dougie was 11 years old and had cancer. He'd had
 12 cancer for a couple of years maybe.
 13 Wayland Brown was a friend of the Turno
 14 family, and he used to, I think, come visit them. I
 15 don't know how frequently. I know they had -- all
 16 of their children were boys, and I don't even know
 17 whether Wayland Brown -- I don't know whether
 18 Wayland Brown was a chaplain at the hospital or
 19 whether Wayland Brown was assigned to Holy Trinity
 20 Church. I don't even know where he originated in
 21 Augusta.
 22 But I do know he was friends of the
 23 Turnos because she would come to me frequently and
 24 having said that this priest was a friend of theirs.
 25 Q No indication -- she made no indication

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1 to you, Mrs. Turno, of any abuse to her children by
 2 Wayland Brown?
 3 A No, she did not.
 4 Q Okay. Do you know where in Florida
 5 Richardson may be now, Bill Richardson?
 6 A No. He could be dead for all I know. He
 7 remained in contact with some friends of mine, the
 8 Barhytes. She was a secretary at St. Mary's in
 9 Greenville. They're both dead now, the Barhytes.
 10 But they used to tell me -- that's how I knew he was
 11 in Florida because he would make contact somehow
 12 with them.
 13 Q Let me ask you about the name of a person
 14 who was your assistant, clerical staff, while you
 15 were at St. Mary's. Do you remember a woman by the
 16 name of Mary Mulvihill?
 17 A Mulvihill, right. She was my director of
 18 religious education.
 19 Q Did she have any conversation with you
 20 concerning Bill Richardson abusing anyone?
 21 A I don't think so. I think after
 22 Richardson -- you know, they had a community there
 23 called Alleluia Community, and there was a guy there
 24 by the name -- the head of the Alleluia Community,
 25 Bill VanAlstine. And after Bill Richardson left,

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1 and it kind of got out a little bit, he came to me
 2 and kind of indicated that he was wary of
 3 Richardson.
 4 Q Anyone else so indicate to you?
 5 A No.
 6 Q Okay. When you say the Alleluia
 7 Community --
 8 A It's a community in Augusta, but they had
 9 externs that lived in Aiken and --
 10 Q Is that a gypsy community?
 11 A Oh, no. It's charismatic.
 12 Q Okay. What do you -- I can't say the
 13 name. I'm sorry. Closest I can say is Joe Murphy.
 14 A Joe Murphy.
 15 Q Murphy's Village, yeah.
 16 Okay. Now, when Bill Richardson left the
 17 Diocese of Charleston, did the Diocese continue to
 18 pay him?
 19 A Oh, I have no idea.
 20 Q Is there any reason why the Diocese would
 21 continue to pay him?
 22 A The Diocese has a responsibility for
 23 priests that have been incardinated.
 24 Q By incardinated you mean ordained?
 25 A Ordained for the Diocese. And canon law

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1 is very specific about, you just can't throw them
 2 out on the street. But what happened there, I don't
 3 know.
 4 Q You were not involved in any of that
 5 process, if there was a process?
 6 A No. I became later when I was Vicar for
 7 Clergy, but that was '92 or '93 or something like
 8 that.
 9 Q Are priests who leave the priesthood for
 10 the sake of a woman, either for the sake of marrying
 11 a woman or simply having a relationship with a
 12 woman, are those priests paid after they leave the
 13 active priesthood?
 14 A Once they're married?
 15 Q Well, before they're married or once
 16 they're married. I'd like to ask the question both
 17 ways. Before they're married, if they leave --
 18 A Again, I don't know. If they leave, it
 19 would be the same answer, that the Diocese would
 20 have a responsibility for them. To what extent, I
 21 don't know. Certainly, I would think if they got
 22 married, the Diocese would not have any
 23 responsibility.
 24 Q Why would that be any different than
 25 someone leaving the active ministry because of

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1 having sexually abused young boys?
 2 A I think if somebody abused young boys,
 3 they would be -- that would be a criminal act, I
 4 guess; whereas, marriage would be a statement that
 5 you no longer want to associate, I guess, with the
 6 church, I suppose. I mean, it is against the law of
 7 the church that a priest marry. So the church would
 8 cease --
 9 Q I understand. Is it against the law of
 10 the church that a priest have sexual relations with
 11 a young boy?
 12 A Uh-huh. But again, I think one is -- one
 13 is in the external form very openly. The other is
 14 not. So I would think that when the Diocese became
 15 aware of, for instance, somebody being a pedophile
 16 that they would certainly continue to pay for the
 17 person's treatment or whatever it would be to try to
 18 get the person settled.
 19 Q Do you know whether the Diocese would
 20 continue to pay the person's normal salary or
 21 stipend and living expenses?
 22 A I don't know that.
 23 Q Okay. Are you -- do you have
 24 knowledge -- let me ask it in a general way first.
 25 Do you have knowledge of the problem of priest abuse

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1 within the Catholic Church in current times?
 2 A You know, what I read and what I hear, I
 3 have that knowledge.
 4 Q Have you expressed any opinion about how
 5 you personally, Monsignor Carter, feel about the
 6 abuse of young boys by priests?
 7 A You're asking me what my opinion is of
 8 that?
 9 Q I'm asking if you've expressed it first.
 10 And then I'm going to ask you what it is if you
 11 haven't expressed.
 12 A I'm sure that I have expressed it in my
 13 time with the Diocese because it's morally wrong and
 14 the person is ill.
 15 Q It's legally wrong as well, I think you
 16 said a moment ago?
 17 A Yes.
 18 Q If it is a crime, can you tell me why the
 19 Diocese does not report in many instances the
 20 commission of that crime to the prosecutorial
 21 authorities or law enforcement authorities?
 22 MR. SHAHID: Object to the form of
 23 the question.
 24 A I think the Diocese does.
 25 Q What is your basis for thinking that?

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1 A With my association with the Diocese in
2 the past Vicar General and Vicar for Clergy.
3 Q I meant to ask you --
4 A We worked very diligently to develop
5 guidelines for how that was managed. And by that, I
6 mean, that right away we would report whatever we
7 heard to the authorities.
8 Q Did you report Bill Richardson?
9 A No. I wasn't with the Diocese then. I
10 reported Bill Richardson to the bishop.
11 Q Do you know whether the bishop reported
12 Bill Richardson to the law enforcement authorities?
13 A I do not know that.
14 Q All right. Now, where did you grow up?
15 What part of town did you grow up in?
16 A Broad Street.
17 Q Did you go to Cathedral Elementary
18 School?
19 A (Witness nodded.)
20 Q And then Bishop England High School, you
21 said. Are you familiar with the church or its
22 schools or parishes or organizations conducting any
23 form of gambling operation?
24 A You know, in the past there was some of
25 that, but then that was -- Unterkoefer was the one

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1 who eliminated that.
2 Q When you say eliminated it, did he
3 prohibit games of chance?
4 A Yes, yes.
5 Q Subsequent to Bishop Unterkoefer leaving
6 the Diocese of Charleston, have there been games of
7 chance conducted here, to your knowledge?
8 A No.
9 Q By parish --
10 A No. I think each bishop has kept the
11 same. No, I don't know.
12 Q How about in the church that you are the
13 pastor of currently, Christ Our King Church, have
14 there been gambling operations conducted there?
15 A No.
16 Q Did you ever have any drawings, for
17 example -- let me say that by gambling operations I
18 want you to understand I mean by that game of
19 chance, that is to say any undertaking in which
20 chance outweighs skill. Do you understand that?
21 A Uh-huh.
22 Q So drawing out of a hat would be a
23 lottery or a raffle or that kind of thing.
24 A No.
25 Q So your testimony today under oath is

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1 that none of that's happened under your term here at
2 Christ Our King?
3 A If it happened under my term, I did not
4 know about it.
5 Q Do you ever have any involvement about
6 awarding free tuition as a result of a drawing?
7 A No. That was suggested, and I said no.
8 Q What you said -- do you remember what you
9 said?
10 A About that?
11 Q Yeah.
12 A I didn't object to it on the grounds that
13 I thought it was gambling. I objected to the fact
14 that I didn't -- I just didn't think that that was a
15 way to go about granting free tuition. If people --
16 and I've just had somebody there today, as a matter
17 of fact, who interviews people who want tuition
18 assistance, and that's the way we work that. If
19 people need help --
20 Q Need-based?
21 A Uh-huh.
22 Q Sure. I understand.
23 A The other way, drawing out of a hat,
24 people could get it that certainly do not need it.
25 Q Did you ever take any part in devising a

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1 plan or scheme which involved the purchase of
2 magnets for a sum?
3 A Magnets?
4 Q Uh-huh.
5 A No. I don't know what you mean by that.
6 Q Do you ever remember an occurrence where
7 magnets were sold to parents who needed to pay
8 tuition, and the magnets were put in a hat or a box,
9 and one was drawn at random for free tuition?
10 A I've never heard of that.
11 Q You never were any part of that?
12 A No.
13 MR. RICHTER: Okay. I don't have any
14 more questions. Thank you very much.
15 MR. SHAHID: I don't have any
16 questions either.
17 (The deposition was concluded at
18 11:34 a.m.)
19
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8 (Pages 26 to 29)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3

4 I, Teri L. Horihan, Registered Professional
Reporter and Notary Public for the State of South Carolina
5 at Large, do hereby certify that the witness in the
foregoing deposition was by me duly sworn or affirmed to
6 testify to the truth, the whole truth, and nothing but the
truth in the within-entitled cause; that said deposition was
7 taken at the time and location therein stated; that the
testimony of the witness and all objections made at the time
8 of the examination were recorded stenographically by me and
were thereafter transcribed by computer-aided transcription;
9 that the foregoing is a full, complete and true record of
the testimony of the witness and of all objections made at
10 the time of examination; and that the witness was given an
opportunity to read and correct said deposition and to
11 subscribe to the same.

12 Should the signature of the witness not be affixed
to the deposition, the witness shall not have availed
13 himself/herself of the opportunity to sign or the signature
has been waived.
14

I further certify that I am neither related to nor
15 counsel for any party to the cause pending or interested in
the events thereof.
16

Witness my hand, I have hereunto affixed my
17 official seal, this 12th day of August, 2009, at Charleston,
Charleston County, South Carolina.
18

19
20 Teri L. Horihan
21 NCRA Registered Professional Reporter
22 My Commission Expires 1/17/2017
23
24
25

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**Diocesan Priests with a Credible Allegation¹ of
Child Sexual Misconduct or Abuse² within the Diocese of Charleston**

<i>Last Name</i>	<i>First Name</i>	<i>Ordination Date</i>	<i>Status</i>
Aiken	Roy	06/15/1946	Deceased - 07/04/2006
Bench, Jr.	John	05/09/1964	Deceased – 06/06/2009
Berberich	Peter	03/22/1947	Deceased – 03/20/1997
Burn	William	05/25/1956	Deceased – 05/29/2009
Condon	Eugene	05/26/1956	Deceased – 05/24/2014
Congro	Basil	06/10/1978	Placed on administrative leave 09/23/2002 and not allowed to function as a Catholic priest
DuMouchel	Raymond	05/10/1956	Deceased – 09/10/2006
Evatt	Thomas	12/18/1976	Deceased – 07/18/2003
Goodwin	Justin	06/10/1940	Deceased – 12/25/1995
Hopwood	Frederick	06/09/1951	Deceased – 04/30/17
Lee	Walter Pringle	05/19/1962	Deceased – April 1981
McLean	Frederick	05/18/1944	Deceased – 08/26/2010
Moynihah	George Frederick	12/07/1974	Deceased – 08/30/2004
Murphy	Daniel Francis	12/08/1945	Deceased – 07/21/1980
Murphy	Joseph	04/24/1943	Deceased – 08/24/1998
Owens-Howard	James Robert	06/12/1957	Deceased – 12/01/2015
Ryfiniski ³	Gerald	04/7/1990	Laicized – April 2007
Seitz	Paul	05/17/1958	Retired 06/01/2002 – under restrictions
Sheedy	Charles	05/16/1937	Deceased – 07/06/1989
Simonin	John	05/25/1947	Deceased – 07/15/2010
Vaverek	Hayden	07/02/1994	Laicized – May 2016

¹ According to the Diocese of Charleston's *Policy Concerning Allegations of Sexual Misconduct or Abuse of a Minor by Church Personnel (2012)*, a credible allegation is defined as "an accusation which at least seems to be true (Canon 1717, Section 1), and/or offers reasonable grounds for being believed. A credible allegation is not manifestly false."

² According to the Diocese of Charleston's *Policy Concerning Allegations of Sexual Misconduct or Abuse of a Minor by Church Personnel (2012)*, "Sexual misconduct or abuse of a minor includes sexual molestation or sexual exploitation of a minor and other behavior by which an adult uses a minor as an object of sexual gratification. Consequently, any act or attempt to commit any act of incest, rape, or a sexual offense in any degree, sodomy, or any unnatural or perverted sexual practice, lewd or indecent acts or proposals, including indecent touching or fondling, exploitation, or permitting, encouraging, assisting, or aiding a minor to participate in such acts, constitutes sexual misconduct or abuse of a minor. Sexual misconduct or abuse of a minor includes conduct or interaction with a minor that is external and an objectively grave violation of the Sixth Commandment. Such conduct does not need to be an act of intercourse involving force, physical contact or a discernable, harmful outcome."

³ Unlike others on the list, this case involved possession of child pornography.



**Religious Order or Visiting Priests with a Credible Allegation of
Child Sexual Misconduct or Abuse within the Diocese of Charleston**

<i>Last Name</i>	<i>First Name</i>	<i>Ordination Date</i>	<i>Affiliation</i>	<i>Status</i>
Castano - Mejia	Juan Carlos	01/25/1991	The Oratory of St. Philip Neri in Ipiales, Colombia, S.A.	Served prison sentence and was then deported
Collerett	Roger	06/19/1943	Missionaries of Africa (White Fathers) - Canada	Unknown - believed to have returned to Canada
Johnson	Anthony William	1962	Visiting priest from the Diocese of Camden (NJ)	Deceased – 03/01/2012
Nyhan	James	1973	Visiting priest from the Archdiocese of Boston	Dismissed from ministry by the Archdiocese of Boston
Palatore Belfiore	Cesare	12/03/1967	Visiting priest from the Diocese of San José (Costa Rica)	Unknown – believed to have returned to Costa Rica
Sharples	James	05/30/1946	The Oratory of St. Philip Neri in Rock Hill, SC, USA	Deceased – 11/28/1974

**Diocesan or Order Priests with a Credible Allegation of Child Sexual Misconduct
or Abuse Outside the Diocese of Charleston⁴**

<i>Last Name</i>	<i>First Name</i>	<i>Ordination Date</i>	<i>Affiliation</i>	<i>Status</i>
Kelly ⁵	Robert Joseph	07/13/1974	Visiting priest from the Diocese of Altoona-Johnstown	Unknown
Landwermyer	Francis	1966	Society of Jesus Order (Jesuit)	Deceased – 09/05/2018
Mitchell	John	05/24/1938	Paulist Fathers Order	Deceased – 12/18/1996
Park	Augustine “Austin”	06/14/1955	Society of Jesus Order (Jesuit)	Deceased - 2013
Smith ⁶	Gabriel “Gabe”	12/12/1982	Diocesan priest	Retired from active ministry – 12/31/2018
Spangenberg	Robert	06/15/1974	Congregation of the Holy Spirit Order	Deceased – 12/23/2006
Tierney	Thomas	09/20/1924	Paulist Fathers Order	Deceased – 12/24/1972

⁴ Priests who served in the Diocese of Charleston, with no accusations within this Diocese, but who have credible allegations of sexual abuse of minors that occurred in another jurisdiction.

⁵Not Monsignor Robert Justin Kelly, who was a Diocesan priest

⁶ The allegation against Father Smith occurred eight years prior to his ordination and did not involve touching the minor. Father Smith voluntarily accepted administrative leave and removal of his ability to act as a priest pending final resolution of the matter. A subsequent decision by the Holy See in March 2004 concluded that Father Smith was not a risk to minors and required that he be returned to ministry.

**Priests who are Listed by Virtue of a Class Action Settlement
Payment as Determined by an Arbitrator**

<i>Last Name</i>	<i>First Name</i>	<i>Ordination Date</i>	<i>Affiliation</i>	<i>Status</i>
Eccleston	John	06/04/1955	Visiting priest from the Archdiocese of Washington, DC	Deceased – 02/09/2012
Hubacz	Leon Joseph	11/13/1943	Diocesan priest	Deceased – 06/28/1999
Kennedy	Ernest	05/26/1956	Diocesan priest	Deceased – 06/09/2017
McElroy ⁷	James	06/06/1920	Diocesan priest	Deceased – 07/05/1971
Plikunas	Anthony	06/10/1933	Diocesan priest	Deceased – 11/28/1973
Richardson	William “Bill”	12/12/1982	Diocesan priest	Left the Catholic priesthood in June 1983
Suggs	Frederick	06/09/1946	Diocesan priest	Deceased – 08/26/1998
Tawes	Creston J.	05/16/1959	Diocesan priest	Deceased – 08/04/1980

⁷ The abuse asserted in this claim occurred in the 1940’s.

Footnotes

The list of names is a result of allegations received by the Diocese and a review of priest personnel files, as well as relevant diocesan clergy or other files (including any files classified as confidential) to search for possible allegations of sexual misconduct or abuse of a minor. The period covered is 1950 to the present.

Priests who had credible claims against them in addition to class action claims are included on sections of the list other than the one entitled “Priests who are Listed by Virtue of a Class Action Settlement Payment as Determined by an Arbitrator.”

There are two priests not included on the list by virtue of class action settlement payments although settlement payments were made to claimants:

- (1) Two claims against a priest were made in connection with the 2007 class action settlement. The Diocese objected to the claims, but the arbitrator elected to award settlements over the Diocese’s objections. The independent Sexual Abuse Advisory Board reviewed the details of the claims and determined them not credible.
- (2) An allegation against another priest was received after the priest’s death. Because the priest was deceased and not a threat to children, the allegation was not initially taken to the independent Sexual Abuse Advisory Board. The Board members reviewed the details of the claim and deemed it not credible.

Also omitted from the list are:

- (1) Three priests who are the subject of litigation in currently pending civil lawsuits
- (2) One priest who is the subject of an ongoing criminal investigation
- (3) Two priests as to whom further review will done by the independent Sexual Abuse Advisory Board

Of the eight omitted priests, all are deceased except for two; one is on administrative leave pending resolution of criminal charges, and an investigation is still pending against the other person, who is no longer a Catholic priest.

This list will be updated as additional investigation and a review and determination of credibility are completed.

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

FOR 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

++S++
INSTRUCTION

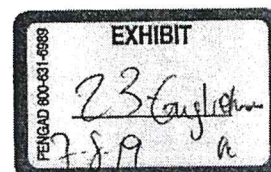
On the manner of proceeding in cases of the crime of solicitation

[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 ++S++ 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 inducted [into the case].

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

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ++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 persons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excommunication?) [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.

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

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

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

confirmed and signed by the person who is denouncing in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denouncer, 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).

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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 denounced [priest] was the case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. It is the right of the Promoter of Justice to appeal and to have recourse for a accused against the canonical prescriptions of this kind to the Holy Congregation of the Holy Office within ten days from their dissemination or intimation. In this case, the Acts of the case will have 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 extinguish 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 case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (See below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

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

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

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, being cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him be not revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the surge of speech slips out which seems to savor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been considerably [put into the Acts], he should order, as soon as he notices, 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 of 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 1959), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings to the Ordinary.

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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 formulas connected to this Instruction and will have been to put in writing, with the addition of an executory decree (Canon 1918). First of all, the 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 [suspensive], but not so, if it is given (Cfr. n. 51) for a suspension from the hearing ++19++of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an 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.

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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:

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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.

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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 whether secular or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should send to the Holy Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

- 67. Any Ordinary who has 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 residence to another territory, the Ordinary a quo should immediately warn the Ordinary ad quem of the things that preceded that 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].

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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 administrative 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.

Place of the seal

A. Cardinal Ottaviani

++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 penalties, 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 of Renunciation (Abjuration)

FORMULA B

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

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

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

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

Signature

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

++30++

FORMULA C

The Formula of Absolution

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

Then, standing, he will say:

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

Let us pray

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

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

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

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

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

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

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

++32++

The Formula of Delegation to Receive a Denunciation

FORMULA D

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).

++33++

FORMULA E

The Manner of Receiving the Denunciation Pertaining Particularly to
Solicitation

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

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

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

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

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

This person denouncing in ordinary language [he must declare that he knows that this faculty was obtained from the ordinary of the place to receive without the intervention of the notary what he is about to relate to exonerate his conscience, and therefore because he cannot present himself to the Most Reverend Bishop concerning the just causes: then] he must continue to narrate, in words, however, discrete and contracted (brief) what pertains to the solicitations made to him or what ++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 denouncing 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 corrections, 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 observe the secret, again touching the Holy Gospels of God (he swears an oath upon the Gospel again); and in confirmation of what has been testified by word he writes his signature (or, if he cannot write: since he cannot write, as he asserted, (let the cause be noted), he made the sign of the cross).

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

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

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

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

These Acts are signed by myself, N.N. [specially delegated only for this act by R.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 denounced 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.

L.X S. Signature of the delegating Ordinary of the place

(To the letter is joined Formula H)

++38++

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 denounced).

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

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

He responds:....

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

He responds:...

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

++39++

He responds:...

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

He responds:...

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

He responds:...

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

1. Interrogation: whether he knew (for example, the woman) N...N...? (name, family name and qualities of the indicated person).

He responded:...(this should be written in the same language the witnesses uses for his response).

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

He responded:...

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

He responded:...

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

He responded:...

Then, the act duly read to the witness, having 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].

++42++

FORMULA I

Way of Conducting an Examination Through Generalities

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

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

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

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

By force of the decree of R.P.D. [The Most Reverend Bishop] (let there be written the name, etc. of the Ordinary of the place) given on the date of having been summoned there appeared before the undersigned (let there be written down the name, the family name, etc. of the person who is to receive the act, and who, if the notary is not present, will write: in the presence of myself the undersigned), taking place in (let there be noted the place and diocese where he is to bound who is to receive the action) (especially delegated only for this action by R.P.D....., as appears from his letter directed to me and given to me on the date (let there be expressed on what precise day the letter was written), this parson, 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 proffered: 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++

Way of Indicting

FORMULA P

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 ++\$!++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, solicitation to grave matter, the worst crime [of

pediastroy], 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 testimony, are of good name, in every way worthy of credence; they are incapable of calumniating or of committing perjury; they are indeed unknown to each other, and hence conspiracy is impossible. Nor has enmity or any other human pathological state been adduced as the reason to accuse [this priest]. It is only in order to satisfy the ineluctable obligation that they have taken the counsel of their own conscience.

++53++

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

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

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

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

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

At the end of each session there shall be read to the accused everything that has been presented and in 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 sessions 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 blessed 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 dispositive 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 judge) seated for the tribunal (let there be said in what place), and by his reading in a high and intelligible voice, to the present person (the name, etc. of the accused) listening to him and not contradicting; (if he had confessed, there should be added: being willing, genuflecting before the judge, touching the holy Gospels of God placed before him, he abjured the aforesaid errors (and heresies and generally all the other errors and heresies contrary to the Holy, Catholic and Apostolic Roman Church), as in the schedule of his abjuration, by which he undertook his abjuration, still kneeling, was absolved in the customary form of the church from the sentence of excommunication and was reconciled to the Holy Mother the Church, having undertaken prayers and usual and customary ceremonies) -- and there having been enjoined upon him salutary penances

contained in said sentence. Having received all these things, he was dismissed, sworn to observe the secrecy at the touch of the ++61++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 Act).

Finally, the judge signs.

EXHIBIT K

EXHIBIT 3

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

3 CASE NO: 18-CP-10-3929

4 _____
JOHN DOE,)

5 PLAINTIFF,)

6 vs.)

7 BISHOP OF CHARLESTON, A)

CORPORATION SOLE, AND THE)

8 BISHOP OF THE DIOCESE OF)

CHARLESTON, IN HIS OFFICIAL)

9 CAPACITY,)

10 DEFENDANTS.)

11 _____
12 DEPOSITION OF:

13 JASON FLASSING

September 19, 2019

14 Given before Cecelia Englert, Court
15 Reporter and Notary Public in and for the State
16 of South Carolina, in the offices of Sherbondy
17 Psychiatric Services, Piedmont, South Carolina,
18 on Thursday, the 19th day of September, 2019
19 commencing at 8:05 a.m.
20
21
22
23
24

25 Job No. CS3521119

Page 6 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 8 1 that diagnosis, that medical diagnosis? 2 A. So there's an initial psychiatric 3 evaluation where we've discussed his mental 4 health status and symptoms related to 5 depression, anxiety. 6 In his case in particular he was 7 referred by a therapist who was diagnosing him 8 with post-traumatic stress disorder in which 9 case I was also able to provide that diagnosis 10 or confirm that diagnosis through my 11 evaluation. 12 Q. And what symptoms of PTSD is Mr. -- 13 or was Mr. Doe displaying? 14 A. Major depression. Okay. So he 15 would have significant depressive symptoms, 16 severe anxiety both of which can be related to 17 PTSD. 18 Also had significant nightmares for 19 which we've provided medication management. 20 Racing thoughts -- those are the primary 21 symptoms. 22 Q. Okay. I noticed on your -- I guess 23 your intake assessment that his memory was 24 intact? 25 A. Yes.
Page 7 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 BY MR. DUKES: 15 Q. What is your role in Mr. Doe's 16 treatment? 17 A. I am a psychiatric physician 18 assistant. So my primary role is to provide 19 medication management for symptoms related to 20 his mental health. 21 Q. Do you make a diagnosis of his 22 mental health? 23 A. I do. 24 Q. And what's the -- what is your 25 process as a physician's assistant in making	Page 9 1 Q. How did you test that? 2 A. That would be more of a direct 3 observation -- him being able to provide a 4 history of events that was accurate. I mean -- 5 - 6 Q. What history of events did he 7 provide you? 8 A. His -- basically his -- the history 9 of his own mental health. You know, he was 10 able to provide symptoms from the time he was a 11 child. He knew, you know, what year it was. 12 He was able to describe specifics 13 as it related to some trauma related to the 14 passing of his wife and kids. It's mostly done 15 by direct observation. 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 ---

1 Q. And how have you managed his
2 medical treatment for his PTSD?

2 medical treatment for his PTSD?

3 A. Well, unfortunately there's not as
4 many medications as we would like to be able to
5 treat PTSD. So we treat somewhat
6 symptomatically.

4 many medications as we would like to be able to
5 treat PTSD. So we treat somewhat
6 symptomatically.

5 treat PTSD. So we treat somewhat
6 symptomatically.

6 symptomatically.

7 But we do treat his major
8 depressive disorder. And the two are, you
9 know, a mesh. It's sometimes hard to
10 distinguish one from the other.

8 depressive disorder. And the two are, you
9 know, a mesh. It's sometimes hard to
10 distinguish one from the other.

9 know, a mesh. It's sometimes hard to
10 distinguish one from the other.

10 distinguish one from the other.

11 But basically initial visit was in
12 September of two years ago. And then seen
13 approximately every one to three months
14 depending on, you know, whether we're making
15 medication changes or not.

12 September of two years ago. And then seen
13 approximately every one to three months

13 approximately every one to three months

14 depending on, you know, whether we're making
15 medication changes or not.

15 medication changes or not.

[illegible][illegible]

[illegible]

EXHIBIT L

Deposition of:

Sally Duffy

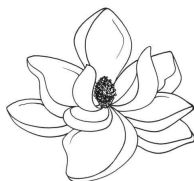
Doe

v.

Bishop of Charleston, et al

Case #: 2018-CP-10-3929

November 26, 2019



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Sally Duffy - 11/26/2019

Page 2 1 APPEARANCES 2 3 REPRESENTING THE PLAINTIFF: 4 LAWRENCE E. RICHTER, JUNIOR, ESQUIRE 5 The Richter Law Firm 6 622 Johnnie Dodds Boulevard 7 Mount Pleasant, South Carolina 29464 8 (843) 849-6000 9 lrichter@richterfirm.com 10 11 REPRESENTING THE DEFENDANTS: 12 RICHARD S. DUKES, ESQUIRE 13 Turner Padget Graham & Laney 14 40 Calhoun Street, Suite 200 15 Charleston, South Carolina 29401 16 (843) 576-2800 17 rdukes@turnerpadget.com 18 19 20 21 22 23 24 25	Page 3 1 INDEX 2 3 Testimony of Sally Duffy 4 Direct Examination by Mr. Dukes.....4 5 Cross-Examination by Mr. Richter.....128 6 Redirect Examination by Mr. Dukes.....133 7 Recross-Examination by Mr. Richter.....135 8 Further Redirect Examination by Mr. Dukes.....136 9 10 CERTIFICATE.....137 11 12 INDEX OF EXHIBITS 13 Defendant's Exhibit No. 1 - Subpoena.....4 14 15 Plaintiff's Exhibit No. 1 - Duffy Report.....133 16 17 18 STIPULATIONS 19 It is hereby stipulated and agreed by and between 20 the parties hereto, through their respective counsel, 21 that the reading and signing of the transcript is 22 waived by the Deponent. 23 24 25
Page 4 1 (Defendant's Exhibit No. 1 marked for 2 identification.) 3 (The deposition commenced at 2:35 p.m.) 4 SALLY DUFFY, SWORN. 5 DIRECT EXAMINATION BY MR. DUKES: 6 Q. Sally, good afternoon. I'm Rich Dukes. We 7 introduced ourselves earlier and agreed to go on a 8 first name basis. 9 A. Right. 10 Q. The rules require I give you a few 11 instructions. 12 First, if you have any questions about 13 something I ask you, please let me know and I'll 14 clarify them. 15 A. Okay. 16 Q. If you answer one of my questions, I'm going 17 to assume you understood it. If you don't understand 18 it, please let me know. 19 A. I will. 20 Q. Occasionally, you will hear Mr. Richter 21 object to the form of one of my questions. That's 22 something that is legalese and the court will work out. 23 A. I'm -- 24 Q. You're to answer the question anyway. 25 A. Right.	Page 5 1 Q. Mary Ann, our court reporter, is taking down 2 everything we say. It will be helpful for her if you 3 wait for me to finish my question before you start 4 answering. And I'll wait for you to start -- I'll wait 5 for you to finish answering before I ask you another 6 question. 7 A. Fair enough. 8 Q. As Mr. Richter just said, if ever you need a 9 break, just let us know. 10 A. Okay. 11 Q. We will accommodate you however we can. 12 A. Okay. I did try to be as thorough as 13 possible in my report. 14 Q. Okay. 15 MR. RICHTER: Are you going to be able to 16 hear her okay? 17 BY MR. DUKES: 18 A. I'm going to try -- I'll try to talk up. 19 Q. I will -- 20 A. It's quiet in here. 21 Q. I will turn up my hearing aids. 22 A. I usually can talk louder than this, but... 23 Q. You've been designated as an expert witness 24 in this case? 25 A. Yes.

2 (Pages 2 to 5)

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Page 6 1 Q. And Exhibit 1 is a subpoena that we served on 2 you to appear for this deposition. And because I 3 forgot to check the box that you were to bring 4 documents -- 5 A. I brought a bunch of them. 6 Q. You did? What all did you bring? 7 MR. RICHTER: I've got some documents, I 8 haven't read them yet, that she's given to me, if 9 these are the ones you're talking about? 10 BY MR. DUKES: 11 A. I even have the drafts of the report. I have 12 some additional information that I haven't used in this 13 one. These are all the depositions, medical records. 14 Q. Okay. 15 A. I have -- I read the whole thing. 16 Q. Okay. What is that? 17 A. It's put out by APA American Psychological 18 Association. 19 MR. RICHTER: Hold on a second, please, 20 ma'am. Let him catch up with you. Tell me what 21 the -- tell us again what this is. 22 MR. DUKES: This is the Psychology and 23 Public -- Psychology Public Policy and Law, Final 24 Report of the American Psychological Association 25 Working Group On Investigation of Memories of	Page 7 1 Child Abuse. 2 MR. RICHTER: Okay. 3 BY MR. DUKES: 4 A. Like plowing a field. 5 Q. Ma'am? 6 A. Like plowing a field. 7 Q. And I've read a lot about this report. I've 8 never actually seen the report. 9 MR. RICHTER: You can get your very own 10 copy. 11 BY MR. DUKES: 12 A. Yes, you can. 13 MR. RICHTER: It's titillating, I'm sure. 14 BY MR. DUKES: 15 A. And while I was at it -- I have to always do 16 stuff on continuing education, so I did an entire -- 17 MR. RICHTER: Okay, hang on a second, please. 18 THE WITNESS: Okay, sorry. 19 MR. RICHTER: I'm just saying this for 20 generally, I'm not talking to you about a specific 21 question or a specific answer, but it's very 22 important that you listen to his question, please, 23 ma'am. And whatever the question is, answer that, 24 if you can. 25 MR. DUKES: She was in the process of
Page 8 1 answering. I asked her what all documents she 2 brought with her and she was telling us. 3 MR. RICHTER: Pursuant to the subpoena. 4 MR. DUKES: No, no. I said because I forgot 5 to check the box commanding her to produce 6 documents -- 7 MR. RICHTER: I see. These -- I understand 8 what you're -- what you're saying. 9 MR. DUKES: I asked her what she brought with 10 her and she's telling us, so... 11 BY MR. DUKES: 12 A. I brought all the documents I could think of 13 that I used. 14 Q. Okay. So you referred to the public policy 15 and law book. You looked at Mr. Doe's medical records. 16 And just for your comfort, our -- Mary Ann is 17 going to change Mr. Doe's name to -- 18 A. To Mr. Doe. 19 Q. Yeah, throughout the deposition. It's just 20 easier to refer to him by his real name. 21 MR. RICHTER: We have done that throughout 22 and it's worked. 23 BY MR. DUKES: 24 A. And all -- all -- all of my records are 25 Mr. Doe.	Page 9 1 Q. Okay, so all of your records. Did you -- I 2 noted from your report that you met with Mr. Doe and 3 his wife a week or so ago. Did you take any notes 4 regarding that meeting? 5 THE WITNESS: I thought I gave you a copy of 6 those. 7 MR. RICHTER: I may -- they may be in this 8 stack. 9 THE WITNESS: This is my original. 10 MR. RICHTER: Well, don't give your 11 originals. Are these the copies? 12 THE WITNESS: Yeah. 13 MR. RICHTER: Is this what you're talking 14 about, right here? 15 THE WITNESS: Yeah. I always take notes. 16 MR. DUKES: Thank you. 17 MR. RICHTER: I can't believe you asked a 18 psychologist if she took notes. 19 MR. DUKES: Like asking a lawyer if he takes 20 notes. 21 BY MR. DUKES: 22 A. I mean, you can't just chat with people. 23 THE WITNESS: Did you get the other side, 24 too? I had stuff on both sides of the page. 25 MR. RICHTER: I just -- she's -- I guess

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Page 10 1 she's copied -- it's numbered at the top. Do you 2 have a page two, Rich? 3 MR. DUKES: Yeah. 4 BY MR. DUKES: 5 A. On the back of the pages I have stuff, too, 6 where I ran out of room. 7 Q. On the back of page one, for instance? 8 A. No, on the back -- on the back of page three 9 I have notes. 10 MR. RICHTER: She's got a 3B. Is that -- 11 THE WITNESS: It's a 3B, yeah. 12 MR. DUKES: Yeah, we don't have that. Oh, 13 yeah, we do. Yeah, we do. She copied it. 14 BY MR. DUKES: 15 Q. Okay. So you brought -- you reviewed Dorothy 16 Whelan's records, right, and Jason Flossing (ph)? 17 A. Flossing. 18 Q. He was the PA? 19 A. Okay. I got records from the VA that were a 20 mess. 21 Q. Thode? 22 A. Thode. 23 Q. I've never seen those. 24 A. They're a mess, okay? What I did was, I went 25 through -- these are deposition notes. These are --	Page 11 1 Greenville Therapy Center. 2 Q. Uh-huh, that's Ms. Whalen. 3 A. Progress notes of -- should have notes -- I 4 think the -- the notes from the hospital may be on 5 here. And I had to go through that because there was 6 so much junk in there that was not really... 7 Q. Were those records for the cardiac procedures 8 or -- 9 A. It was everything. 10 Q. Okay. 11 A. That's why she had -- that's why she had to 12 put it on a CD. 13 Q. Uh-huh. 14 A. I did print most of it out because it's 15 just -- being older, it sometimes helps to have 16 everything on paper. But here, I've got everything. 17 You can look through it, if you'd like. These are her 18 notes. 19 Q. "Her" being Dottie Whalen? 20 A. Yes. And -- 21 MR. RICHTER: Didn't you ask about Thode? 22 MR. DUKES: Yes. That's the VA. 23 MR. RICHTER: Let's -- 24 BY MR. DUKES: 25 A. I had this, too.
Page 12 1 Q. What do you have from the VA? 2 A. That's what I'm trying to find out. 3 Q. Okay. 4 A. Ferguson. Yeah, this is VA here. Rick 5 Thode. I've got Rick Thode's, too. 6 Q. May I look at those real quick? I'll hand 7 them right back to you. 8 A. Sure. 9 Q. You said those records were a mess? 10 A. I tried to not print off everything. I tried 11 to just print off some of the pertinent medical -- 12 mental health records. 13 Q. And I'll hand these back to you because those 14 are -- 15 A. They're all here. 16 Q. -- Dottie Whelan's records. 17 A. I have more of hers somewhere. Hers are hard 18 to read. Here you go, some of Dottie Whelan. 19 Q. Okay. I correct myself. These VA records I 20 have seen. 21 A. I took -- you know, I took pertinent notes on 22 everything I read, some of which were incorporated in 23 the record. 24 Q. I see. I'll hand the VA records back to you. 25 A. Yeah. Because these are just -- the VA	Page 13 1 records were like this, so I went through and just 2 printed off ones that I thought were particularly 3 pertinent. 4 Q. Okay. Who provided you those VA records? 5 A. Mr. Richter's office. 6 Q. Okay. 7 A. On here. 8 Q. Okay. I don't think I have a thick stack of 9 VA records; I have a very small section of records from 10 the VA. 11 MR. RICHTER: I don't have any idea what's on 12 that. I thought you said there were lots of 13 things on that disc. Did you say that a moment 14 ago? 15 THE WITNESS: My God, yes. 16 MR. RICHTER: And one of those things is the 17 VA records? He just wants to make sure he's got 18 or getting whatever. 19 BY MR. DUKES: 20 A. I'm sure that they -- I'm sure that they 21 could -- that they could burn one for you, which is 22 what they did for me, because it -- it was too many -- 23 there were too many records. 24 MR. RICHTER: If you need that. 25 MR. DUKES: I do. I do need a copy.

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Page 14 1 BY MR. DUKES: 2 A. It would take a ream and a half of paper to 3 do that. 4 Q. Okay. 5 A. Now, what is -- is this yours or mine? 6 Q. That is the exhibit. 7 A. Yes, that's the exhibit. Okay. 8 MR. RICHTER: It's No. 1, the notice? 9 MR. DUKES: Uh-huh. No. 2 is the same No. 2 10 from Ellie's, the same No. 2. 11 MR. RICHTER: What was it? 12 MR. DUKES: The answers to interrogatories 13 where you designated her. 14 MR. RICHTER: Oh, I see. 15 BY MR. DUKES: 16 A. And this is the Moriarity. 17 Q. Okay. Since you've pointed out Moriarity, 18 you've read the Moriarity cases, the Court of Appeals 19 and the -- 20 A. Yes. 21 Q. -- Supreme Court's case from 1999 -- 22 A. Yes, I have. 23 Q. -- and 2000? 24 A. Yes. 25 Q. Okay. What else have you reviewed prior to	Page 15 1 this deposition? 2 A. This is brand new. This just came out on 3 PBS. One of my psychologist friends told me about 4 that. I did not use it in here. I probably will, 5 going forward. It's a program that they instituted, I 6 think in Detroit, and they now have it in 117 schools, 7 looking at some of the horrible traumas that kids can 8 go through, which leaves them less resilient. And we 9 do know that previous trauma makes somebody more likely 10 to develop PTSD with subsequent trauma, as well as 11 potentially leading to repressed memories where they 12 end up with all kinds of health problems, job problems, 13 everything. But that's brand new, hot off the press. 14 It's got face validity, so I didn't use it because it's 15 only face validity at this point, as opposed to 16 verifiable, although that's building. I mean, 117 17 schools, the evidence is building. And we always have 18 to do -- I have to do ethics anyway every year, so did 19 that a few weeks ago. 20 Most psychologists tend to be a little on the 21 compulsive side, as well as lawyers. 22 Q. Okay. I'll give that back to you. 23 A. Okay. 24 Q. Have you been identified as an expert witness 25 in any other lawsuit?
Page 16 1 A. Many, especially in the '90s, over a hundred, 2 hundreds. I have no idea how many. And for chronic 3 pain, Workers' Comp and personal injury cases. 4 Q. Okay. How many sexual abuse cases have you 5 been identified as an expert? 6 A. Only a couple. And one of those stemmed from 7 one of my pain patients. What I noticed is that when 8 people, they're living their lives, they get hurt or 9 they get sick, they can't work, they -- you know, they 10 have stresses about jobs. They have stresses about 11 money. And I started noticing in the late '90s, early 12 2000s, that people would say, I don't know what's wrong 13 with me but, all of a sudden, I'm remembering this bad 14 stuff. And sometimes they were suppressed memories 15 where they volitionally pushed them down and other 16 times they came out of the blue in little pieces. 17 And the -- I couldn't find the research, 18 unfortunately, for this, for this deposition, somewhere 19 in my stacks of stuff. But what they have found is 20 that the additional trauma of being sick, being in 21 pain, and not being able to work can sometimes trigger 22 these repressed or suppressed memories later on in 23 life. 24 Q. And let's -- 25 A. So I became an inadvertent expert.	Page 17 1 Q. Okay. In how many cases have you been 2 qualified by a court to testify as an expert regarding 3 repressed memory? 4 THE WITNESS: Wasn't I qualified with this, 5 with Dr. M? 6 MR. RICHTER: I think so, yes. 7 THE WITNESS: Yeah, I'm almost positive I 8 was. 9 BY MR. DUKES: 10 Q. Which case was that? 11 A. Dr. M, back in 2000 -- 2000 -- what was that? 12 Got it in here somewhere. 13 THE WITNESS: Larry, you don't remember that, 14 do you, that date? 15 MR. DUKES: You don't know what year that 16 was? 17 MR. RICHTER: What case? 18 MR. DUKES: Dr. M is what she was asking 19 you. 20 MR. RICHTER: Yeah, I -- 21 BY MR. DUKES: 22 A. I've got it in here somewhere. I'm sorry. 23 Q. That's okay. 24 MR. RICHTER: 2005, 2007, something like 25 that.

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Page 18 1 THE WITNESS: 2007 rings a bell. 2 MR. RICHTER: Honestly, I don't remember. I 3 remember the name; that's the extent of it. 4 BY MR. DUKES: 5 Q. Sally -- Sally, tell me what you remember 6 about Dr. M's case. 7 A. Dr. M came to me with severe chronic pain. 8 And he had hurt his back. He had had numerous 9 surgeries. He developed camptocormia, which is an 10 inability to stand upright. 11 MR. RICHTER: Is Dr. M deceased or is he 12 alive? 13 THE WITNESS: He called me a few years ago, 14 about three years ago, in distress, even though I 15 was retired at that point. I still get calls from 16 patients all the time. 17 MR. RICHTER: Do you -- do you know if he's 18 alive or dead? 19 THE WITNESS: At that point, he was still 20 alive, I think. 21 MR. RICHTER: The reason I'm asking this 22 question is -- 23 MR. DUKES: Let's -- let's call him "Dr. M" 24 in the transcript. 25 MR. RICHTER: We're -- we're trying --	Page 19 1 we're trying to defer to anybody who wants to be 2 deferred to as best we can. 3 BY MR. DUKES: 4 Q. Just call him Dr. M. What -- he had severe 5 pain and -- 6 A. Severe pain. 7 Q. -- developed -- 8 A. He ended up in the hospital numerous times. 9 It was affecting his marriage. 10 And then his wife called me and said -- here 11 we go, 2007. His wife called me and said his behavior 12 is becoming intolerable. He's irritable. He's 13 verbally abusive. This is not like him, yada, yada. 14 So, of course, being -- I wasn't her therapist so I 15 couldn't say anything, except listen and take notes. 16 When he came in the next time, I had to tell 17 him that his wife called. 18 And he said, Well, let me tell you what's 19 going on. And that's when he related that -- he knew 20 that there had been some abuse by a -- Father Hopwood. 21 But he went into all the details at that point. Well, 22 he started with some pieces of details. Over the 23 subsequent weeks, you know, as people -- as little 24 pieces of memory become available and people start 25 talking about it, a lot of times, more and more of the
Page 20 1 pieces fall into place, especially if they feel like 2 they're in a safe place. And so that's what happened. 3 It became apparent that he had -- in his 4 case, it was hard, at times, to tell if he suppressed 5 it or repressed it. I think there was a little of 6 both. That can happen. 7 Q. I had this in my list of questions to ask 8 you, but I think it's important to get some 9 definitions. 10 A. Sure. 11 Q. By "suppressed memory" what exactly do you 12 mean? 13 A. Suppressed memory is more volitional. 14 Somebody has something bad happen -- and this is in my 15 report, very clearly written. Suppressed memory is 16 more volitional. People say, Oh, that's horrible. I 17 don't want to think about it. I don't want -- I push 18 it out of my -- I'm going to push it out of my memory 19 as much as I can, typically. 20 Q. But the memory is still accessible to them? 21 A. Most of the time, or pieces. Let's put it 22 this way. Pieces of the memory are still accessible. 23 Q. Okay. 24 A. Occasionally, they can wholly suppress it. 25 But most of the time, I think it's more pieces. Now --	Page 21 1 and it's volitional. Remember, they're willfully doing 2 this. 3 With repressed memories, the thinking is that 4 the person is so incredibly overwhelmed that -- that 5 the emotion is so dire, that they nonvolitionally 6 repress that memory. That memory goes away. It's like 7 they flush it. 8 Q. Now when, in your opinion, if it's -- if it's 9 autonomous or volitional that suppression could happen 10 anywhere all along -- anywhere along the continuum of 11 the person's life, it wouldn't be immediate? 12 A. It's more likely in childhood. It can happen 13 later in life, yes. And, in fact, we do know that if 14 somebody's in a horrible, horrific automobile accident, 15 let's say -- there have been cases where they were an 16 adult, the accident was terrible -- and in huge traumas 17 as like that, most people don't remember all of it. 18 Some parts of it are going to get suppressed or 19 repressed, probably suppressed, some of the more 20 graphic things. 21 But on the other hand -- and we know that's 22 true. I mean, we can all experience -- we can all 23 remember something in our own lives in which there was 24 a terrible trauma, you know, the death of a loved 25 parent or sister or brother, and you remember it.

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Page 22 1 Parts of it are flashback memories, flashback memories 2 being these incredibly vivid memories that Elizabeth 3 Loftus, who is a memory -- big memory person -- 4 Q. She is one of our experts. 5 A. Yeah, she's huge. And she changed her tune, 6 by the way, from the '70s to the '80s, but we won't go 7 there. 8 And I met her. She's a very great woman. 9 And -- but -- because she was a big believer 10 in repressed memories in the '70s and then she changed 11 her tune in the '80s because of the lack of 12 experimental -- the lack of experimental data, which I 13 get that. She's more of an academic researcher as 14 opposed to a clinician. 15 And, as you well know, there's a big divide 16 with -- on repressed memories between the academics and 17 the experimentalists and the clinicians. 18 Q. And let's clarify that a little bit. 19 A. Okay. 20 Q. The academics and the experimentalists, the 21 scientists -- 22 A. The scientists. 23 Q. -- what percentage of them reject Repressed 24 Memory Syndrome? 25 A. Percentage, I don't know the percentage,	Page 23 1 actually. I just know that most -- I just know that 2 many, many, many of them do. And clinicians, on the 3 other hand, most of them do not. 4 And I look at it this way. Okay. For years, 5 I did not believe in the unconscious. Most of my 6 professional life -- you know, everybody talks about 7 the unconscious. I always referred to it as a Freudian 8 fantasy, because I thought it was hoo-ha, because my 9 background is -- I mean, as a medical psychologist, I'm 10 going to be -- I'm -- I'm science. And I prefer it 11 that way. Boy, I want stuff proven. And -- and there 12 was no way to prove the existence of the unconscious, 13 so I thought it was a bunch of crap, quite frankly, 14 until a few years ago, five or six or so. They 15 actually were able to demonstrate that the unconscious 16 is, in fact, real. And they did it through functional 17 MRI. 18 Q. Okay. 19 A. And I believe that at some point we will come 20 to -- up with technology to prove the same thing about 21 repressed memories. 22 Q. But right now, you can't? 23 A. But right now, we can't. 24 Q. There's no way to do a neuropsychiatric test 25 for repressed memories, even to determine whether
Page 24 1 someone repressed their memory or whether the recovered 2 memory is true? 3 A. There is that. However, one -- keep in mind 4 that there are certain signs -- I've written in the 5 report there are some signs that suggest -- that are 6 suggestive of repressed memories, where people have -- 7 you know, we sometimes talk about phobias, but some -- 8 but they're not really phobias. They -- they -- 9 they're uncomfortable in certain situations, around 10 certain kinds of people. Like, this fellow was -- he's 11 still -- he's still uncomfortable going into a Catholic 12 school classroom, you know, for -- for no, quote, 13 apparent reason, initially. 14 So we had these signs that suggest that 15 there's something awry, that there's some kind of 16 repressed memory issue going on. And so kind of -- 17 we're kind of relying on those kinds of things now, 18 which is kind of what the -- well, that's kind of what 19 the people who were believing in unconscious stuff were 20 saying 20 years ago. And so I do believe that -- that 21 in the next -- I can't say how many years, but I don't 22 think it's going to be that many years now that they're 23 going to have the wherewithal and the technology to 24 prove that there are such things as repressed memory. 25 Q. Okay. But, again, we don't have that	Page 25 1 scientific ability now? 2 A. No, we do not. 3 Q. And we haven't had it since the '90s, when 4 the theory of Repressed Memory Syndrome came to the 5 fore? 6 A. That could be, except, like I said, I think 7 we still have signs that indicate that that -- in fact, 8 something's gone -- something's wrong. Something's 9 wrong. 10 You don't -- this kid -- this man did not 11 even remember being in seventh grade. And when you're 12 talking about a kid whose prefrontal cortex doesn't -- 13 prefrontal cortex is part of the thinking brain, the 14 part of the brain that allows us to think more like 15 adults, only starts to kick in around adolescence, with 16 hormones. It doesn't complete the job until 25-ish. 17 Girls complete it faster than boys. I don't know why. 18 Q. Because boys are idiots. I have a 19 19-year-old and an 18-year-old. 20 A. Okay. I get your point. Yeah. So I think 21 part of the problem is, when you look at it that way -- 22 I mean, so that leaves kids with fewer resources to 23 cope. I mean, adults can go -- adults are -- are more 24 verbal. They're willing to go talk to somebody. 25 They're willing to read stuff, although that current --

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Page 26 1 I can't stand that book, but anyway... 2 You know, it's -- I think it fosters -- I 3 think it fosters repressed memories that don't exist, 4 but that's another issue. 5 But kids have fewer resources to cope. I 6 mean -- and, again, like I point out in my report, I 7 mean, we're raised in church that -- that venerated 8 teachers, that venerated priests, that venerated nuns. 9 And here's a kid who had a terrible time in school, one 10 school after another, terrible relationship with his 11 abusive father. And, all of a sudden, here's this 12 teacher that comes along and takes an interest in him, 13 a male teacher. 14 Q. How do you know that? He didn't remember it. 15 A. He didn't remember it, but... 16 Q. You're just assuming, right? 17 A. Well, there is -- 18 MR. RICHTER: Please don't interrupt her 19 answer. 20 BY MR. DUKES: 21 A. There is some assumptions. But -- but he 22 implied that he was getting -- his implication was, He 23 was nice to me, initially. 24 So this guy appeared -- and, again, he's -- 25 again, we're talking about -- this happened when he was	Page 27 1 11, 12, not the most -- 11-, 12-year-olds are not the 2 most verbal kids on Earth. 3 Q. Let's correct that. He was born in 1957. 4 The abuse, if it happened, happened in 1970. 5 A. Right. And so we're saying -- 6 MR. RICHTER: Object to the form of the 7 question. Go ahead. 8 BY MR. DUKES: 9 A. But we're saying 11 to 13. He doesn't even 10 know. But, I mean, he was in seventh grade, so we're 11 making some assumptions, I admit, around -- I mean, I'm 12 not saying at 11, I'm saying 11 -- between 11 and 15 -- 13 13, whatever. 14 Q. But we know some facts. 15 A. We do know some facts. 16 Q. Let me -- and let me indicate those to you. 17 A. Okay. 18 Q. We know that one of the accused teachers, 19 Chris Hartnett, only taught at this school for the 20 1969-1970 school year -- 21 A. Uh-huh. 22 Q. -- and the 1970-'71 school year. And we also 23 know that the other accused teacher, Hal Brooks, only 24 taught at the school in the fall of 1970. 25 A. Correct.
Page 28 1 MR. RICHTER: Object to the form of the 2 question. Go ahead. 3 BY MR. DUKES: 4 Q. So we do know -- 5 A. We do know that. 6 Q. -- when it had -- when it could only have 7 happened, if it did, and that would have been in 8 1970? 9 A. And I read that. 10 MR. RICHTER: Object to the form of the 11 question. 12 BY MR. DUKES: 13 A. However, you know, some of the things don't 14 add up in terms of 1970. He would have been 13. 15 And 13 is eighth grade, not seventh. And, again, we -- 16 there are some things we simply don't know. 17 Q. Well -- 18 A. It is -- it is his opinion -- 19 Q. -- we do have his report card. 20 A. Okay. We do have his opinion -- 21 Q. Let me find that. 22 A. -- that this guy was, quote, nice to me. I 23 should have put that in the report. But this guy was 24 nice to me, this guy took an avuncular interest in him 25 when no other male in his family did. And I think you	Page 29 1 know that makes a kid vulnerable, especially when he 2 was a crummy student. Don't you think? 3 Q. Not necessarily, no. 4 A. Why not? 5 Q. Well, I'm not the one giving opinions. 6 A. Well, it's been my experience over the years, 7 being a psychologist for 40 years, that typically if a 8 child is having problems at home and there's no 9 grandparents, there's no grandfathers -- we're talking 10 boys -- no grandfathers, no uncles, no fathers, you 11 know, even brothers who take an interest in that kid, 12 and he's considered -- he always felt like kind of the 13 outcast in his family, the bad student, everything, 14 when somebody comes along who is in a place of power 15 over him, like a teacher, the male teacher, that kid is 16 going to put that guy on a little bit of a pedestal. 17 That kid is go to say, Wow, he's nice to me. 18 Q. This is just your opinion. And it's just 19 your inference, right? 20 A. It's my -- 21 MR. RICHTER: Object to the form of the 22 question. 23 BY MR. DUKES: 24 A. It's my inference based on him saying 25 something to the effect that this guy was nice to me.

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Page 30 1 Q. I could -- 2 A. That's all he could remember. 3 Q. I have -- 4 A. I mean, that's all he could -- once -- once 5 the abuse started, of course, all that came back, 6 but... 7 Q. Let me tell you, I've looked -- I've got his 8 report card on my iPad. And in the 1970-'71 school 9 year, he was in the seventh grade. 10 A. Okay. 11 Q. So he would have been 13 turning 14 in the 12 spring, in May. 13 A. And he should have been a freshman in high 14 school, agewise. 15 Q. He -- who knows? But I do know from his -- 16 A. Yeah. 17 Q. -- report card, 1970-'71 -- 18 A. What kind of grades? 19 Q. He did very poorly in the sixth grade. 20 A. Uh-huh. 21 Q. But he passed all his classes in the seventh 22 grade, except for history. No, that's a P. He passed 23 history. Did not do very well in English, but passed 24 everything else. 25 A. Uh-huh. And so he went from being a horrific	Page 31 1 student to being passable? 2 Q. Yes. 3 A. And what would -- you know, I would infer 4 from that that a teacher took an interest in him, 5 because there's no other way that would have happened. 6 He didn't get any help from home. 7 Q. And his teacher in the seventh grade was 8 Chris Hartnett? 9 A. Right. 10 Q. Okay. And even though you're saying that 11 even though he was being sexually abused by Chris 12 Hartnett during that year, his grades would not have 13 suffered? 14 A. It's possible that they would or would not 15 have. It depends on the kind of interaction that he 16 had. I mean, the interaction, of course, was -- was 17 debasing and disrespectful and abusive. However, I 18 also believe that initially the guy took an avuncular 19 interest in him, gave him a little -- maybe a little 20 extra help, I don't really know. Or the guy may have 21 even -- we don't know. Maybe because he was being 22 sexually abused the guy felt guilty and gave him better 23 grades. How do we know that? We can't. You know, 24 Mr. Doe doesn't know that. All he knows is that he 25 didn't remember being in the seventh grade. Then he
Page 32 1 saw a report card and he was like, Wow, I did better. 2 Q. Yeah, I remember that. 3 And, again, if you need to take a break at 4 some point to -- 5 A. I've still got my green tea with lots of 6 honey, so... 7 Q. Okay. 8 A. I'm not going to keel over or anything. 9 Q. Okay. 10 A. I'm kind of used to this. 11 Q. Oh, Dr. M was a Hopwood victim? 12 A. Uh-huh. 13 Q. Did you evaluate him as part of a claim in 14 the class action? 15 A. Yes, what -- see -- I gave this to you. Here 16 you go. What happened was, found out that -- through 17 Mr. M that -- that he was part of a class action suit 18 with Mr. Richter. And I wrote -- I wrote him a letter 19 about -- about it. And then I was asked to be -- I was 20 asked to be deposed. 21 Q. Okay. Were you deposed? 22 A. Yes, I was. 23 MR. DUKES: I wasn't aware y'all took any 24 depositions in the class action. 25 MR. RICHTER: I don't remember.	Page 33 1 BY MR. DUKES: 2 A. It was downtown somewhere. 3 MR. RICHTER: It was -- 4 THE WITNESS: Meeting Street? 5 MR. RICHTER: Oh, yeah, at -- 6 THE WITNESS: Meeting Street. It was where 7 the secession building was. 8 MR. RICHTER: That's right, the 134 Meeting 9 Street. 10 MR. DUKES: The Haynsworth firm? 11 THE WITNESS: Yes. 12 MR. RICHTER: Yeah. 13 MR. DUKES: That's where Marvin's office is. 14 MR. RICHTER: That may be. That may have 15 been it. I'm sorry, I just don't recall that. 16 That doesn't mean I processed it. Someone else 17 could have processed the thing. 18 Let me express a concern to y'all. In 19 terms -- I -- I don't know -- is this -- was this 20 guy an education -- 21 THE WITNESS: Yes, he's -- 22 MR. RICHTER: Okay, I know who -- 23 THE WITNESS: I can't remember if he was an 24 Ed.D or Ph.D. 25 MR. RICHTER: I know who this guy is.

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Page 34 1 MR. DUKES: I do, too. 2 MR. RICHTER: I don't remember the specifics. 3 My concern -- the Diocese knows all this 4 information. So as we're sitting in here, we're 5 talking amongst a group of people who know all of 6 the victims and know the cases that we processed 7 in the class settlement. But I'm -- I don't want 8 to take -- I don't want to identify -- I'd like to 9 pose an objection generally, Rich. 10 MR. DUKES: Well, just object to the form. 11 MR. RICHTER: Yeah, to the -- just let it run 12 is what I'm saying. 13 MR. DUKES: I would -- I'd asked her had she 14 ever been qualified as an expert in court. And 15 she talked about Dr. M. But I don't think y'all 16 ever went to court, qualifying. 17 BY MR. DUKES: 18 A. No, we did not go to court. It was a 19 deposition. But I was qualified as an expert witness 20 during the deposition. 21 MR. RICHTER: Let me -- let me tell you what 22 I'm concerned about. And I just -- I think none 23 of us want to do this. I don't know -- I don't 24 know the rules of HIPAA law or anything else. 25 THE WITNESS: Right.	Page 35 1 MR. RICHTER: I don't want to take part in 2 questioning her about patients she has treated -- 3 THE WITNESS: That's true. 4 MR. RICHTER: -- if she's not allowed to do 5 that. 6 MR. DUKES: I understand. 7 MR. RICHTER: So I object to that. 8 MR. DUKES: I didn't ask her about her 9 treatment of him. I was asking if she had been 10 qualified as an expert on repressed memory in 11 court. And the answer is, I gave a deposition -- 12 THE WITNESS: And I -- 13 MR. DUKES: -- but haven't been qualified as 14 an expert in court. 15 BY MR. DUKES: 16 A. Yes, but I do remember clearly being 17 qualified as an expert in that deposition. 18 Q. Okay. But not sitting in a courtroom -- 19 A. Not with this. 20 Q. -- with a judge? 21 A. Not with this. 22 Q. Okay. Any other times have you been 23 qualified as an expert -- 24 A. Yes. 25 Q. -- in a court?
Page 36 1 A. Yes. 2 Q. Where? 3 A. Charlotte. 4 Q. Okay. And what were you qualified as an 5 expert to testify about? 6 A. Chronic pain, disability. 7 Q. Chronic pain? 8 A. And disability and medical. 9 Q. But what about on Repressed Memory 10 Syndrome? 11 A. No. 12 Q. Okay. 13 A. Although, interestingly, the two times -- 14 well, I don't know how many times I was in court. Most 15 of the time, it was deposition and we didn't have to go 16 to court. But there were five or six times when 17 repressed memory just came up, like I said a minute 18 ago. 19 Q. Uh-huh. 20 A. And they -- they -- I don't remember at that 21 point whether they qualified me as an expert witness in 22 repressed memory or not. I don't remember. It was a 23 long time ago. 24 Q. That would have been during trial? 25 A. Uh-huh.	Page 37 1 Q. Okay. And you've indicated that you're a 2 clinician? 3 A. Well, I have been trained in the 4 scientist-practitioner model, which is what -- which is 5 what -- which is what psychologists are, unless they're 6 a side Ph.D. or trained in the scientist-clinician model 7 and they trained the science goes first and then the 8 clinician. You know, unfortunately, as life takes 9 over, we tend to veer from one to the other. But 10 we're -- we have to keep up with the science part in 11 our field. 12 Q. Okay. But you're a clinician? 13 A. I'm a clinician. 14 Q. You treat patients? 15 A. Yes. 16 Q. How many patients with Repressed Memory 17 Syndrome have you treated or how many patients have you 18 diagnosed as suffering from Repressed Memory Syndrome? 19 More than a hundred? 20 A. Maybe a little less, maybe 90. I don't 21 remember. I've -- I've been to court -- I've been 22 deposed so many times, my head -- I can't even tell 23 you. 24 Q. Of those patients you've diagnosed as 25 suffering from Repressed Memory Syndrome, how many of

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Page 38 1 those were victims of sexual abuse? 2 A. Oh, most. That's the thing, most. That's 3 the thing that blew me away. That's the thing that I 4 was not -- I'll be honest with you, I was not expecting 5 that. I was expecting to simply treat somebody, to 6 help them cope with chronic pain, chronic health 7 problems, disability. That was what I did. So to have 8 all these people, after a couple of years or so, start 9 coming with -- coming to me with these bad memories, 10 and I know something happened, and I'm like -- you 11 know, at first -- and at first -- at first, I thought, 12 Oh, this person's just suffering and they've got too 13 much time on their hands. I mean, that's a terrible 14 thing to say. But I just was kind of skeptical. And I 15 just was. And then they wouldn't let it go. It was 16 like a dog on a -- dog with a bone. And so I started 17 having to take them more seriously. And, of course, I 18 never -- I mean, you know, hypnosis, age regression, 19 all that crap, you don't want to do anything that 20 heightens suggestibility. 21 Q. Does that include EMDR? 22 A. No, EMDR is totally different. 23 Q. Okay. 24 A. I used -- I used EMDR with, like, bad 25 accident -- bad automobile accidents, for example.	Page 39 1 Q. Right. 2 A. Where the person was being tortured with 3 certain visual or sometimes auditory memories. 4 Q. Is it appropriate to treat somebody who is 5 claiming to be recovering memories or to have repressed 6 memories -- 7 A. No. 8 Q. -- with EMDR? 9 A. I don't. No, I never used that. 10 Q. That's not appropriate? 11 A. Some people might, but I tend to be pretty -- 12 I'm -- I'm pretty fact-based. I don't feel like that's 13 necessarily appropriate. I will only use it if 14 somebody's being, like I said, tortured by certain 15 visual memories or auditory memories of a car wreck. I 16 have them put that in their head and then I -- because 17 I -- when I first heard about MDR I thought it was like 18 witchcraft, and so -- and so I figured, well, if I'm 19 going to think this is stupid, I need to at least go to 20 a couple of workshops before I, you know, dis these 21 people. 22 And the physiology, the neurobiology behind 23 it is pretty impressive, actually. And it does work. 24 Now, again, I used it in very specific cases. 25 Q. And it wouldn't be appropriate to use it with
Page 40 1 somebody claiming a Repressed Memory Syndrome? 2 A. I do not think so, but that's my opinion. 3 Q. What -- 4 A. There are EMDR people that use it for 5 everything, but I don't agree with that either. 6 Q. Okay. What about a therapy called brain 7 spotting? Have you ever heard of that? 8 A. Brain spotting? 9 Q. Uh-huh. 10 A. Learn something new every day. What is that? 11 Q. I don't know. I don't know. 12 A. I have to go look that up now. Brain 13 spotting? 14 Q. Yeah. 15 A. I'll have to Google that. 16 Q. I think it's a -- it's a sub group of the 17 super EMDR people. 18 A. Oh, well, no telling. 19 Q. Okay. But you don't think that's a wise 20 treatment to use with somebody with repressed memory 21 and, as near as I can determine, Mr. Doe has never 22 undergone EMDR? 23 A. No. 24 Q. But coping -- the CBT, cognitive behavioral 25 therapy, that Ms. Whelan uses sometimes involved	Page 41 1 picturing a happy place to -- 2 A. Yeah, and that's -- that's basically a 3 coping -- that's a coping strategy, picturing a happy 4 place to get them calmed down, because you want to do 5 the whole self-soothing. They teach them how to calm 6 themselves down, the self-soothing, so that's 7 appropriate. 8 Q. And that's not EMDR? 9 A. (No verbal response.) 10 Q. One thing, Mary Ann would appreciate if you 11 answer out loud. 12 A. Oh, no. I'm sorry. No, I know. I'm sorry, 13 it's just I'm trying to save myself. 14 Q. When you're treating patients who are 15 experiencing recovered memories, what is the therapy 16 model that you follow? 17 A. I -- I'm a very -- fairly strict CBT person, 18 cognitive behavioral therapy, because that is science 19 based. You know, it might be a clinical -- clinical 20 treatment approach, but it's very science based. It's 21 based on best practices. It's taking -- it's taking 22 thoughts, it's taking disturbing memories, and it's 23 also teaching people correct ways of thinking. People 24 get depressed, they get upset about memories or what 25 have you, and then they focus on all the negative,

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Page 42 1 which makes everything worse, including pain or 2 whatever. So part of it is teaching people how to 3 think accurately. That is my thing, teaching them how 4 to think accurately and then utilizing that for problem 5 solving to help them cope. 6 Q. You talked -- 7 A. In other words, somebody comes in to me and 8 says, My life sucks. I'm going to say, Well, how? And 9 then they're going to give me a list of things. Then 10 I'm going to point out, Well, but you have a lovely 11 spouse who's been very supportive. You know, in other 12 words, I start trying to -- not -- I let them talk a 13 little bit more than that. But I try to challenge 14 their ways of thinking to make it more accurate and 15 reflective of their actual life. 16 Q. Okay. This afternoon you brought a report 17 with you and I want to ask you kind of a general 18 question of what studies or articles do you base your 19 opinions on? What peer-reviewed materials do base your 20 opinions on? 21 A. Oh, peer-reviewed materials? Well, I have an 22 entire wall of books. Thought about bringing some of 23 those in, but it would have taken two boxes. 24 Q. Right. 25 A. Those are peer-reviewed.	Page 43 1 Also, you know, of course, I'm a member of 2 APA, American Psychological Association. I have been 3 so for 29 years, so now I get to be a member for life, 4 for free, which is nice. And... 5 Q. Have you been elected to any offices with the 6 APA? 7 A. No. Those are -- I'll be honest. It 8 typically -- typically, academics are the only people 9 that have time to do that, because they're -- they're 10 supported by an institution who will give them time to 11 do that. Those of us who are clinicians, we eat what 12 we kill, kind of like y'all. 13 Q. Yeah. 14 A. So we don't typically have a whole lot of 15 time for that. I would have liked to have served on 16 that particular committee, but just -- I couldn't pull 17 it off. I couldn't go to Washington four times a year. 18 You know, I just couldn't do it. And so, no, I have 19 not done it. I've been on different -- of course, I've 20 been on the -- on committees, some of the subcommittees 21 of APA, the neuropsychological committee, the 22 neuropsychological research committee, division of 23 health psychology. Oh, Lord. And two others. Those 24 are the ones I was most active in. 25 MR. RICHTER: You asked this earlier, Rich,
Page 44 1 and I didn't write it down. I'm sorry, I missed 2 it. Do you remember, you might have asked her, 3 how many years of practice you have? 4 THE WITNESS: Okay. Got my master's degree 5 in 1979. I practiced for several years. Went 6 to -- from here, but they -- but Eastern Kentucky 7 gave me money, so -- so I went there for two 8 years, two-year master's program, 60-hour degree. 9 And then I worked in eastern Kentucky for a 10 year -- that was an eye-opener -- to have to pay 11 Kentucky back for educating me. 12 Then I worked in Louisville, at a rehab 13 hospital, for three years. And that's when I 14 found -- that's kind of my niche. 15 So -- oh, saw repressed memories there, too. 16 But at the time, I was too young and dumb to 17 recognize them. You know, people getting 18 amputations and all kinds of gross stuff in rehab 19 hospitals. 20 And so then I went back for my Ph.D. at the 21 University of Kentucky, and finally graduated 22 in -- well, not finally, but graduated in 1989. 23 And then I did a post doctoral fellowship 24 here at MUSC. So if we count that, I've actually 25 been -- I mean, I was in practice during all that	Page 45 1 time, since 1979. 2 BY MR. DUKES: 3 Q. Okay. 4 A. Which is, what, 40 years? 5 MR. DUKES: I had not asked that, Larry. 6 MR. RICHTER: I thought you asked a 7 question -- 8 MR. DUKES: No. 9 MR. RICHTER: -- in the beginning that said 10 that. 11 BY MR. DUKES: 12 Q. Are you a member of the National Science 13 Foundation? 14 A. I was, for a while. But -- I kind of liked 15 them. But I just -- the time factor. 16 Q. Okay. 17 A. So I was a member of maybe ten years or so. 18 And it didn't cover -- I mean, I was not -- I just 19 wasn't interested in physics, I'm sorry. And a lot of 20 it was physics. It was -- got to where it was more and 21 more about physics. 22 Q. Okay. You mentioned earlier Elizabeth 23 Loftus -- 24 A. Uh-huh. 25 Q. -- who is one of the eminent --

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Page 46 1 A. She's -- 2 Q. -- preeminent scholars -- 3 A. She's iconic. 4 MR. RICHTER: Object to the form of the 5 question. She's lot of things. 6 BY MR. DUKES: 7 A. I was, at one point, a big admirer of 8 Elizabeth Loftus, but not anymore. 9 Q. Why not? 10 A. Because I think she has gotten very rigid in 11 her thinking. She's -- you know, her first studies had 12 to do with eyewitness -- eyewitnesses for automobile 13 accidents, interestingly enough, or a parade, or 14 something like that, and she would ask people what did 15 they see, what did they notice? And she found -- and 16 she was -- found out that eyewitness testimony isn't 17 necessarily all it's cracked up to be because people 18 remember things differently, which I thought was 19 fascinating. 20 I read all of her early books. I read all 21 the things -- back in the '70s, I was reading 22 everything she wrote. 23 Then, in the '80s, I don't know, I don't know 24 what happened to her in the '80s. In the '80s, she 25 just kind of did a whole turnabout and said, Well, you	Page 47 1 know, this is what I'm finding. I can't -- I can't 2 find anything that really that says that repressed 3 memories even are such a thing. 4 So it's almost like she dropped it. It's 5 like she -- she got hardened in her -- this is my 6 opinion, of course. I think she got very hardened in 7 her approach and kind of refused to get out of that. 8 I mean, she still writes articles and 9 everything. And some of them -- you know, she writes 10 some stuff. I still read her stuff, not all of it, 11 like I used to. And some of it I'll say, yeah, I'll 12 give you that. I'll agree with that a little bit. 13 And then she'll turn around, though, and say 14 they just don't exist. I'm like, but you're saying 15 they don't exist because you don't have experimental 16 research. But you're not looking at -- you're not 17 looking at some of the clinical findings, because there 18 is such a thing as clinical findings that you can't 19 just ignore. 20 Q. Well, I mean, the scientific method is to 21 have a hypothesis -- 22 A. Absolutely. And you want to prove the no. 23 Q. Do research? 24 A. And prove the no. 25 Q. Prove it?
Page 48 1 A. Yes. 2 Q. And, as you discussed with subconscious -- 3 A. The unconscious, yeah. 4 Q. -- there was no way to prove it? 5 A. Right. 6 Q. And you rejected it? 7 A. I admit, I rejected it. 8 Q. And then they came up with a way of proving 9 it? 10 A. Yes. 11 Q. And now you accept it? 12 A. And I accept it because they have proved it. 13 And there are other things. I mean, back in 14 the '90s, what caused ulcers? Think about it. 15 Somebody came in with ulcers, what were they 16 automatically diagnosed with? They were diagnosed as 17 stress related. Oh, you get stress, you produce all 18 this acid in your stomach. Well, they found that that 19 was bogus because -- acid can make it worse, but ulcers 20 are -- ulcers are caused by bacteria. You give -- you 21 give somebody an antibiotic, certain antibiotic, guess 22 what happens to their ulcers? They go away. 23 So what I -- what I object to with her is 24 that she doesn't -- her thinking is inflexible. She's 25 not willing to consider some of the stuff that's coming	Page 49 1 out. 2 Q. Okay. What stuff that has come out? 3 A. Well, like I said, the signs that they're 4 looking at now. They've got a list of different signs 5 you can get. And one of them was a peer-reviewed 6 journal that I used. And -- and they're saying that, 7 okay, these are signs not -- you know, not necessarily 8 symptoms. Symptoms would be finding the -- would 9 find -- would be finding, you know, somebody has ulcers 10 because of bacteria, you know, and looking at the 11 symptoms. Okay, the signs would be indigestion, that 12 kind of thing. And she -- she just -- she just kind of 13 like got rigid about that. 14 Q. And aren't most research scientists likewise? 15 A. Yeah. Clinicians aren't so much. 16 Q. Okay. 17 A. I think clinicians -- I think we tend to be a 18 little bit more flexible in our thinking and a little 19 bit more open-minded about looking at options because 20 we see more. You know, we see people in the real word. 21 And, I'm sorry, but academics don't. 22 Q. I used to be an academic. 23 A. I was an academic, too. I was at MUSC. 24 MR. RICHTER: You know all the shortcomings. 25 BY MR. DUKES:

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Page 50 1 A. Seriously, I was trained to be -- I was 2 trained and did a post doc at MUSC. I was trained to 3 be an academic clinician. And -- well, and then the -- 4 it's a big mess. It was a big mess. 5 Back in 1990, they lost their CON, from -- 6 you know, Roper and MUSC were going to do a rehab 7 hospital. My deal was, finish my post doc and I was 8 going to be head of the psychology department in the 9 rehab hospital. They lost their Certificate of Need. 10 Everything fell through. And then the politics got so 11 horrible, I said, You know? 12 It was a very hard decision because I had 13 always wanted to be -- that was my goal, I wanted to be 14 an academic clinician at MUSC, in my hometown. And so 15 it was a very bitter pill for me to swallow because I 16 couldn't -- I couldn't do that. 17 Q. Uh-huh. With -- 18 A. So I like academia. 19 Q. Getting away from ulcers and getting to 20 Repressed Memory Syndrome, you've already said, and 21 you'll agree with me, that it's highly controversial -- 22 A. Yeah. 23 Q. -- among psychologists? 24 A. Sure. 25 Q. And those who believe it, believe in it and	Page 51 1 those who don't, don't? Is that a correct way to -- 2 A. I think that's a little stark. I believe in 3 it, but -- but I'm not going to just -- I have -- 4 somebody comes to me and says, Oh, I discovered these 5 repressed memories, do you think I'm just going to bite 6 on that and say, Oh, I'm sorry, you did? No. I'm not 7 going to accept that at face value. The academic part 8 of me, the scientific part of me, is going to say, 9 Well, what makes you think that? Or, you know, I'm 10 going to ask them questions, not leading questions. 11 I'm going to ask them questions. I'm going to get some 12 clarification. I'm not going to just swallow it whole. 13 Q. Okay. What questions did you ask Mr. Doe? 14 A. Okay. Let me see if I can find the thing. 15 Where's my original? 16 THE WITNESS: Larry, you -- can I borrow that 17 for a minute? I can't find mine. That piece. 18 No, the written -- handwritten. 19 MR. RICHTER: This? I'm sorry. Sure. 20 BY MR. DUKES: 21 A. There you go. And, again, this is face 22 value. And I am looking for better questionnaires than 23 this. But this was kind of a -- I knew I only had a 24 certain amount of time with him so I tried to make the 25 best use of my time. If you go on page five.
Page 52 1 Q. Uh-huh, I'm looking at. 2 A. Those are some of the questions I asked. I 3 also have on the side there what his wife said. There 4 were some -- there were some differences, which I 5 expected. That's why I see them separately or saw them 6 together, then him, then her. 7 Q. Uh-huh. And why would strong reactions to 8 certain people be a sign of repressed trauma? 9 A. Because that's pretty -- that's kind of -- 10 you're traumatized by a certain kind of person and -- 11 you know, but -- but if you don't remember that person, 12 you don't remember what happened, you're going to find 13 yourself feeling a little anxious, feeling a little 14 uncomfortable around that person or kinds of people. 15 And it's just like I said, it's a sign. It's not -- 16 it's a sign. It's not like this big, huge symptom. 17 So right now, as clinicians, we are trying to 18 come up with better ways of measuring some of these 19 things. 20 Q. Okay. 21 A. I mean, if you're -- he was not abused by a 22 Catholic priest. But let's say he was abused by a 23 Catholic priest and somebody walks in with a Roman 24 collar, he's not going to run screaming out of the 25 room, but the odds are he may very well be	Page 53 1 uncomfortable. 2 Q. When did Mrs. Doe report that her husband 3 began having difficulty controlling his emotions? 4 A. She said it was shortly after they moved to 5 Greenville. And I think -- 6 Q. Have you read her deposition? 7 A. Yeah. She said -- yeah, I did read it. 8 Q. She said it was while they were in 9 Charleston. 10 A. Well, she mentioned that. 11 MR. RICHTER: I object to the form of the 12 question. 13 BY MR. DUKES: 14 A. What I got from that was, yeah, he was 15 starting to change a little bit. But she -- I got from 16 the deposition and from her -- she told me that, you 17 know, everything changed when they moved to Greenville. 18 I mean, that's her deposition. Then I'm going back to 19 what she tells me. I mean, unfortunately, people are 20 not always consistent. 21 Q. And that reflects that memory isn't always 22 consistent; isn't that true? 23 A. That -- that is true. I mean -- okay. 24 Well -- and -- and a lot -- one of the things about 25 memories is state-dependent learning. That's way

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Page 54 1 important. I mean, you may not be able to tell me what 2 you had for dinner last Wednesday. However -- however, 3 if it was a special meal, your wife's birthday or your 4 anniversary, you took her to some really nice place, 5 Magnolias or whatever, white tablecloths and 6 everything, you're going to much more likelihood of 7 remembering that meal than just run-of-the-mill 8 house -- run-of-the mill house that you had last 9 Wednesday. 10 Q. Uh-huh. 11 A. Is that true? I mean, that's -- that's just 12 normal human memory. So that's -- state-dependent 13 memory is -- is -- is very important. 14 And he fell apart when he had to move to 15 Greenville without her, because he's so dependent on 16 her. And she said and he said -- he's the one that 17 also said his life fell apart when he moved to 18 Greenville. And, yeah, she said something about the 19 crying and stuff. But to me she said something -- she 20 told me that he started crying and carrying on right 21 after they moved to Greenville. 22 So, I mean, the deposition is not -- 23 that's -- that's why, yeah, I read the deposition. But 24 that's why I'm also going to talk to these people. 25 Q. The deposition is sworn?	Page 55 1 A. I know it's sworn. 2 Q. Okay. 3 A. And this isn't. I... 4 Q. Do you need a break yet? 5 A. I've just got lots of honey running down my 6 throat. 7 MR. RICHTER: She's got green tea and honey 8 in her... 9 BY MR. DUKES: 10 Q. And we can get you another glass of tea, if 11 you want. 12 A. That's okay. You could add alcohol in it, if 13 you want. But I'm teasing. Please. The problem is, I 14 don't like the way it tastes. 15 Q. If a drink would help you testify, we'll get 16 you one. I may join you. 17 A. Wish it tasted better. 18 Q. You said that you didn't have time to rise up 19 in the APA because mostly academics do that. Have you 20 ever published a peer-reviewed article? 21 A. Yeah. 22 Q. How many? 23 A. I only published a couple. One was in 24 graduate school, on values. 25 And I don't know, it was -- it was -- my
Page 56 1 social psychology professor, she was doing something 2 called a banker's model of investments in terms of 3 relationships. And she and I published something on 4 homosexuality. I don't even remember very much about 5 it; it was a long time ago. 6 And then, when I worked for HealthSouth, this 7 wasn't -- no, it ended up getting -- my dissertation 8 part of it was -- my dissertation was on narcolepsy and 9 stress. And everybody, at that point in time, was 10 saying if somebody has narcolepsy and they fall asleep 11 or whatever, don't stress them. Well, I found the 12 opposite. I found that if you stress the hell out of 13 somebody with narcolepsy, they're wide awake to enjoy 14 it. So, anyway, that was kind of a -- that got me 15 published. And a piece of it -- I didn't do the 16 whole -- just a little piece of it got me published in 17 Health Psychology or something. 18 And then -- and then I -- right after MUSC 19 fell through, I got a job in Charlotte. I was 20 recruited to HealthSouth in Charlotte. I was going to 21 be their first psychologist in all of their outpatient 22 units. And I showed that I could make the money and 23 improve patient outcomes, so then they decided they 24 were going to hire a whole bunch of psychologists with 25 their outpatient units. Unfortunately, they hired	Page 57 1 people that didn't even know what a vertebra was, so -- 2 and it's pain psychologists. That just really irked 3 me. So I had to train all these people twice a month 4 for months. I had all these different psychologists 5 come through the clinic for a whole weekend, Friday 6 night to Sunday night. And I ended up publishing a 7 manual. And it -- it was peer-reviewed and they -- 8 part of it got published. 9 Q. Have you published anything on repressed 10 memory? 11 A. No, I have not. 12 Q. What about suppressed memory? 13 A. No, I have not. 14 Q. Have you done any research on repressed 15 memory? 16 A. What do you mean? Yeah. I read constantly. 17 Q. No, no. I mean, have you conducted a 18 research study? 19 A. Have I conducted a research -- no, I have 20 not, although I've been tempted several times, 21 especially -- like, I started -- actually started doing 22 something when these people -- my pain patients and 23 sick patients started coming to me with this, you know, 24 repressed memory stuff. And, like I said, at first, I 25 was kind of skeptical and -- you know, but it came up,

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Page 58 1 over and over and over. And I actually started the -- 2 I started to develop a protocol to try to -- oh, and I 3 also did some stuff at MUSC on -- on geriatric pain, 4 but anyway... 5 That was -- part of that was published, 6 but -- well, the whole thing was published, but... 7 But I just started to develop a protocol on 8 that because it was becoming such a thing. And I 9 couldn't find anything in the literature. I mean, I 10 found, like, a blip here or a blip there. But I 11 never -- I couldn't find an actual study about that. 12 And I -- so I started developing a protocol. And 13 somebody beat me to the punch and did -- and somebody 14 else published something. 15 Q. Okay. And what was that; do you remember? 16 A. It was -- it was just what I was telling you. 17 It's something about the recovery of repressed memories 18 in people with physical trauma or something like that, 19 I think was the name of it. It got published in Health 20 Psychology. 21 Q. Okay. When was that? 22 A. Early 2000s, I think. 23 Q. Okay. 24 A. No, it was before 2010, so... 25 Q. And you didn't publish anything?	Page 59 1 A. No. I wish. They had -- they had -- they 2 even had a similar protocol. But, like I said, I 3 developed the protocol. I had the questions. I had 4 the setup. And, you know, I had a control group 5 already kind of -- who I could use in a control group. 6 I had another group that had the repressed memories 7 from this stuff. But I was just -- they were an 8 academic and had time and I was not, quite frankly. So 9 I just -- I couldn't move as fast as they could. Now 10 maybe I'm making an excuse for myself, but whatever. 11 Q. No, we have to work for a living. 12 A. Yeah. Yeah. 13 Q. What -- 14 A. Because I -- I saw ten people a day. For 15 psychologists to -- hour a clip. And then all the 16 phone calls and the writing of the report, it's a long 17 day. 18 Q. What was the protocol you developed for 19 assess -- was it a protocol to assess a repressed 20 memory patient or what? 21 A. Yeah, it was a protocol. You know, like -- I 22 like my little protocols. So I had -- you know, I had 23 demographic information, of course. Then I had 24 information about how the person -- how the person -- 25 the injury, the current symptoms, the pain, if there
Page 60 1 were other issues, surgeries and all the medical stuff, 2 had all the medical, demographic, medical stuff, and -- 3 and then how devastating was the accident or the 4 injury, how long they were out of work. 5 Because I thought that was important, because 6 people start thinking, how long they were out of work, 7 and triggers, if we could identify them, you know? 8 And, like I said, most of the time you can't. 9 Sometimes you can and -- identifying triggers for those 10 repressed or suppressed memories. 11 I did make a distinction between suppressed 12 and repressed. And -- and I actually had several -- I 13 was trying to get -- you know, you need an in of 30 for 14 something like this. And in this case, I wanted an in 15 of -- you know, a number of 30 in control and -- and -- 16 and 30 in the -- in the protocol. And I got about 15 17 people. 18 I worked on Saturdays. I'd come in and see 19 people and -- and -- who wanted to be in this thing. 20 And I was able to get about 15 people, ten from one 21 group, 15 from another, something like that, evaluated. 22 And lo and behold, I picked up a journal, 23 Health Psychology. And now there's -- some of their 24 questions were different, some of their protocol was 25 different, but it was -- I could see that I was heading	Page 61 1 in the same direction as them. And, you know, nobody's 2 going to publish a second article that is... 3 Q. It's not groundbreaking anymore? 4 A. Not groundbreaking. So it was -- I was 5 pretty upset at that point. I decided I'm not doing 6 any more -- I'm not doing that. I'm not going to do 7 any more studies. 8 Q. Okay. So your opinions regarding the 9 validity of repressed -- the theory of repressed memory 10 are based on first-hand reports from patients? 11 A. And what I've read. 12 Q. And what you've read? 13 A. I'm certainly not going to just -- like I 14 said, somebody comes in and says, Oh, I have repressed 15 memories, I am not going to just say, Oh, okay. I'm 16 not going to accept that. I can't. 17 Q. Uh-huh. 18 A. I don't think that's -- that's not 19 reasonable. 20 Q. What studies do you believe establish that 21 the theory of repressed memory has been proven to be 22 correct? 23 A. Well, to be honest, I can't cite any 24 specific. I will tell you that there's several in 25 there that do a pretty darned good job.

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Page 62 1 Q. In the book down there? 2 A. Uh-huh. There's several in there that I 3 think do a great job of making a distinction between 4 suppressed versus repressed and for the validity that 5 they exist. 6 Q. And the A -- 7 A. That's the stuff -- and that's the stuff I've 8 read most recent. I've read other things, too. But 9 most recently I think that's probably one of best ones. 10 And also what I showed you, that recent ethics -- well, 11 fairly recent ethics course I took. 12 Q. And this APA book you have down here, that 13 was the -- was that the publication by seven national 14 scientific societies: The APA, the Council on 15 Scientific Affairs -- 16 A. Let's see -- I don't know, I just thought -- 17 Q. -- AMA -- 18 A. No, I don't think that -- this is APA stuff. 19 This is final. It's a final report of the American 20 Psychological Association Working Group on 21 Investigation of Memories of Childhood Abuse. 22 Q. What year was that? 23 A. It's old. That -- that -- that bothered me. 24 I think it's too old. But I tried to find other 25 updates and I'm -- I found one -- I found three. But I	Page 63 1 haven't gotten them yet because I couldn't get them off 2 the internet; I had to order them. 3 MR. RICHTER: I'll find the date for y'all, 4 if you want. 5 BY MR. DUKES: 6 A. Yeah, the date is 1998, which I thought was 7 too old, personally. So I'm in the process of hunting 8 down some newer ones. 9 Q. And you are aware that at least in 2012 the 10 American Psychological Association, the Australians, 11 the -- I'm trying to think who all else -- the 12 Canadians, the Australians -- 13 A. And British. 14 Q. -- the Royal -- 15 A. And the British. 16 Q. -- College, yeah, the British, said that 17 there's no general acceptance of Repressed Memory 18 Syndrome. 19 A. I did -- I do remember reading that. And 20 there's no general acceptance. But, again, they're all 21 academics. 22 Q. Okay. But still -- 23 A. Every single one of them. 24 Q. But there's still no general acceptance of 25 that theory?
Page 64 1 A. I admit that. There -- like I said, there's 2 a lot of contention in the field. And, ten years ago, 3 you would have also had people saying there's no 4 general acceptance that the unconscious exists either. 5 Q. Right. But the problem of the unconscious 6 was proved scientifically -- 7 A. Yes, it was. 8 Q. -- to exist? 9 A. And this -- 10 Q. And now it's accepted? 11 A. I think this -- I think the same thing -- I 12 think we're going to see the same thing happen within 13 the next five to ten years with Repressed Memory 14 Syndrome. 15 Q. Who's doing that research? 16 A. Of course, academics are doing it. But 17 they're also -- they're also using, like I said, the 18 fMRI with -- with repressed -- 19 Q. With the subconscious? 20 A. With the sub -- the unconscious. They used 21 that. And that was a pretty fascinating study, set of 22 study. That -- I was riveted. And most of the time 23 science is not -- you know, scientific studies like 24 that are not riveting. But I read every single one of 25 them because was I fascinated.	Page 65 1 And I think that whether the technology 2 already exists, there is something that's kind of 3 emerging that could possibly be used. And I don't 4 remember the name of it or whether they're going to -- 5 we're going to have to wait for something else. But I 6 do believe that it's going to be proven in the next 7 five to ten -- within the decade that repressed 8 memories exist with appropriate -- with appropriate 9 medical documentation. 10 I don't think it's going to be proven with 11 academics. I didn't think it's going to be proven with 12 protocols. I think it's going to have to be proven 13 based on newer diagnostics, just like unconscious 14 memories or the unconscious. 15 Q. So there's going to have to be a test that 16 you can use to prove it. And we don't have that now 17 and -- 18 A. We don't have it now. 19 Q. -- it's not on the horizon? 20 A. I read somewhere that there was an incipient 21 movement, but I don't know what that means. 22 Q. Okay. 23 MR. RICHTER: I object to this line. And I 24 won't interrupt you again to say this because it's 25 the law in South Carolina.

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Page 66 1 BY MR. DUKES: 2 A. It is a law in South Carolina, based on 3 Moriarity. 4 Q. Well, it's actually not. It has to be 5 proved. 6 A. It has to be proven, but you have to have an 7 expert witness to prove it. 8 Q. Correct. 9 A. But it is accepted in the statutes, right? 10 Q. Not in the statute. It's -- 11 A. It's not in the statutes? 12 Q. It's one case. 13 A. It's one case, that's true. But it is 14 accepted as -- 15 Q. No, they recognized that in those cases that 16 it is a hotly contested theory. 17 A. Yes, it is. 18 Q. It's not generally accepted. It was 19 described by one person, and I'm sure you can probably 20 quote it better than I, that it is the greatest debate 21 in all of the study of memory. 22 A. Right. However, it also says that it is 23 accepted in the State of South Carolina. 24 Q. But you still have to prove it. 25 A. You still have to prove it and you have to	Page 67 1 prove it through the use of an expert witness, right? 2 Q. Right. 3 A. Which I'm trying to do. 4 Q. Have you ever directed any anatomical studies 5 of repressed memories in patients? 6 A. No. 7 Q. Have you ever done any neuroimaging of a 8 repressed memory? 9 A. I'm not a physician, so I'm not allowed to. 10 Q. Have you conducted or supervised or been 11 involved in any biochemical studies? 12 A. Not on repressed memories. 13 Q. Okay. 14 A. I have, on narcolepsy and sleep disorders. 15 Q. Back when you were in graduate school? 16 A. Even after, yeah. 17 And also -- also seen -- I've taken anatomy 18 courses in terms of -- I didn't -- part of my training 19 was in med school, part of it was in psychology. I did 20 not take gross anatomy with medical students; I took it 21 with the PT students. So instead of having two persons 22 per cadaver, there were six of us. 23 Q. Okay. Any laboratory investigations or 24 neuropsychological testing? 25 A. Neuropsychological testing?
Page 68 1 Q. Uh-huh. 2 A. I've done tons of that. 3 Q. Of repressed memory patients? 4 A. Not specifically repressed memory. I was 5 more -- it was more about, you know, how is this person 6 coping after their liver failed? How is this person 7 coping after their head injury, Lyme Disease, you know, 8 spirochetes getting in your brain? You know, it was 9 more that kind of testing. 10 Q. And you didn't do neuropsychological testing 11 on Mr. Doe, did you? 12 A. No, I did not. I did not think it was 13 appropriate. 14 Q. Why not? 15 A. I just didn't. I -- because I wasn't -- 16 again, the problem is, there are no neuropsychological 17 tests for repressed memory. If there were, believe me, 18 I would have found it and used it. And I'm still 19 looking, but I haven't -- I just can't find any. 20 I mean, they are developing some things, but 21 they have not come up with that yet. Once they do, I'm 22 going to start using it. 23 Q. And that would be a tool that you could use 24 to verify -- 25 A. Yes, it would.	Page 69 1 Q. -- whether somebody is actually suffering 2 from repressed memory or whether they're malingering? 3 A. Malingering. Malingering is a big issue 4 because -- especially when you're talking about 5 Workers' Comp. And that was a huge issue that I dealt 6 with regularly with Workers' Comp and personal injury 7 cases. So usually -- I got fairly -- I mean, I'm sure 8 I was scammed a couple of times, you know? I'm human 9 and I like to help people. But a lot of times, you 10 can -- after a few sessions with somebody, they can't 11 hold it up. I also was not above watching them walk 12 out to their car after they left my office. So, I 13 mean, here they come walking with their little cane and 14 they leave my office walking to their car kind of 15 jauntily with the cane flinging on their finger. What 16 do you think I'm going to do? But we don't have that 17 for repressed memory, either. 18 Q. Okay. 19 A. I don't have these kind of observations. 20 Q. So there are no objective tests or mechanism 21 to objectively verify? 22 A. There is one. I finally found it. It's 23 pretty expensive but I think I'm probably going to 24 order it anyway. It's -- oh, crap. But it -- but it's 25 a little old, so I want to get a little bit more

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Page 70 1 information on it, a dissociative memory -- it's DES, 2 dissociative -- I'm going to try to find it. I want to 3 see if there's a -- a lot of times, they have an older 4 test and then they have ones that have been updated. 5 And that's what I'm looking for. 6 Q. And this test would -- you think would -- 7 would help you objectively verify whether someone -- 8 A. Possibly. That's why I want to -- before I 9 go and -- before I go and just spend all this money on 10 it. 11 And they have PTSD checklists. But we know 12 he has PTSD, so I'm not -- Dissociative Experience 13 Scale 2. But I'm still not a hundred percent 14 convinced. 15 And I'm going to call PAR. They have 16 different companies that publish -- publish 17 psychological tests and you have to meet certain 18 criteria before you can order them, like, you know, 19 Ph.D. that went into practice, that kind of -- so I can 20 order this. 21 But before I do, it -- I'm not sure it's 22 going to tell me enough about repressed memories, per 23 se. And that's why I haven't ordered it yet. You 24 know, it tells me about dissociative identities or 25 multiple personality disorder, but I'm not -- I don't	Page 71 1 need to know about that. Dissociative order not 2 otherwise specified, yeah. I mean, so some of this I 3 just -- I'm not sure about. 4 And I'm going to call the PAR people -- I 5 just found this out two days ago. I'm going to call 6 the PAR people and -- and -- and talk to them. PAR is 7 Psychological Assessment Research or something. 8 There's about five reputable companies out there. 9 And then there's something call a TAQ score, which 10 is, again, traumatic antecedents -- antecedents 11 questionnaire manual. And, again, it's a -- it talks 12 about -- it's a self-report instrument, gathers 13 information about lifetime experiences in ten domains, 14 you know, incompetence, neglect, whatever. 15 Q. But you didn't -- you didn't put Mr. Doe 16 through this test? 17 A. I didn't put Mr. Doe through -- 18 Q. You haven't put anybody through it? 19 A. No, I haven't put -- that's exactly right. 20 Because I'm not going to just willy-nilly use 21 something. Now, the signs that I used -- this has face 22 validity. You know, I want something with more than 23 just face validity. I mean, face validity is okay. I 24 probably am going to start using the Beck Depression 25 Scale and stuff like that. The PTSD, I -- you know,
Page 72 1 yeah, I've got several PTSD tests that I've used for 2 years. 3 Q. Is CAPS one them? 4 A. Yeah, I've used CAPS. And -- 5 Q. What do you think of CAPS? 6 A. It's not bad. 7 Q. Okay. 8 A. You know, it's not like I'm going to jump up 9 and down and say it's the best thing since sliced 10 bread, either. But I think it's pretty good. It's 11 okay. 12 So, yeah, so I'm in the process of trying to 13 find, you know, like, this signs of repressed trauma. 14 This was the best I could find right now. 15 And I'm sure there's more stuff out there. 16 Because, you know, I mean, testing is -- psychologists, 17 we like our tests. Because we -- because they are -- 18 especially verifiable tests that have been around for a 19 long time and they've had lots of studies to prove 20 they're -- to prove -- to prove their validity and to 21 prove that they actually -- you've got to look at 22 validity and reliability. You know, are they valid in 23 terms of testing what they say they're valid? And are 24 they reliable for -- in terms of result from person to 25 person?	Page 73 1 Q. And we don't have either of those for 2 repressed memory? 3 A. Not yet. We're coming close. 4 Q. Okay. 5 A. I -- I hope. I shouldn't say that. Strike 6 that. 7 Q. No, it's in there now. 8 A. I'd like to think we're coming close because, 9 like I said, I have been really, really -- the -- you 10 know, you saw that on some -- where all the hours of 11 research that I didn't charge anybody for because I 12 felt like this is my thing. I've got to get more -- I 13 mean, I'm up-to-speed. I mean, a lot of stuff I've 14 been reading it's like, yeah, I know that. But there's 15 a few -- there's some tidbits that I don't know, so 16 that's why I've been really trying to get myself up to 17 speed. 18 (Discussion held off the record.) 19 (A brief recess was taken.) 20 BY MR. DUKES: 21 Q. I think we were talking about possible 22 neuropsychiatric testing that would allow you to 23 determine whether somebody was either malingering -- 24 and I'm going to get to some differentiations between 25 memory conditions in a little bit. But right now we

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Page 74 1 don't have any test that can verify whether a person 2 has repressed memory, correct? 3 A. That's my understanding. 4 Q. And all you really have to go on is the 5 person reporting to you -- 6 A. Yeah. 7 Q. -- that they are remembering? And there's no 8 way to determine whether they're being honest or not? 9 A. No, there's no way to determine that. 10 However, I think some of the interesting questions on 11 here that I liked, the reason that I used this, was 12 that it -- it -- it doesn't come out and say, Oh, what 13 memories do you have? It looks at the signs or the 14 symptoms. And, I mean, when you first start evaluating 15 somebody for pneumonia, you have to ask questions, 16 right? You know... 17 Q. You do a differential diagnosis? 18 A. You do a differential diagnosis. And I'm not 19 saying that this is obvious. I'm not saying that this 20 is a great differential diagnosis. I'm saying we're 21 getting there. That's all I'm saying. I'm saying we 22 are -- we're getting there. And I'm -- like I said, 23 I'm spending lots of hours trying to dig up some better 24 tests. 25 Q. And I've spent lots of hours studying memory	Page 75 1 and trying -- 2 A. I bet you have. 3 Q. -- and trying to learn as much as I could 4 about it. 5 A. I bet have you. 6 Q. The one thing I've learned that I think is -- 7 that we would absolutely agree on is that memory is not 8 like a videotape? 9 A. Huh-uh. Memory is reconstructive. 10 Q. And memory is not always honest with us? 11 A. No. 12 Q. We remember things that didn't happen, 13 right? 14 A. And people can be susceptible to memory 15 changes because somebody makes -- makes a comment. 16 That's why I think it's so important for therapists to 17 know what the hell they're doing, because you don't 18 want to implant false memories, which happened to a 19 patient of mine. I won't even go there with that. 20 Q. But it's not hard to implant a false memory. 21 And that's one of the things Beth Loftus has done a lot 22 of -- 23 A. Yes, I agree. 24 Q. -- with the Lost In The Mall -- 25 A. Yes, the Lost In The Mall --
Page 76 1 Q. -- study -- 2 A. -- a famous study. 3 Q. -- or the broccoli study -- 4 A. Yes. 5 Q. -- which is my favorite? And you -- and she 6 was admittedly trying to do an ethical false memory 7 implantation -- 8 A. She was. 9 Q. -- that wasn't going to harm the person? 10 A. That wasn't going to harm someone. 11 Q. And whether -- unless you were George Bush, 12 Senior, implanting a memory that you didn't like 13 broccoli wasn't going to hurt you? 14 A. Right. 15 Q. But it's malleable, right? 16 A. It is malleable. I'm not saying it isn't. 17 And, like I said, memory is -- it's not one big chunk 18 in one part of your brain. You know, it's coded and -- 19 and it's coded in different parts of the brain. 20 It's -- and so for memory to coalesce, you've got to 21 pull these pieces back into a whole, which may or may 22 not be completely accurate, because memory is a 23 reconstructive process because it is differentially 24 stored in the brain. Smell is in one part, vision is 25 another part.	Page 77 1 Q. Music in another part? 2 A. Emotions here, vision here, motor here. 3 Q. And people forget? 4 A. Yeah. 5 Q. I've forgotten more than I know. 6 A. Sure. We all have. 7 Q. And ordinary forgetting is not equated with 8 repressed memory? 9 A. No, it isn't. But, again, you have -- you've 10 got to keep in mind that we're talking trauma in 11 memory. That's a whole different ball game. Like I 12 said, you don't -- might not remember what you had for 13 dinner last Wednesday. But if it was a special date 14 with your wife or somebody, you are going to remember 15 that. 16 Q. And trauma is -- is something that you 17 normally would remember? 18 A. It depends. Not -- that's -- see, there you 19 go. There's the rub. All right, some trauma you're 20 going to remember, especially if you're an adult, 21 because you have more coping skills. But if you're a 22 kid and your coping skills are limited, and the emotion 23 is overwhelming that a kid can't handle, they are more 24 likely to repress those memories. 25 Q. Okay. What is your basis for that opinion?

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Page 78 1 A. The basis for that opinion is developmental 2 studies. 3 Q. Which ones? 4 A. Which ones? 5 Q. Uh-huh. 6 A. Oh, Rich, I'm sorry, I've -- I've -- 7 I've read so many of those studies, I can't even tell 8 you. I mean, but it's based on -- I took a whole 9 course in development -- developmental biology and all 10 this other kind of stuff, developable -- develop -- 11 developmental neurobiology. And, I mean, the brain 12 matures in different ways. It matures in different 13 times. 14 And so, consequently, kids just don't have a 15 big repertoire of coping skills. You know, it's in my 16 report. They don't have a big repertoire. They can 17 imagine themselves somewhere else. They can numb out. 18 They can pretend it didn't happen. I mean, their -- 19 their coping skills are limited. And when it -- when 20 it gets into something like this, who are they going to 21 tell that's going to believe them? So what option -- 22 think about it, logically speaking, what option do they 23 have? 24 Q. But physiologically how does the psyche 25 repress a memory?	Page 79 1 A. Physiologically speaking? 2 Q. Uh-huh. 3 A. Well, we're still looking into that, aren't 4 we? But, again, I think -- 5 Q. We don't know? 6 A. We don't know. 7 Q. We can't describe it? 8 A. I still think it has to do with the 9 developmental, how the brain develops. Because, you 10 know, the brain just isn't very -- okay, 12-year-old 11 kid, how sophisticated is their brain going to be? Not 12 so much. They still laugh at bathroom humor. Their 13 brains are not sophisticated. Their coping skills are 14 not sophisticated. A lot of times, their parents have 15 never even taught them resilience or problem-solving. 16 And then, if you get into a situation like this, where 17 you've got a person in power over you, you're not going 18 to -- you're going to be afraid to tell on that person. 19 And that person is probably going to say, You may as 20 well not tell anybody, nobody's going to believe I did 21 anything. 22 Q. You read Mr. Doe's deposition where he 23 testified that nobody told him not to tell, right? 24 A. Right. True. Nobody told him not to tell. 25 Q. And --
Page 80 1 A. And he also figured, who was he going to 2 tell, anyway? 3 Q. And all of your comments a moment ago, that's 4 just supposition, right? 5 A. Wait a minute. No. All my comments, 6 supposition? 7 Q. Assuming that -- 8 MR. RICHTER: Let -- let her answer, please. 9 MR. DUKES: Okay. 10 BY MR. DUKES: 11 A. What comments were supposition? 12 Q. Well, you went into a long, I won't say a 13 rant, but certainly not a diatribe, but -- but you made 14 a lot of assumptions. You assumed that, that somebody 15 had power over him. You assumed that, that he was just 16 a kid with no coping skills. You assumed that this 17 happened. And you do assume that it -- 18 A. In this case, I assume it happened. In this 19 case. 20 Q. And you believe him? 21 A. I do believe him. I -- well, I don't -- I 22 believe all the stuff I read, really. If I had just 23 spoken to him, by himself, probably -- I would probably 24 be skeptical. And maybe if I -- but we have -- think 25 about it, all this information we have. I mean, yeah,	Page 81 1 was everybody accurate? I don't know. But I think we 2 have enough -- I think we have enough fact-based stuff 3 to make these suppositions stick. 4 And, like I said, I don't -- I don't know of 5 any -- my nephew is 11. His coping skills are pretty 6 terrible, even though his parents work with him and 7 he's a great kid and he's honors. But he's still 11. 8 His brain hasn't matured enough. And that's -- you can 9 look at any 11 -- you've got boys. What were they like 10 at 11? 11 Q. They were different. They were different. 12 Every individual -- 13 A. Oh, they're different. But, in general, how 14 are -- you know, how well does an 11-year-old cope? 15 They don't. They don't have those skills yet. 16 They don't have the -- they don't -- and we 17 know -- you can stick -- my nephew is in this study -- 18 well, it's a bunch of Medical University -- medical 19 hospital things. He's in the one at MUSC. It's a 20 long-term longitudinal study starting with, I don't 21 know, eight-year-olds all the way through 18. It's a 22 ten-year study looking at brain development. And it's 23 fascinating because my sister is like, Oh, you've got 24 to see this, because I can read this stuff. And she'll 25 show me the different scans, brain scans, he's going

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Page 82 1 through. And it's amazing what you can see from 2 every -- every -- every year. The brain is changing. 3 The brain is -- you know, it's developing. And 4 that's -- and we know -- I mean, there are studies. 5 There are plenty of studies out there showing that -- 6 that developmentally kids cope differently when they -- 7 as they get older. 8 Q. And so your generalizations were just 9 generalizations. They -- 10 A. They're generalizations based on -- 11 Q. But each -- 12 A. -- based on -- based on studies. 13 Q. But each person is developmentally different, 14 right? 15 A. Not as much as you think. Really, not as 16 much as you think. You scratch the surface and, yeah, 17 you've got one kid that's going to be a little more 18 mature than another kid. You've got a kid that's going 19 to be more anxious and a rule-follower than a free 20 spirit who doesn't care. You've got those differences. 21 But when it comes to brain development, until 22 they have some developmentally -- developmental 23 disable -- disabilities, the brains aren't that 24 different. I mean, you and I haven't had a stroke. 25 Our brains are going to be a lot more similar than you	Page 83 1 think. 2 Q. What kind of things affect memory? 3 A. Trauma. 4 Q. Head trauma, for instance? 5 A. Are you talking about -- are you talking 6 about -- when you say "affect memory" -- 7 Q. Your ability to remember things? 8 A. Oh, ability to remember. Yeah, head trauma 9 can do that. Trauma, in general, can do that, 10 certainly. Being overwhelmed by emotion in the -- in 11 the event somebody's -- who, like, dies in front of 12 you, it's going to affect -- you're going to remember 13 certain parts of that very vividly and other parts 14 you're not going to remember. 15 Q. That's like the example that I've seen drawn 16 in a lot of literature of the puzzling conundrum, I 17 guess, of the person who's robbed at gunpoint. And 18 they remember the gun vividly, but cannot describe the 19 assailant's face. 20 A. That is exactly right. Because -- and 21 what -- and what does that? That's emotion. That's 22 state-dependant learning because they're overwhelmed. 23 They're only going to be able to focus on one thing. 24 So that can affect it. 25 You know, dementia can affect it. Drugs can
Page 84 1 affect it. Medications can affect it. I mean, yeah, 2 there's lots of things. 3 Q. Somebody who's using drugs -- 4 A. That's what I just said. 5 Q. -- their memory is -- may not be as 6 trustworthy or it may be more suggestible than someone 7 who wasn't? 8 A. If they were under the influence of the drugs 9 at the time, yeah, not necessarily after they finished. 10 Q. And you remember that, at least with 11 Mr. Doe's discussion of the party, he had said -- 12 A. Uh-huh. 13 Q. -- he had smoked a bunch of marijuana -- 14 A. Uh-huh. 15 Q. -- and had a lot to drink? 16 MR. RICHTER: Object to the form of the 17 question. 18 BY MR. DUKES: 19 Q. Well, that's what he said, right? 20 MR. RICHTER: He didn't say that. 21 BY MR. DUKES: 22 A. That's what he -- well, I don't remember him 23 saying that in his deposition. 24 MR. RICHTER: He didn't say it. 25 BY MR. DUKES:	Page 85 1 A. He didn't say it. I don't remember that in 2 his deposition. And the thing is, all we know is that 3 he was kind of abandoned at a bar and left it at that, 4 because we don't know exactly what happened in that 5 bar. I think he was kissed by another man or 6 something. But in terms of the drugs or the alcohol, 7 whatever, all we know is that the guy was abandoned in 8 a bar and had to find his own way home to Charleston. 9 I mean... 10 Q. And that would normally be something that 11 would be memorable, wouldn't it? 12 A. That would be memorable within -- but, again, 13 one of the things that's been found -- I read this a 14 long time ago with memory. One of the things that can 15 be found is that, especially children -- as adults, we 16 have a little bit better ability to volitionally 17 suppress certain aspects. It's harder for adults, in 18 general. We just -- it's just too hard for us to 19 really suppress stuff. But -- but, still, we end up 20 suppressing certain things that are just too 21 overwhelming. But we can do it in pieces. Children 22 cannot. 23 That's one of the things that -- that was 24 found. God almighty, that was found 20 years ago, that 25 kids cannot just say, I'm not going -- I'm not going to

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Page 86 1 remember this bad thing that happened to me. What ends 2 up happening is that they don't remember a year. They 3 don't remember much of their childhood. If their 4 childhood was bad, but not all of it was, meaning, oh, 5 you know, Dad did this to me or that to me and I had 6 trouble here, I had trouble there, a lot of times 7 they'll just kind of say, I don't remember much about 8 my childhood, period. They don't have the ability 9 to -- to compartmentalize like adults do. Now, that's 10 a fact. 11 Q. And it's also a fact that people choose not 12 to report bad things that happened to them in the 13 past? 14 A. That can sometimes happen, yes. 15 Q. How do you -- how can you differentiate 16 between somebody who is choosing not to report an event 17 that happened in the past and someone who is suffering 18 from Repressed Memory Syndrome? 19 A. Well... 20 Q. You can't, can you? 21 A. Not unless you know them pretty well, not 22 unless you spend a lot of time with them. I think 23 Dorothy Whelan has come pretty close because she has 24 spent a good bit of time with him. But me -- you 25 know, me seeing him that one time, that would be hard	Page 87 1 for me to do. You know, I had to go on the existing 2 information I had and his wife. And only she -- she 3 only knows so much. But -- but in a one-shot deal, 4 I -- I admit that can be difficult. 5 But, again, you look for -- you know, okay, 6 you look for how he reported this stuff with the -- 7 when he was six, as opposed to the stuff when he was 8 older. And -- and there was a -- I don't know. Okay, 9 here's -- excuse me. Here's my clinician coming out. 10 Forgive me. It's kind of -- sometimes we do go with a 11 little bit of a gut feeling. But I don't -- I don't 12 like to rely on gut feelings. In graduate school, I 13 got accused being too much of a scientist. And that's 14 fine. But there is sometimes, if you have a little bit 15 of a gut feeling, and then you follow it up. You 16 follow it up and say, Well, how come you remember this 17 but you're not remembering that? And most of the time, 18 of course, unfortunately, most of the time you get, I 19 don't know. But -- but I try to follow some of that 20 stuff up. 21 Now, again, the fire, he was an adult. He 22 didn't -- he didn't suppress any of it. He remembered 23 all of it. Well, he remembered what he was told. He 24 wasn't there. 25 Q. Uh-huh. How do you -- is there a test or
Page 88 1 something you can do to differentiate between repressed 2 memory and ordinary forgetting or choosing -- or not so 3 much suppressing but choosing not to think about 4 something? There's not, is there? 5 A. Well, you know, I'm thinking. I remember 6 several cases in the past where I probably pushed too 7 hard. But I did know them well enough. I mean, I'd 8 seen them for a couple of years for health problems or 9 for pain or whatever. And I can remember several cases 10 where I just -- where -- where I, number one, pointed 11 out very nicely, of course -- I try to always be 12 polite, but very nicely pointed out inconsistencies. 13 Well, you know, two months ago you mentioned X, Y and Z 14 that you kind of remembered it and now you're saying 15 you don't remember it. What -- what's -- tell me about 16 that. What -- what's different? So if you know 17 somebody well enough, I -- I think that sometimes you 18 can tease it out. I can't -- I can't say you can -- 19 you can't always tease it out. And you have to have 20 very good rapport with that person and a lot of trust. 21 Q. And did you build that kind of trust with 22 Mr. Doe? 23 A. Well, not -- not in a one-shot deal. No, 24 couldn't. 25 Q. Okay. Do you give any value to the	Page 89 1 information that Chris Hartnett was a school teacher 2 for 30 years? 3 A. I thought that was kind of weird. 4 Q. And that he never had an allegation of sexual 5 abuse again? 6 A. I don't -- I didn't know what to make of 7 that, you know? 8 MR. RICHTER: I object to the form of the 9 question. Go ahead. 10 BY MR. DUKES: 11 A. I didn't know what to make of that, quite 12 frankly, because, you know, it's like -- I can't 13 help but -- I'm sorry, I can't help but believe -- I 14 can't help -- I find it hard to believe that -- that 15 Mr. Doe would have been his only -- his only victim. 16 Q. One-shot deals, not to speak lightly of -- 17 A. I know what you're saying. 18 Q. Doesn't happen? It's -- 19 A. No, it doesn't. That's what I'm saying. 20 Q. Yeah, it doesn't happen? 21 A. That's what I'm saying. That's why I find it 22 very hard to believe that Mr. Doe was the only victim. 23 Q. And Mr. Brooks denies it absolutely? 24 A. Okay. Well... 25 Q. He's alive. We've -- we've located him.

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Page 90 1 A. What about Hartnett, is he alive? 2 Q. No. He died 20 years ago. 3 A. Oh, boy. That's what I'm saying. I find it 4 very hard to believe that -- that Mr. Doe would have 5 been his only victim. I -- I -- I just don't see that. 6 And I'm -- and I'm not saying we should go beat the 7 bushes for him. I'm just saying I find it hard to 8 believe. 9 Now, again, it's -- you know, we know that 10 these guys are going to prey on vulnerable kids. And I 11 can't -- Mr. Doe could not have been the only 12 vulnerable kid that came under his tutelage. 13 Q. And Larry's good friend, Mr. Hartnett's 14 sister -- 15 A. Really? 16 MR. RICHTER: Trying to hide the sister. 17 They don't want us to get access to her. 18 BY MR. DUKES: 19 Q. Are there any studies of the rate of 20 malingering or exaggeration in people who claim to 21 suffer from repressed memory? 22 A. I've been trying to find those. I know 23 they're out there. I haven't been able to locate a 24 good one. And I'm sure they are out there. The 25 problem is, really, it's much harder to prove that than	Page 91 1 somebody with a bad back. I mean, we've got tons of 2 studies for that stuff, for malingering and everything. 3 And I'm -- 4 MR. RICHTER: Did you say bad back? 5 THE WITNESS: A bad back. 6 MR. DUKES: She said "bad back." 7 BY MR. DUKES: 8 A. In other words, I'm saying that you want to 9 know about a study about malingering with repressed 10 memories -- 11 MR. RICHTER: When you finish answering this, 12 I want to tell y'all something. Go ahead. 13 MR. DUKES: Well, let's -- let's keep 14 moving. 15 BY MR. DUKES: 16 A. You know, there's a ton of studies out there 17 showing malingering and signs of it. And, you know, 18 over the years, I've gotten pretty good at -- at -- at 19 teasing that one out. 20 Q. The dancing across the parking lot tossing 21 the cane helps, helps that determination? 22 A. Oh, my God. And some other stuff, too, is 23 pretty amazing. But, anyway -- saw one guy on the 24 lake, diving off his boat. I'm like, Seriously? Right 25 in front of me? Anyway, I was on a different boat, but
Page 92 1 he didn't know I was there. 2 So, I mean, that's pretty -- and -- and then 3 some of the stuff they say. 4 But -- but I have not been able to find one. 5 And I have -- I heard -- I was looking 6 through something, one of my stuff, one of my things, 7 and -- and it did have a -- had a reference. But I 8 found it two days ago. I didn't have time to mess with 9 it. I found a reference to a study and I'm going to 10 look it up. 11 Q. Are there any studies that examine the rate, 12 I guess, for lack of a better word, the rate of 13 repressed memory claimants who are actually only 14 suffering from the normal process of forgetting? 15 A. I'm sure it's got to be out there, but I 16 don't know. 17 Q. Okay. You don't know of any? 18 A. I don't know of any, but I can't imagine that 19 there isn't something out there. 20 Q. What about -- 21 A. But, again, I think repressed memories versus 22 forgetting is different, because -- 23 Q. I'll agree with you on that. 24 A. Because, I mean, forgetting is normal. I 25 mean, you forget stuff. But repressed memories, you	Page 93 1 don't repress memories unless there a lot of trauma and 2 emotional upheaval and emotional pain. I mean, that's 3 going to be the big sticking point. 4 Q. Okay. You will agree with me that Holocaust 5 survivors don't repress that memory, do they? 6 A. They're adults. 7 Q. There were many, many children. 8 A. There were many children. There were many 9 children. 10 Q. Who saw horrific things? 11 A. They did. And some of them did repress those 12 memories. 13 Q. What study shows that? 14 A. God, I read something back in the '80s 15 that -- that was even before -- that was just as 16 repressed memories were coming to the fore. I remember 17 it was an 11-year-old girl. And when they -- when they 18 got to the -- she was 11. When they -- when the Allies 19 came -- I can't remember -- I can't remember I can even 20 remember this little bit. She was 11 years old. That 21 stuck with me. The Allies came in which -- whichever, 22 Birkenau, whichever camp they were in. And I remember 23 them -- they said something about, How long have you 24 been here? She didn't know. What's your name? I 25 don't know. I mean, she had just completely flushed

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Page 94 1 everything. 2 Q. So she -- she suffered global amnesia? 3 A. Yeah. But -- well, she suffered dissociative 4 amnesia. 5 Q. And that global amnesia is extremely rare? 6 A. Extremely rare. 7 Q. And -- and it's almost the subject of 8 folklore, although it happens? 9 A. Well -- and, again, she was -- she was 11. 10 She was put in that camp right almost at the very 11 beginning. Parents died, everything. So she was -- 12 she was pretty small, I mean pretty young. Eleven. 13 She was in that camp three, four years. How old would 14 that make her? You know, seven. It's awfully young. 15 But that was -- that's kind of -- that was one of those 16 weird studies that just sort of struck me. 17 Although, you're right, most of those 18 Holocaust victims did remember. But part of it was 19 because they talked -- they saw horrible things, but 20 they talked to each other. They had a built-in support 21 group. You know, when we're talking about repressed 22 memories of somebody being sexually abused, where's 23 their -- where's their support group? Who are they 24 going to talk to? They aren't there. And I think 25 that's what makes that different, too.	Page 95 1 Q. Uh-huh. If you're going to construct a test 2 to determine the rate of memory repression within a 3 given cohort, how would you do that? 4 A. We talked about this a minute ago. 5 Q. Yeah. You talked about developing a program, 6 a protocol. But I want -- how would you set that test 7 up specifically for Repressed Memory Syndrome? 8 A. The test up, as opposed to pencil and paper, 9 interviewing that person? What? 10 Q. Some test that would determine within a group 11 of sexual abuse victims -- 12 A. Yeah. 13 Q. -- how many of those will suffer from 14 Repressed Memory Syndrome over time? 15 A. You mean setting -- setting a protocol to 16 find that out? 17 Q. A prospective test, not a retrospective 18 test? 19 A. A prospective test? Well, that is tough. 20 Q. And it's never been done, has it? 21 A. No, it's never been done because people don't 22 want to do it. Think about it. You know, I've never 23 had that -- somebody says, I never had that happen to 24 me. Why should I fill this out? 25 Q. Uh-huh.
Page 96 1 A. And the other problem is, most -- you can't 2 do a prospective test on someone like that because most 3 sexual abuse happens, you know, young. I mean, most 4 sexual abuse happens six, seven, eight, that kind of 5 thing. Now, with priest sexual abuse, sometimes kids 6 were older. But, still, how do you set up a 7 prospective study when the abuse is going to start at 8 six or seven? You can't do it. How could you possibly 9 set that up? 10 Q. I don't know. I was asking you if you had a 11 mechanism to set one up? 12 A. I can't think of one because, you know, we're 13 dealing with -- we're dealing with children. We're 14 dealing with parents saying, I don't want my kid 15 filling that out. We're dealing with kids that don't 16 even know what it is. You know, inappropriate 17 touching, well, you know, they teach kids about that 18 now. But what does that really -- how are they going 19 to define that? I mean, you don't want to start a 20 prospective test on a five-year-old and talk about 21 penises, okay? 22 Q. Uh-huh. 23 A. You just -- you just don't. 24 Q. Are recovered memories accurate in all 25 respects?	Page 97 1 MR. RICHTER: Object to the form of the 2 question. 3 BY MR. DUKES: 4 Q. Is there a test that can verify that? 5 A. You know, no matter what you do -- you know, 6 no matter what you do, you're going to have some -- 7 some situations that are not going to be verifiable. 8 You know, the MMPI, which is -- which is the gold 9 standard, as you probably know in terms of 10 psychological testing -- 11 Q. Uh-huh. 12 A. -- have error rates built in because we know 13 that there's going to be error rates. We know that 14 there's not going to be a perfect test, even if the 15 person is trying desperately to be honest. So can you 16 say that that's going to be a perfect outcome, that 17 this is going to be a perfectly accurate snapshot of 18 their psychological functioning when they took that 19 test? No, because they have an error rate built in. I 20 mean, so there is a problem with that. It's not like 21 testing chemistry, where you're going to put this stuff 22 together and this is going to happen. 23 Q. So there's no -- there's no way you could 24 verify that a recovered memory is accurate? 25 A. Not a hundred percent. I think that you can

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Page 98 1 verify it, up to a point. That's why you've got a 2 checklist. That's why you've got signs. So I think we 3 can verify it. 4 I hate to use my own personal statistics, but 5 I think we can verify it up to a point, let's say -- 6 not a hundred percent. Let's say -- even if we can say 7 80 percent, that's pretty good. 8 Now, of course, there's also different 9 problems with one study I read, of course, said that 50 10 percent of women have been sexually abused. Okay. 11 Then, there's another study that I think may be more 12 accurate that came out later that said it's closer to 13 25 percent. Now, so how -- you know, how do you verify 14 that? That is a problem. All we know is that it 15 happens. And at this point, we're still trying to 16 figure out how often, because a lot of times it never 17 gets reported. The people that are saying 50 percent, 18 at the time, are going to include people that have not 19 verified it. The 25 percenters are saying these are 20 people that have definitely said they've been sexually 21 abused. We probably know that's pretty accurate. But 22 the 50 percent, I don't know. The truth is probably 23 somewhere in the middle. Usually is. 24 Q. How does the brain encode memory, happy 25 memories, pleasant memories, differently than it	Page 99 1 encodes memories of trauma? 2 A. Oh, happy memories have a different 3 state-dependent emotion attached to it. Happy memories 4 are -- they're attached to feelings of happiness, of 5 joy, of, you know, being excited and positive. 6 Traumatic memories -- and -- and emotion usually isn't 7 quite as strong. 8 Although my 11-year-old nephew graduated from 9 the fifth grade a few months ago. And took him out to 10 the fun thing, took him out to lunch, this is the best 11 day of my life kind of thing. But -- but, again, for 12 him, that's a happy memory and he still talks about it. 13 That's different than traumatic memories that the 14 memory -- the -- the -- the state-dependent emotion is 15 overwhelmingly negative. 16 And, consequently, we think that those 17 memories, they're -- if they're remembered, they're 18 stronger and more vivid. But if they're so 19 overwhelming in terms of the emotion, that's when they 20 get flushed, especially if the -- if it's a kid. 21 I think you can't overestimate the whole 22 state-dependent learning thing. We can't overestimate 23 that. That's crucial. 24 Q. How do you determine with any certainty, any 25 degree of certainty, when someone begins to recover a
Page 100 1 memory? 2 A. I think, first, it's important to be 3 skeptical. Now, that might surprise you, a 4 psychologist. But I'm also -- I like science. So I 5 think initially I tend to be skeptical. And -- but I 6 don't -- I'm never going to discount it to that 7 person's face because that's very counterproductive. 8 I'm going to listen. And then I'm going to ask them 9 what -- what's caused this to come up or when did you 10 start remembering it or what pieces have you 11 remembered? I would start like that. 12 Q. And -- 13 A. And so there would be questions that are not 14 leading and they are not suggestible. They are just 15 kind of like, you know, A, B and C. 16 Q. Uh-huh. And when somebody reports that 17 several years ago I began remembering being molested, 18 is that trustworthy? 19 A. Sometimes. Sometimes it isn't. I had a 20 patient who I was convinced it was not trustworthy, all 21 of this ritual abuse, and it was just -- she was 22 just -- no offense, but she was just so psychotic. I 23 didn't -- you know, I did not -- 24 Q. Ritual, satanic ritual, baby sacrifice -- 25 A. And then she --	Page 101 1 Q. -- the horror stories. 2 A. And then -- and then -- and then you have to 3 look for confabulation because, a lot of times, the 4 memories of abuse, as they become -- they come up, they 5 become recovered, they're -- there does tend to be more 6 vividness to those recollections. However, when you're 7 talking about I think so-called recovered memories that 8 are not necessarily true, you're going to get some 9 outrageous confabulation that is kind of beyond the 10 realm of belief, like babies being killed and people 11 eating their parts. I'm sorry. 12 Q. And there -- and you'll agree with me there 13 are times when a so-called recovered memory is just not 14 true? 15 A. That's right. 16 Q. And there's no way to objectively verify -- 17 A. Yeah, except -- except how much distress the 18 person is having and if I can verify that they're not 19 psychotic, which is not that hard to do anymore. We do 20 have a lot of tests for that. 21 Q. Okay. Sometimes -- I read the term 22 dissociative amnesia. 23 A. Uh-huh. 24 Q. And that's a broader topic. 25 A. It's broader. But some of the more recent

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Page 102 1 stuff is kind of saying, well, repressed memory and 2 dissociative amnesia, sometimes they use them as equal 3 things. They're saying dissociative memory -- I mean, 4 you know, repressed memory is a form of dissociative 5 amnesia and that's kind how I look at it. 6 Q. But it's not a synonym of -- 7 A. It's not a complete synonym. But -- well, it 8 depends on what you read, actually. 9 Q. It includes global amnesia. 10 A. Well, true. 11 Q. It includes, for lack of a better word, an 12 out-of-body experience? 13 A. Well, yeah. I'm -- I'm -- I'm kind of funny 14 on that. 15 Q. You think that's -- that that happens? 16 A. I think people perceive it as happening, as 17 opposed to somebody's soul leaving their body. I've -- 18 I'm a little skeptical. 19 Q. Okay. So as a coping strategy for trauma, 20 imaging that you're -- 21 A. Imaging that your soul is leaving, imagining 22 that you're leaving that situation, sure. I'm 23 somewhere else. 24 Q. Okay. But actually -- 25 A. This isn't happening.	Page 103 1 Q. -- doing it -- 2 A. Yeah, but I'm not going to -- I don't see 3 anybody's soul floating up from their body, so... 4 Q. Okay. 5 A. I'm sorry, I didn't mean -- I hope I didn't 6 offend anybody. 7 Q. No, I'm just here to have a pleasant 8 conversation with you. 9 With repressed memory patients, is a history 10 of memory disorders an important factor to consider? 11 A. That's an excellent question. 12 Q. And Larry didn't object to the form of it. 13 A. No, he didn't. 14 MR. RICHTER: Well... 15 BY MR. DUKES: 16 A. Well, I think it's an interesting one and 17 one, you know, we can't disprove. You know, I mean, if 18 somebody's got severe organic memory loss, I don't hear 19 repressed memories from them. Somebody's got dementia, 20 I don't mean really, you know, significant dementia, 21 I've never heard repressed memories come from them. I 22 mean, they might say, Where's -- I want to go home. 23 Where my's mother? But that's not repressed memory; 24 that's disordered memory. 25 Q. Is there a way to test whether a memory that
Page 104 1 is recovered is part of a memory disorder and not 2 really a repressed memory? 3 A. Not -- not really. But I can test for memory 4 disorders. I do it all the time. Some of them -- some 5 of the tests are a little bit more involved than 6 others. 7 But sometimes I do something depending on 8 time. I do a quick-and-dirty test. It's a not a mini 9 mental status; it's a lot more of the memory stuff. 10 And I do do some those of tests to make sure that the 11 person doesn't have early dementia or that they 12 aren't -- they don't have a memory problem. And that 13 kind of helps. Because if they score okay on that, I'm 14 not saying that it gives more credence to dissociative 15 memory, but I'm saying that at least rules out organic 16 basis for memory impairment. 17 Q. When did John Doe either express or repress 18 any of his memories? 19 A. When did he do it? 20 Q. Uh-huh. 21 A. I think he did it in seventh grade. 22 Q. Okay. 23 A. Because he didn't even remember being there. 24 Q. When did he begin remembering again? Do you 25 have an opinion on that?	Page 105 1 A. That's interesting, because the depositions, 2 the notes, everything is a mess in terms of that. And 3 that's why I was also saying triggers, where I don't 4 see any triggers. 5 Q. Uh-huh. 6 A. And let me see if I can find it. He did 7 completely fall apart when he moved to Greenville 8 without his wife. I think that was a huge -- 9 Q. In 2012? 10 A. 2012. I think that was a huge, huge thing 11 for him. He -- what did he tell me? 12 Q. And Ms. Whelan's notes, her first interview, 13 did you note that, that he told her he began to 14 remember being abused several years ago, several years 15 prior to 2016? 16 A. Yeah. 17 Q. Right after he had bypass surgery? 18 A. He mentioned that, yes. He mentioned that. 19 But... 20 Q. And the bypass surgery he had was in 1999. 21 A. Yeah, he mentions that. 22 Q. And he was pretty specific with me when I 23 would say about a bypass surgery and he would say, no, 24 that was a stint. 25 A. Yeah. He did not come out to me and say that

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Page 106 1 happened right after my thing. He talked more about 2 moving to Greenville in -- 3 Q. In 2012? 4 A. In 2012. And that's when the -- that's when 5 all -- he started having all kind of problems, couldn't 6 cope and he was overwhelmed. 7 Q. And -- 8 MR. RICHTER: Please don't interrupt her 9 answer. She's got a right to give her answer. 10 BY MR. DUKES: 11 A. And let me see if I can find this thing. And 12 I got the sense that he was -- it was around 2012 that 13 he started having some -- some blips of memory. That's 14 my opinion from what -- everything I've read and from 15 what he told me, because he was completely falling 16 apart at that point and he was overwhelmed by emotion, 17 by negative emotion. But, again, it -- I mean, there 18 are so many -- I mean, think about it, these 19 depositions, the notes, everything, there were so many 20 inconsistencies. I had to make notes on everything. 21 And then I had to kind of put them together that made 22 some kind of sense to me, which was hard because there 23 were so many inconsistencies. 24 Q. I believe his wife said that before they 25 moved to Greenville, when they were still in	Page 107 1 Charleston, he began to have uncontrollable crying and 2 bouts of severe depression. That's when they quit 3 going dancing? 4 A. Yes. 5 Q. And that she would ask him, Why? And he 6 said, I can't tell you, I'm so ashamed? 7 A. Yes. And what she told me was that things 8 got bad after -- after he moved to Greenville and she 9 stayed in Charleston. And he got -- started crying and 10 he changed. He became a different man. What do we do 11 with that? 12 Q. So we really cannot pin down when Mr. Doe 13 began to remember? 14 A. Uh-uh. I think there were blips just like -- 15 recovered memories seldom come in one big tsunami. 16 They come in little blips. And I think maybe he 17 started having some tiny little blips in Charleston. 18 But, apparently, I think -- I think -- 19 personally, I think the trigger for him primarily was 20 the overwhelming negative emotions and stress 21 associated with moving to Greenville, where he didn't 22 really want to go, and having to live without his wife. 23 I think -- I don't know what -- I don't know 24 what -- I think that man would probably become overtly 25 suicidal if something happened to his wife, because he
Page 108 1 can't cope without her. 2 And that's when she told me things changed. 3 I mean, so what are we supposed to believe? I mean, I 4 don't know. And -- and, yet, I don't believe it's 5 necessarily that unusual, because I've heard it all the 6 time, you know, a little piece here, a little piece 7 there, and then... 8 Q. And if somebody came to you and said, All of 9 sudden, it came back to me like it was -- 10 A. Happening just again? 11 Q. Yeah. 12 A. I've seen that happen, but I think it's rare. 13 I think it's relatively rare. I do think it can 14 happen. I've only heard -- I heard -- I've heard of a 15 couple of people, a couple, three, four people tell me 16 that. But most people talk about it coming in bits and 17 pieces, until -- until something rips the lid off. And 18 he talked about the bomb. 19 Q. And that's usually therapy? 20 A. Often it's therapy because they start talking 21 about it and they feel a safe place. Sometimes it's 22 some other overwhelming life stressor. The negative -- 23 we go back to the state-dependent learning, where they 24 start experiencing some of the same emotions that they 25 did when they were traumatized.	Page 109 1 Q. Uh-huh. But with John Doe, there's no way 2 for us to say when he began -- when he remembered the 3 abuse? 4 A. No. Like I said, it's my opinion that he 5 started having blips after -- with the stress of moving 6 to Greenville. 7 Q. In 2012? 8 A. In 2012. And, like you said, his wife said 9 something about the -- the surgery, so I don't know. I 10 mean, I'm going by what he and his wife told me. 11 Q. Is there any more work that you want to do to 12 complete your report? 13 A. Like? 14 Q. Are you going to do any more work? 15 A. I wasn't planning to, but if y'all think that 16 that would be necessary, I'm willing to give it a shot. 17 Q. I just want to make sure there's not 18 something that you're planning to do that would change 19 the report after I finish depositing you? 20 A. Not -- not really. You know, I mean, I am 21 sort of interested in the whole idea of his lack of 22 resilience. And I have a better idea now why he was -- 23 why he lacks resilience. People who lack resilience, 24 you know, we're not -- we know that they're more prone 25 to develop PTSD, to trauma later in life, and have more

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Page 110 1 health problems, physical health problems. We know 2 that. And we know how to teach it. But I haven't been 3 able to nail down if that lack of resilience 4 contributes to repressed memory, so that's why I'm 5 not -- that's why I didn't put it in here. 6 Q. Okay. You'll agree with me that Mr. Doe has 7 had a difficult life? 8 A. Oh, yeah. 9 Q. And that there are some significant traumas 10 that -- 11 A. Uh-huh. 12 Q. -- impacted him, the sexual abuse at age six? 13 How significant do you put that in his -- 14 A. Well, that was a trauma which could set him 15 up to have more difficulties with trauma down the road. 16 However, like I said in my report, I don't -- I do not 17 think that was a proximate cause of PTSD. He did not 18 have a significant relationship with this kid. It 19 happened once or three times, whatever, a kid down the 20 street. I think it's bothered him, but I don't think 21 it was -- I think in the grand scheme of things, I 22 don't think -- I think he just went about his life. 23 Q. What about his relationship with his 24 father -- 25 A. Oh, I think that's --	Page 111 1 Q. -- which was disastrous? 2 A. It was disastrous. And I want -- I thought 3 about putting more in the report about that, and yet 4 the only reason I did not -- I mean, I think it made 5 him more vulnerable to the teacher, for sure. The only 6 reason I didn't put that in the report was because he 7 didn't repress those memories. 8 Q. Uh-huh. 9 A. You know, all that -- all that abuse and 10 trauma from his relationship with his father, none of 11 those were repressed. 12 Q. And he didn't repress memories of friends or 13 things they did when they were -- when he was a 14 teenager? 15 A. That was -- that was weird, okay? In the 16 deposition, first he says he doesn't remember having 17 friends. He doesn't remember, you know, his childhood. 18 And then, when you start -- then, when people started 19 asking him specific questions, they came back. 20 And there was a study I read a long time ago 21 that generally kids who have poor childhoods oftentimes 22 don't remember a bunch of them, don't remember a lot of 23 their childhood unless people ask them specific 24 questions. 25 Q. Uh-huh.
Page 112 1 A. But, again, I did not see that as necessarily 2 cogent to the idea of repressed memory in this case. 3 But it could have been. Could have been more 4 suppression. But after some thought, I decided, okay, 5 is that going to muddy the waters and make it more 6 difficult or not? So I -- so I opted to leave it out. 7 Q. Well, I mean, I found it interesting that he 8 says I don't remember anything about the seventh grade, 9 yet he remembers going to smoke pot with the kid -- 10 A. Yeah. 11 Q. -- across the street -- 12 A. Of course. 13 Q. -- go down to the movies -- 14 A. Yeah. 15 Q. -- walking down King Street to the movies? 16 A. Yeah. There's inconsistencies, yes. And 17 that's why I'm saying that -- that with kids, a lot of 18 times, they have a hard -- they'll just say, I don't 19 remember. I don't remember. I don't remember. But 20 then, when you ask specific questions, little pieces 21 will come up. But it's not necessarily about the 22 abuse, if you think about it. It's not about what the 23 teacher did to him. It's more about, oh, I played 24 hookie with my buddy. And, again, I -- I thought -- 25 Q. But you'll agree that that's an	Page 113 1 inconsistency? 2 A. Oh, absolutely. 3 Q. Yeah. 4 A. And one of things is, I don't like to write, 5 and Mr. Richter knows this. I mean, I was taught to 6 write reports the shorter, the better. This is one of 7 the longer reports I've written and so I was trying not 8 to add too much. 9 Q. On your opinion about the abuse at age six 10 not being traumatizing, what do you base that on? 11 MR. RICHTER: Did you say page six or age 12 six? 13 MR. DUKES: Age six. 14 BY MR. DUKES: 15 A. Oh, you mean with the -- with the -- 16 Q. With the teenager. 17 A. -- adolescent? Oh, the teenager. Well, 18 number one, you'd be surprised how often that happens. 19 Maybe you wouldn't. Probably wouldn't. I'm sure you 20 wouldn't be surprised. Because he -- like I said a 21 minute ago, he did not have a -- he did not have a 22 relationship of trust with this kid. 23 Q. But he either -- in your report you say he 24 either repressed that memory or suppressed that memory. 25 A. Yes. Yes. And I -- if you remember, I then

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Page 114 1 came back and said I believed it was more suppressed. 2 Q. Right. 3 A. Because I didn't think it was quite as 4 traumatize -- I didn't think it was nearly as 5 traumatizing as with the teacher. 6 Q. And is suppression -- I'm really interested 7 in this. Suppression is a willful putting the memory 8 out of mind? 9 A. Yeah, basically. 10 Q. And -- and is it more than just choosing not 11 to think about something? 12 A. Oh, it's probably a little bit more than 13 that, because you're going to have the negative -- the 14 negative state-dependent learning. So it's unpleasant 15 and you don't want to think about it. You don't have a 16 lot of coping skills, nobody to tell, I'm don't want to 17 think about it. I'm just going to flush that one or 18 I'm going to choose to flush that one. 19 Q. Uh-huh. And that -- 20 A. Repression is, I can't deal with this. I'm 21 overwhelmed. It's gone. It didn't happen. 22 Q. Okay. As Elizabeth Loftus says there would 23 have to be a hobgoblin in your brain that reaches up 24 and grabs your memory -- 25 A. Yeah, that's one of her little --	Page 115 1 Q. -- and hides it in a box? 2 A. Yeah. She has a way with words sometimes. 3 Q. And there's no scientific evidence that that 4 hobgoblin exists? 5 A. That's true. Like I said -- but, again, I 6 have a lot of respect for Elizabeth Loftus. She's an 7 icon in the field. 8 Q. I just liked the line. 9 A. I know. She's great with words, seriously. 10 But I also don't -- I don't agree with her 11 like I used to. Nice lady, by the way. I mean, she 12 could be. 13 Q. She is nice. She's pleasant. 14 A. Yeah, she's very pleasant, even though we 15 didn't agree with -- I met her at an APA convention. 16 And I saw her get off one of the shuttle buses and I 17 said -- I was young. I was -- I was, like, in my 30s 18 and said, Elizabeth Loftus. And so we -- she took me 19 to lunch. 20 Q. I was the same way with an historian named 21 James McPherson. 22 A. I've heard of him. 23 Q. He wrote one of the best books about the 24 Civil War. 25 A. My brother read that book.
Page 116 1 Q. I met Jim at a conference at Annapolis and he 2 took me to lunch. 3 A. Isn't that cool, when somebody does that? 4 Q. Yeah. 5 A. You're just a -- you feel like you're a lowly 6 nothing and this person takes an interest in you. 7 Q. Yeah. 8 Now, after he was molested by the teenager 9 and before you say he was molested by the teachers, 10 before age 13, between age six and age 13 -- 11 MR. RICHTER: Excuse me. I object to the 12 reference, age 13, if you are stating that that's 13 when he was abused by the preacher -- by the 14 teacher -- 15 MR. DUKES: Well, we know it had to have 16 happened in 1970. He had to be 13. He was born 17 in 1957. 18 MR. RICHTER: I made my objection. 19 MR. DUKES: Okay. 20 MR. RICHTER: I'm not arguing with you about 21 it. 22 MR. DUKES: Okay. 23 BY MR. DUKES: 24 Q. How about if I say this? Between the time he 25 was six in 1963 and in 1970, Mr. Doe was troubled. I	Page 117 1 mean, after his -- he was molested by the teenager, his 2 father took him to a psychiatrist for two years? 3 A. Uh-huh. 4 Q. He couldn't -- 5 MR. RICHTER: Is there a question? 6 MR. DUKES: I'm asking. 7 MR. RICHTER: Okay. 8 BY MR. DUKES: 9 Q. And there must have been something going on 10 there. 11 A. Well, yeah. He was a poor student. He slept 12 in class. He cut class. He didn't do well in school. 13 That -- that's what I'm hearing. 14 Are you -- are you wanting to relate that -- 15 I'm sorry, I should have let you finish. 16 Q. I'm just wondering. I mean, he had 17 discipline problems? 18 A. Uh-huh. 19 Q. He had either expelled or withdrawn from -- 20 A. Lots of schools, yeah. 21 Q. -- three schools? This is before he ever 22 arrived -- 23 A. I know. 24 Q. -- at Sacred Heart. So he had -- clearly, we 25 can infer there were behavioral problems?

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Page 118 1 A. Absolutely. 2 Q. There were -- and you met him. I've met him. 3 He is not an unintelligent man? 4 A. No, he's -- and he actually got his GED 5 without hardly studying for it, by the way. 6 Q. Yeah. 7 A. And didn't -- and didn't go to school from 8 eighth through twelfth grade, which is amazing. 9 Q. So to what trauma do you attribute the 10 behavioral problems between age six and age 13? 11 A. You know, that crossed my mind. And I didn't 12 feel like I had enough evidence to even make a 13 supposition. Yes, I think that was traumatic. But 14 we've seen a lot of kids -- we've seen a lot of boys go 15 through that kind of behavior without a trauma. So how 16 do we -- how do we really link it to that? I mean, I 17 wanted to try to -- yes, you said I made a lot of 18 suppositions and implying stuff. But I really tried to 19 put everything connected to facts as well as I could 20 get them. 21 Q. Okay. 22 A. So that's why I didn't include it. 23 Q. What do you base his running away from home 24 on? 25 A. I base that running away from home on his	Page 119 1 abusive father and on the abuse and simply wanting to 2 escape. 3 Q. Now, if -- and this is something that has 4 bugged me. And maybe you can explain it to me. If 5 somebody represses a memory, what are they running away 6 from? They have no access to the memory. 7 A. All they know is they're running away from 8 feeling bad. They're running away from being 9 depressed. They're running away from being 10 overwhelmed, being anxious, not succeeding. 11 Q. He was doing that before. 12 A. Well, he wasn't running away to California. 13 And he wasn't -- 14 Q. He tried. 15 A. I know. But, I mean, he was -- he ran away, 16 but it wasn't serious running away, like -- like -- 17 think after -- after the abuse by the teacher, that's 18 when the running away got really outrageous. Before 19 that, it was like, you know, my brother going down to 20 the -- down the street to his best friend and telling 21 his mother -- telling our mother he ran away. I mean, 22 it wasn't as serious as that. 23 Q. Well, let's see. He hitchhiked -- the first 24 time he hitchhiked, he was headed for Florida. 25 A. Yeah, but I thought that was after the abuse.
Page 120 1 Q. Huh-uh, that was before. 2 MR. RICHTER: Object to the form of the 3 question, if that is a question. I think it's 4 argumentation, but I object to it. 5 BY MR. DUKES: 6 Q. I believe that happened before and the 7 sheriff picked him up. 8 A. Okay. The sheriff picked him up. Think 9 about it. 10 Q. And brought him home. 11 A. That deposition on him was very hard to read, 12 was full of inconsistencies. So, I mean -- and I 13 went -- and I had notes everywhere. And I could not 14 make said heads or tails of some of that stuff. I 15 think I did a pretty good job, given everything. 16 Q. So you're saying that his -- his memory of 17 his childhood is convoluted, at best? 18 A. Yeah. Yes. But I also think there are 19 certain things that stand out. 20 MR. RICHTER: Certain things that what? I'm 21 sorry. 22 THE WITNESS: Stand out. 23 MR. RICHTER: Stand out, thank you. 24 BY MR. DUKES: 25 Q. Are there any opinions that you have about	Page 121 1 Mr. Doe that are not included in your report? 2 A. I think -- I think Mr. Doe, because of his 3 childhood and some of the stuff that happened to him, I 4 think he lacks resilience. I think he has a lot of 5 difficulty with authority figures. I think he 6 avoids -- well, I mean, a lot of times we'll all avoid 7 certain things we don't want to do. But I think he -- 8 I think he's socially phobic, at times. I think he 9 avoids things as much -- unpleasant things as much as 10 he can. I got this -- here -- well, there's a list of 11 some of them here. Difficulties with trust. 12 Oh, I think he has -- he -- he told -- I 13 asked him about self-sabotage. He said years ago he 14 did that but he doesn't feel like he does that now. 15 I do think that the experience at Publix was 16 pretty devastating for him. However, Earth Fare has 17 definitely been a very good salutary -- salutary 18 experience for him. He's part-time. He found a 19 full-time job. And they -- he told me that they 20 actually made arrangements for him to stay full time 21 and get benefits. And I think that's turned him around 22 in a lot of ways. It's funny how certain life 23 experiences like that can do that. 24 I -- of course, he's very reticent. He will 25 answer questions, but he is -- you know, I think he

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Page 122 1 would never just kind of -- he's not an open book. And 2 I think that that goes -- goes back to a lot of his 3 suspiciousness, his inability to trust. 4 He would call that paranoia, but it's not -- 5 like Ms. Whalen says, it's not -- it's not paranoia in 6 the clinical sense. 7 Q. It just John Doe's -- 8 A. It's just John Doe's paranoia. And a lot of 9 people have it, believe it or not. 10 He saw himself as a failure, so he wouldn't 11 go on to school, but I think that was more related to 12 the abuse. He didn't want to be put in another 13 situation like that. 14 But, again, he's -- he's -- he repressed 15 memories. So all he knew was that he was a failure. 16 And, of course, he has terrible fears of 17 abandonment. He said occasionally; his wife says no. 18 He is terrified of losing her. She can't go to the 19 store without him calling her. She can go visit a 20 grandchild without him calling her and asking him to 21 come -- asking her to come home. So it's horrible 22 feelings of abandonment. 23 And so I think there's -- yeah, there's all 24 these things that I think are going on. Did I think 25 that they were necessarily -- they can be considered	Page 123 1 signs of repressed memory. And I mentioned that. But 2 I didn't put it under impressions. 3 Q. Okay. The physical abuse of his wife -- 4 A. Yeah, okay. 5 Q. -- that was -- do you have an opinion -- 6 A. Yes, I do. 7 Q. -- on the cause of that? 8 A. Yes, I do. Because when he's awake, he does 9 not do that to her. She called it physical abuse. And 10 I questioned her a lot about that, because that's 11 really important, because I have seen people with PTSD 12 who have rages and take them out on their closest 13 people. You know, they beat up their kids and their 14 wife. And he never does that when he's awake; it's 15 only when he's having nightmares. 16 And the interesting thing is, when we -- when 17 we have a dream, we have something called sleep 18 paralysis, which keeps us from acting out our dreams. 19 Kind of handy. And, obviously, for him, the sleep 20 paralysis -- he's got a sleep disorder out the wazoo. 21 But, you know, he wouldn't get it addressed. And so 22 his sleep -- and with -- this happens sometimes. 23 People will have a failure of that mechanism. It 24 happens mostly in children, but even adults can have 25 this failure of that -- of that sleep paralysis
Page 124 1 mechanism. So they start acting out their dreams. 2 Q. Now, do you attribute this to the Trintellix 3 that he was taking at the time, that he's no longer 4 taking? 5 A. No, because she said she still sleeps in a -- 6 in a separate bedroom because she's -- she's not afraid 7 of him during the day, but she feels like it's a safety 8 issue at night. 9 Q. It started when he got on the Trintellix? 10 A. On Trintellix. And that's a possibility, 11 sure. Because, you know, medications have all kinds of 12 side effects that we don't even realize and don't get 13 into the literature when they're putting them out. So 14 that's a possibility. 15 I also think he's horribly anxious all the 16 time, including socially, including his own -- his own 17 capabilities. 18 Q. When did he learn that one of his 19 grandchildren had been abused? 20 A. My God, I don't remember. 21 Q. Was it before or after he began recalling his 22 abuse? 23 A. I think it was after. 24 Q. How long after? 25 A. I don't know, but I know it was after.	Page 125 1 Q. And how did he react to the abuse of his 2 grandchild? 3 A. Oh, he was pretty upset about it. I think he 4 would have killed the guy, if he could have. I mean, 5 not really, but... 6 Q. Uh-huh. 7 A. But I think he was extremely upset about it. 8 I just can't remember. That's all -- I don't remember 9 as much as I should have about that. 10 He also has, by the way, impulsivity, 11 compulsive behaviors, you know, the cleaning, the 12 praying, and addictions. Now, the thing is, 13 are we talking about OCD? By the way, we could be, 14 because he's got two sisters and a brother who are 15 compulsive cleaners and stuff. And OCD runs in 16 families. And OCD is an anxiety-based disorder. And 17 it can be made worse by trauma. In fact, I've seen it 18 made worse by childbirth. I mean, all kinds of things 19 can make OCD worse. But I do think he probably -- and 20 the addictions in the past. He doesn't have any now 21 except he likes coffee. But I think there is some 22 definite compulsivity stuff going on there. 23 Q. Uh-huh. You talk in your report that he and 24 [REDACTED] went to church in Charleston and went to the 25 cathedral, right?

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Page 126 1 A. Yeah. Uh-huh. 2 Q. And did he tell you anything about Monsignor 3 Roth? 4 A. No, he did not. But he did say that he was 5 involved in the men's club there and that it was 6 helpful to him. But when they moved to Greenville, he 7 just -- the men's club was -- he wouldn't tell me much 8 about it. He just said the men's club there was 9 different, it didn't meet his needs, and he was not 10 comfortable at that church and he stopped going. 11 Q. Okay. But they're going to another one now? 12 A. Yeah, they're going to another one now. But 13 he -- he only goes sometimes. He does not go like he 14 did at the cathedral. 15 Q. Okay. 16 A. Now, she does. She's -- you know, 17 she's there when the doors open and very involved. 18 Why, what about Monsignor Roth? 19 MR. RICHTER: Wait a minute now. He's got to 20 ask you. 21 THE WITNESS: I know. I'm sorry. 22 BY MR. DUKES: 23 Q. Did he mention to you that he wanted to 24 confide his abuse in Monsignor Roth? 25 A. Yeah, he did -- he -- he mentioned he wanted	Page 127 1 to confide his abuse in a priest at -- 2 Q. The cathedral. 3 A. -- the cathedral. He didn't mention his 4 name. 5 Q. Okay. And the only name I've seen about that 6 is Monsignor Roth. 7 A. Well, that would make sense, then. 8 Q. And would he have had to be have been 9 remembering -- if he wanted to confide his abuse in his 10 priest at the cathedral -- 11 A. That would have been before the -- the -- 12 that would have been before the move to Greenville. 13 Q. Yes. 14 A. But he -- he didn't exactly tell me abuse. 15 He didn't say -- he said he wanted to confide 16 something. He wanted to -- what he told me was he 17 wanted to talk to a priest at the cathedral. He never 18 mentioned abuse. He just said I want -- there was a 19 priest there I thought I could talk to. That's all he 20 told me. 21 Q. Okay. He didn't tell you any more? 22 A. He didn't tell me any more. 23 Q. Okay. 24 A. That could be anything. Again, that's why it 25 wasn't in the report that I wrote because, you know, I
Page 128 1 don't know. He didn't elaborate. 2 Q. Okay. 3 A. And when I asked him, he wouldn't elaborate. 4 Q. All right. Have we uncovered and discussed 5 all of the opinions you have in this case? 6 A. I sure hope so. 7 Q. Have we discussed the basis for all of your 8 opinions in this case? 9 A. I think so. I think I really tried very hard 10 to make connections that I thought were appropriate. 11 Q. Okay. 12 A. And I did not make connections that I did not 13 think were appropriate and I left them out, as a matter 14 of fact. 15 Q. Okay. Sally, that's all I have for you. 16 A. Okay. 17 Q. Thank you very much. 18 THE WITNESS: Larry? 19 MR. RICHTER: Yes. 20 THE WITNESS: Okay. I can do this. This is 21 a long one. Okay. 22 MR. RICHTER: Yeah. This will be very quick 23 for me, I think. 24 CROSS-EXAMINATION BY MR. RICHTER: 25 Q. I want to ask you if it is your professional	Page 129 1 opinion to a reasonable degree of medical certainty 2 within your own field that John Doe, who we've 3 identified here as John Doe, suffers from Repressed 4 Memory Syndrome? 5 A. Yes. 6 Q. Okay. 7 A. If you notice on the -- in the -- at the end 8 of my report, I wrote, I think in pretty explicit 9 language, that there -- it would appear that there's no 10 question beyond a reasonable doubt that Mr. Doe 11 repressed memories of the abuse by the teachers. 12 Q. By his teachers, did you say? 13 A. Yeah. 14 Q. Thank you. 15 A. In order to survive emotionally. 16 Q. All right. One more question, please. 17 I'd like for you to look on page six of your 18 report. 19 A. Out of curiosity, would y'all have liked me 20 to have written a longer report? 21 Q. No. I think your report is your report. 22 A. Yeah, because I don't like to -- 23 Q. We all respect your -- 24 A. I mean, I don't -- I don't believe -- 25 Q. We --

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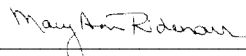
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Page 130 1 A. I don't believe in writing a 17-page report. 2 MR. DUKES: In state court, you're not 3 required to do a report at all. 4 THE WITNESS: I know. 5 MR. DUKES: So we're grateful to have one. 6 BY MR. RICHTER: 7 A. Nobody wants to read a 17-page report. Good 8 God. So I tried -- 9 Q. No. All we -- all that we ask for, and I'm 10 sure Rich joins me in saying this to you, is just 11 truthful testimony -- 12 A. That's -- which is what I've tried to do. 13 Q. -- from a professional, in your case. 14 A. That's what I tried to do. 15 Q. If you'll look, please, on page six, if 16 you're there? 17 A. Uh-huh. 18 Q. The bottom paragraph on that page. 19 A. Yeah. 20 Q. It begins, "As is." Do you see that? 21 A. Yeah. 22 Q. If you will count up from the bottom the 23 lines, please, if you'll count eight lines up from the 24 bottom. 25 A. Yeah.	Page 131 1 Q. See it begins with the word "memories"? 2 A. Memory -- wait a minute. 3 Q. First word on that line. 4 A. Oh, yeah, these life stressors, yeah. 5 Q. I would appreciate you publishing into the 6 record, that means reading, from the beginning of that 7 paragraph, the words "as is" down through the word 8 "memories." 9 A. Okay. 10 MR. DUKES: Object to the form. 11 BY MR. RICHTER: 12 Q. Go ahead. 13 A. Okay. As is usual in cases of recovered 14 repressed memories -- 15 Q. I'm sorry, I can't hear you. 16 A. I'm sorry. 17 Q. No, I'll move closer. 18 MR. DUKES: I'll loan you one of mine. 19 BY MR. RICHTER: 20 A. I usually can talk louder. 21 Q. This is the last for me. 22 A. As is usual in cases of recovered/repressed 23 memories, they came back gradually in open -- open -- 24 you know, quote, pieces of memory, end quote. He 25 cannot identify specific triggers. He said that these
Page 132 1 piece of -- pieces of memory started to return while 2 seeing Dr. Thode at VA. 3 See, that was not even in Dr. Thode's notes. 4 He told me that. 5 Q. Just -- just read -- 6 A. Okay. 7 Q. -- what I asked you, please. 8 A. He said -- he said that he had a pretty good 9 life until the memories started to surface. He was 10 involved with his children and his church and felt 11 successful in his life and had a sense of pride. He 12 said that after he stopped seeing Dr. Thode one day it 13 was like a bomb went off with emotionality he could not 14 control. No specific trigger has been identified per 15 se for the bomb or the recovered memories. However, 16 there were multiple life stressors. Such stressors can 17 serve as kindling, as in building a fire, eventually 18 resulting in severe anxiety, depression, panic attacks, 19 and, in his case, triggering repressed memories. 20 Q. Thank you. Now, is that your opinion? 21 A. Yes, it is. 22 Q. One of your opinions? 23 A. Yes, it is. 24 Q. All right. 25 MR. RICHTER: Last thing. I want to be sure,	Page 133 1 Rich. I don't know if you put the record in as an 2 exhibit. If not, I'd like to give you a clean 3 copy, Madam Reporter, and make it an exhibit, 4 please. 5 BY MR. RICHTER: 6 Q. Is your copy clean? 7 A. What do you mean "clean"? 8 Q. With no scribbles on it. 9 (Discussion held off the record.) 10 (Plaintiff's Exhibit No. 1 marked for 11 identification.) 12 MR. RICHTER: Okay, that's all I have. 13 MR. DUKES: I've got to go back, since you 14 had her read something. 15 REDIRECT EXAMINATION BY MR. DUKES: 16 Q. I want you to turn back to page three. 17 A. Okay. 18 Q. And in your discussion about his treatment at 19 the VA -- 20 A. Yeah. 21 Q. -- it says he was diagnosed with PTSD -- 22 following me? 23 A. Yes. 24 Q. You found that. And it -- 25 MR. RICHTER: Where are you, Rich?

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Page 134 1 THE WITNESS: It's in the middle -- 2 MR. DUKES: Kind of the middle of -- 3 THE WITNESS: It's in the middle -- 4 MR. DUKES: -- that big paragraph. 5 THE WITNESS: -- of that that big 6 paragraph. 7 MR. DUKES: Right after a parenthetical that 8 says OCD is an anxiety-based disorder. 9 BY MR. DUKES: 10 Q. He was diagnosed with PTSD and it appears 11 that the memories regarding the abuse started to be 12 recovered during this treatment or possibly immediately 13 prior to seeking such treatment. 14 A. Possibly, yeah. Unclear. 15 Q. And that was in 2014? 16 A. Yeah. 17 Q. And -- and you testified earlier that -- that 18 he and his wife said that he began having massive 19 depression back in 2012? 20 A. Right. But do we know if that's related to 21 the memories or not? I don't know. 22 Q. Okay. But he -- it's your opinion that he 23 began to recover the memories in 2014 or prior? 24 A. I think or prior, yeah. 25 Q. Okay.	Page 135 1 A. I think he definitely started getting more -- 2 I think, from what I could gather from him, that's when 3 they got bad. That's when they really started popping 4 up. 5 Q. Okay. That's all I have for you. Thank you. 6 RECROSS-EXAMINATION BY MR. RICHTER: 7 Q. And when you talked about -- and you may have 8 said this. I'm sorry if I'm repeating something. 9 You -- you talked about, on page six, when you were 10 reading a portion of that paragraph, you -- like a bomb 11 went off? 12 A. Yeah. 13 Q. Does -- are those your words or -- 14 A. Those are his words. 15 Q. They're his words? Okay. 16 A. Yeah. I have them -- I have them in 17 parentheses -- I have them in quotes because it was his 18 thing. 19 But he never he -- you know, again, he tried 20 to answer questions. But he has a hard time 21 verbalizing his concerns. And he said "like a bomb 22 went off." And, obviously, there was emotionality 23 attached to it. But he could not say it was specific 24 memories or anything; it was just overwhelming 25 emotionality. And I think there were -- I think there
Page 136 1 were some memories that obviously attached to it, 2 but... 3 FURTHER REDIRECT EXAMINATION BY MR. DUKES: 4 Q. But you don't know what those memories were? 5 A. No, and I'm not -- and I wouldn't -- I wasn't 6 going to make a supposition about what they were when 7 he couldn't tell me. 8 Q. Okay. 9 MR. RICHTER: You finished, Rich? 10 MR. DUKES: Nothing more for me. 11 MR. RICHTER: Same here. Thank you, ma'am. 12 (The deposition concluded at 5:21 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 137 1 C E R T I F I C A T E 2 S T A T E O F S O U T H C A R O L I N A : 3 C O U N T Y O F C H A R L E S T O N : 4 5 I, MARY ANN RIDENOUR, Registered Professional 6 Reporter and Notary Public, State of South Carolina at 7 Large, certify that I was authorized to and did 8 stenographically report the foregoing deposition of 9 Sally Duffy; and that the transcript is a true record 10 of the testimony given by the witness, and was sworn as 11 such. 12 I further certify that I am not a relative, 13 employee, attorney or counsel of any of the parties, 14 nor am I a relative or employee of any of the parties' 15 attorney or counsel connected with the action, nor am I 16 financially interested in the action. 17 WITNESS MY HAND AND OFFICIAL SEAL this 6th day of 18 December, 2019, in the City of Charleston, County of 19 Charleston, State of South Carolina. 20 21 22  23 Mary Ann Ridenour, RPR, CLR 24 and Notary Public 25 My commission expires: March 14, 2021 

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11/26/19

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Dear Mr. Richter,

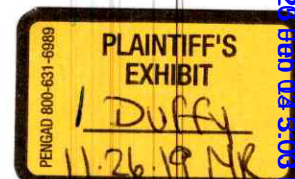
Thank you for your referral of Mr. John Doe. Documentation Review and Psychological Evaluation are included below. Between the Documentation Review and the Psychological Evaluation there is some repetition but this translates to consistency and verification of findings and therefore is important.

Documentation Review:

The various documents pertaining to Mr. John Doe, including the Complaint, the Response from the Defendant (the Diocese of Charleston), the Depositions from Mr. Doe, Ms. Doe (his wife) and his therapist, Dorothy Whalen, pertinent medical records from the VA and Dr. Thode's notes, and notes from Dorothy Whalen, have all been reviewed in detail. To briefly summarize based in these documents: John Doe was sexually abused at the age of 6 by a male adolescent neighbor on one or several occasions when the neighbor was hired to baby-sit Mr. Doe. He was sexually abused on multiple occasions by a male teacher at Sacred Heart School (now Charleston Catholic) in Charleston, SC at approximately ages 11-13, about 1970-71. He was taken to a house party by the teacher in another city where he was sexually abused by the teacher as well as by another teacher from the school and then taken to a bar and left to fend for himself and find his own way back to Charleston. [REDACTED]

[REDACTED] He was "devastated" by this, resulting in depression and 2 suicide attempts. He sought treatment at the VA in about 2015 where he was diagnosed with PTSD from this event.

It is important to note that the memories regarding the sexual abuse and assault by the baby-sitter were questionably suppressed or repressed (this is not clear and the different depositions and notes are inconsistent with each other) but were apparently recovered in full, concomitant with the recovery of the repressed memories of the teachers' sexual abuse. Memory formation is based on a process of state-dependent learning in which emotions serve as factors in mediating that learning. When a situation or trauma is emotionally overwhelming, these memories become inaccessible, either partially or entirely, to normal consciousness. This enables an individual to function in the world. When the brain is returned to a similar



emotional state, such as through serious stress and severe negative emotions, these memories can sometimes again be accessed. Memories are also stored in a distributed manner in different neural networks; consequently, when memories are recovered, they are not recovered as a whole but initially in bits. Suppression of memories and repression of memories are similar coping strategies. Suppressed memories are considered to be those memories that are consciously denied and partially or sometimes wholly lost; repressed memories refer to memories that are unconsciously, non-volitionally denied and often referred to as dissociative amnesia and the memories can be wholly lost. There continues to be considerable contention in the profession regarding suppressed memories, repressed memories, and recovered memories. Proving such memory issues scientifically has been difficult and empirical results have for the most part failed to prove the existence of repressed and suppressed memories. However, clinically there are significant findings for the existence of such memories. In the case of suppressed and repressed memories, empirical and laboratory experiments simply cannot duplicate clinical and field environments. For example, most of us scientifically minded psychologists considered the 'unconscious' a Freudian fantasy until fMRI demonstrated its existence a few short years ago. It is anticipated that the reality of suppressed and repressed memories will also eventually be proven given appropriate technical support.

Developmentally, it has been suggested that children have considerably fewer coping strategies for dealing with trauma, especially given contextual issues. During severe trauma, a child cannot escape and may be more vulnerable to memory loss. S/he can imagine that s/he is somewhere else, someone else, or simply that the trauma is not occurring. A child cannot physically escape and may numb the emotions being experienced. Although Mr. Doe was younger, at age 6, when the sexual abuse occurred by the baby-sitter, it occurred once or several times and he did not have a relationship of significant trust with that older boy. It was apparently not as traumatizing as the later abuse by the teachers and it makes sense that these memories may have been suppressed, partially or wholly, rather than repressed. However, the abuse by the teacher at a Catholic school occurred in a context of significant trust, in a setting wherein children are deemed to be safe, and by an adult man who held power over him. He had a poor relationship with his father and this teacher took an apparently avuncular interest in him which he would have valued. He had a history of school difficulties and was a poor student; to be given positive attention from a teacher, where he previously appeared to experience more negative attention, would also have been significant to him. Therefore, he was vulnerable and a target for this man. This abuse was further exacerbated by a second Catholic school teacher who sexually abused him at the above mentioned house party in addition to the primary abuser. When this trust and safety were egregiously violated, it would have been a shock rendering him incapable of coping effectively. "Flushing" these memories through repression would have been the best, albeit non-volitional, coping approach. After this abuse occurred, he did not attend high school (although he later earned his GED) and ran away from home 8 times, as a way to avoid a school setting where the abuse occurred and the place (Charleston) where it occurred without understanding why he engaged in these behaviors. He also started smoking pot at around age 12, again probably related to the abuse as well as ceasing to attend the Catholic Church which was no longer a repository of his faith.

Mr. Doe has not had an objectively happy life, despite noting to Ms. Whalen that he had a "damn good life until he remembered that crap", referring to the teachers' abuse. He never attended high school, ran away from home 8 times, went into the Marines at 17 where he was sent to rehab for drug abuse, [REDACTED] worked several different physically demanding jobs including as a butcher, truck driver and landscaper (the latter his own business). He was fired from a recent job as a butcher. He and his wife and step-children whom he has raised, moved from Charleston to Greenville in 2012 (2014 in VA notes) apparently related to financial reversals. He has had multiple health problems including a number of heart attacks and stents since 2010, a cholecystectomy, total knee replacement, kidney stones, and diabetes. He said that he "hit bottom" after he moved to Greenville. This appears related to both recovered memories and losing his job which he said related to medical issues, e.g., knee replacement. It should be noted that despite all that he has experienced, he was functional in terms of his life until the memories of abuse started to be recovered. It was during this time frame that he sought treatment at the VA because of depression. He was also given a provisional diagnosis of Obsessive Compulsive Disorder (OCD) at the VA because of compulsive praying and cleaning which appeared to calm his anxiety temporarily. (OCD is an anxiety based disorder.) He was diagnosed with PTSD and it appears that the memories regarding the abuse started to be recovered during this treatment or possibly immediately prior to seeking such treatment. However, the notes are unclear. The precipitating event/s for the recovered memories is/are never identified by him or Ms. Whalen and may not be known. Although a precipitating event or trigger is often identifiable, it is not all that uncommon for such a precipitating trigger to not be identified. He was not treated long at the VA for mental health issues although he was prescribed medications by a PA and treated by Dr. Thode. He and his wife noted that the medications were not helpful and were detrimental. He apparently contacted the Diocese or someone contacted the Diocese for him and Louise Storen, the Victim Assistance Coordinator for the Diocese, arranged treatment for him with Ms. Whalen, who started treating him in June of 2016. She notes that he worsened after he began to see her as more memories of the teachers' sexual abuse were recovered. This is not uncommon as therapy provides a safe place and his memory was being triggered by increasingly more events such as the news about Catholic priest abuse, etc. As Ms. Whalen notes, these memories are not just memories or remembrances. They are associated with emotions, psychological states, "visceral feelings", "the whole thing". These appear to be in the form of flashbacks (Ms. Whalen) in which the individual re-experiences the trauma. It should be noted that Ms. Whalen did not attempt to plant memories or suggest what may have occurred, did not use hypnosis (a poorly advised treatment strategy in these cases), did not use age regression (also contraindicated), did not use EMDR. She did utilize CBT, music, relaxation strategies, imagery for relaxation (e.g., "the lake"), and other strategies, all of which are considered to be appropriate treatment approaches in these kinds of cases.

PTSD and depression have been diagnosed secondary to the abuse and [REDACTED]. Symptoms noted by Ms. Whalen include flashbacks, nightmares, depersonalization and derealization, anxiety and fear, his idiosyncratic, non-clinical paranoia, irritability, and anger. There is also avoidance of "things that are associated with the original trauma by the Catholic teachers". He sees himself as victimized by the teachers but also by employers and even the

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government (his paranoia). His wife noted in her deposition that he exhibited personality changes after they moved to Greenville and began to cry and act depressed. He was no longer happy and social. She also related the development of physical abuse toward her. All of these are consistent with worsening PTSD which can be associated with recovered traumatic memories.

The defendant's attorney has raised the issue of Mr. Doe's memory impairment. Given his cardiac issues this is a possibility. Mr. Doe himself also reports concern about memory issues. Medical notes indicate his concerns about his memory but there is no diagnosis of dementia or any related diagnoses associated with memory impairment. The recovery of past memories related to abuse, on the other hand, would suggest a lack of actual dementia and organic memory loss and impairment. Given Mr. Doe's current torment, organic memory loss and impairment could be a blessing. However, this is not the case.

Psychological Evaluation:

John Doe, a 62 year old man, and his wife, Ms. Doe were evaluated together and separately on 11/15/2019 in Mt. Pleasant, SC. As established above, he and his wife live in Greenville. They moved there in 2012 from Charleston, following financial reversals and a desire to improve their lives. He has been married to his second wife for 27 years. He has raised her 4 daughters, now grown, whom he considers to be his own children. They have 9 grandchildren. He is very close to them and noted that his wife changed his life much for the better, essentially enabling him to function effectively again. As previously noted from the documentation review, he was previously married and [REDACTED]. He also has an adult son from a previous liaison.

Reason for Referral: Mr. Doe was evaluated for evidence of trauma, sexual abuse and repressed and recovered memories and the impact on his life. Mr. Doe and his wife were well groomed and polite. His manner was subdued but he was cooperative and answered all questions to the best of his ability. Reported medical concerns include coronary problems including 2 MI's and 7 stents. He has diabetes II, has had a partial right knee replacement, a history of kidney stones, S/P cholecystectomy, and IBS, which is controlled. He also reports chronic pain in his cervical spine, pain in his left knee, and left elbow pain from an injury 2 years ago which has impacted on diminished strength in his left upper extremity. Medications include alprazolam .5 mg bid, lisinopril 2.5 mg qd, aspirin qd, metformin 500 mg qd, eszopiclone 3 mg qhs, Jardiance 25 mg qd, clopidogrel 75 mg qd, fluoxetine 20 mg qd, carvedilol 3.125 mg bid. Health behaviors are positive in that he quit smoking 20 years ago, does not drink alcohol, or engage in illicit drugs (although he did smoke pot and use cocaine many years ago), and has lost weight and weight appears to be WNL. He does "love" caffeine and drinks several cups of coffee per day.

History: In terms of family of origin, Mr. Doe was raised in Charleston, the second of [REDACTED] children. His father was an abusive alcoholic. He has [REDACTED] sisters and [REDACTED] brother but he appears to have been singled out for more abuse than his siblings. His parents are deceased. He indicated that he is fairly close to 3 sisters, but his wife later disagreed with this assertion when she was seen individually. He dropped out of school after the 7th grade which appears more causative than just correlated with the abuse he sustained from the teachers at his elementary school. However, since he did not remember the abuse or even attending 7th grade, he attributed quitting school to being a failure academically. This may well have one reason, but does not appear the primary reason. It should be noted that he did earn a GED while in the military, without any difficulties. As indicated in the documentation, he left Charleston and lived several places after his abuse and after the [REDACTED] always returning to Charleston. This is consistent with a desire to avoid places of emotional or physical injury and trauma. His work history is noted in the above documents review. He is currently employed at Earth Fare. He was initially employed part-time and gave notice when offered a full-time job elsewhere. However, this led to being asked to stay on full-time with benefits. He indicated that his helped his self-esteem and self-confidence and his is happy in this job. In addition to working full-time, he spends time with his wife, children, and grandchildren. His wife is very involved in their Catholic Church. He attended church and was involved at the Cathedral in Charleston before moving to Greenville. He sometimes goes fishing. He plays the guitar but not as much since his friend who played with him is no longer available. He is a self-described "news junkie" which studies have found to be unhealthy and only serves to reinforce his negative and suspicious world view and makes the world seem worse than it is. It also exacerbates depression and he was strongly encouraged to decrease his consumption of news to 2 hours a day from his current 6 hours per day, reported by his wife, with which he did not disagree.

Psychological Issues: At this juncture, Ms. Doe was asked to leave and Mr. Doe was seen alone/ Mr. Doe evidenced a reticent manner and somewhat flat affect. His behavior was appropriate and he was forthcoming in responding to questions. He acknowledged depression, anxiety, crying spells, anhedonia, fatigue, amotivation, social withdrawal. He does appear rather introverted by nature. There is some irritability although he noted that this has improved as well as improved frustration tolerance and emotional reactivity, which he attributes to medication. Self-esteem is diminished and he appears to be socially anxious. There is somatic anxiety and he indicated his belief that he will not live much longer because of his heart. He has burial insurance and is making arrangements to prepay for his demise. He does acknowledge some racing thoughts. There is intrusive rumination which could be an issue: he reports thoughts of "paranoia" about losing his job after his experience at [REDACTED] and engages in marked thoughts and feelings of "shame" about the [REDACTED] and the sexual abuse and the fact that his wife knows about the abuse. He is also afraid to go out a night. He has a tendency to engage in excessive, compulsive cleaning and cannot make himself stop. He notes that 2 sisters and his brother also have this OCD tendency.

There are symptoms of PTSD. He has been exposed to at least 3 traumas: sexual abuse by a teenaged male neighbor at 6 years of age, [REDACTED] and the sexual abuse at around ages 11-13 in 7th grade. Symptoms include recurrent,

intrusive memories of the traumas. He may have partially suppressed memories of the abuse at 6 years of age; however, this can not be definitively proven. He did not suppress or repress memories of [REDACTED]

[REDACTED] However, he does clearly appear to have non-volitionally repressed memories of the abuse by the school teachers to the point of not remembering that he actually was in the 7th grade. Other symptoms include flashbacks in which the trauma is basically relived by the individual not just in memories, but including sounds, visceral responses, etc., cue sensitization (school), efforts to avoid those cues (dropping out of school), nightmares, hyper-startle reflex, hypervigilance, suspiciousness, emotional numbing, depersonalization, derealization, and a foreshortened future. This latter was noted above regarding his belief that he will not live long because of his heart, despite his wife stating that his coronary status is currently stable; consequently, this may be more related to his PTSD than to his medical status. There are signs of repressed trauma that he has experienced over the years. These include: specific places which illicit anxiety; problems with mood regulation; problems maintaining healthy relationships with people and difficulties keeping a job; fears of abandonment, previous tendency to self-sabotage; impulsivity, compulsive behaviors, and/or addictions; feeling of emotional exhaustion; chronic anxiety. When his wife was seen individually, she added that he has reactions to people in authority, avoids crowds and will not go into a mall, avoids situations in order to manage his emotions and has significant abandonment issues. When asked about anger management issues, she described him as a "wonderful man". However, when the repressed memories began to resurface, he started having severe nightmares in which he physically attacked her in his sleep. Per his therapist, she now sleeps in a separate bedroom for her own safety. He does not engage in such behaviors when he is awake and she is not afraid of him.

As is usual in cases of recovered repressed memories, they came back gradually in "pieces of memory". He cannot identify specific triggers. He said that these "pieces of memory" started to return while seeing Dr. Thode at the VA. He said that he had a "pretty good life" until the memories started to surface; he was involved with his children and his church and felt successful in his life and had a sense of pride. He said that after he stopped seeing Dr. Thode, one day it was "like a bomb went off" with emotionality he could not control. No specific trigger has been identified per se for the "bomb" or the recovered memories. However, there were multiple life stressors. Such stressors can serve as "kindling" – (as in building a fire) - eventually resulting in severe anxiety, depression, panic attacks, and in his case, triggering repressed memories. These life stressors included stress at work at [REDACTED] and serious pain in his knee, being "always worried", depressed. The move to Greenville was especially stressful for him, as described by he and his wife. He moved to Greenville without her to start a new job while she stayed in Charleston until their house there sold. He stayed with one of his daughters but he could not cope without his wife and became isolated and tearful and suicidal. There are also current triggers per his recovered memories, including news reports regarding priest sexual abuse, the "me too" movement, and going to Church, going to confession, and Catholic schools, all of which he avoids.

Sleep disturbances are problematic. In general, he does not sleep well. In the mornings, he gets up and makes his wife coffee before she goes to work and then returns to bed until he arises for work. He attributes some of his sleep problems to "odd shifts" required by his job. His sleep is unrefreshing. He has been diagnosed with obstructive sleep apnea (OSA) but said that he cannot wear the mask. This tends to lead to daytime fatigue and sleepiness. As noted above, he has violent nightmares that have resulted in his wife being physically attacked and they now sleep apart for her safety.

In terms of cognitive functioning, he reports impaired memory, impaired concentration, impaired decision-making (this appears related to anxiety), cognitive discontinuity, and word-retrieval problems. However, cognitive mapping is intact. In discussing these issues, and later with his wife, these do not appear to be associated with mild cognitive impairment (MCI) which would be indicative of organic brain involvement or incipient dementia, but rather to stress and some age-related changes.

Current stressors include finances, work, concerns about his health and a recent rupture of a Baker's cyst, and memories of the teacher abuse, although he notes that Ms. Whelan is helping in this regard. He also notes that he "just wants this to be over" and that the memories of the abuse are the most stressful.

In terms of relationships, he is exceptionally close to his wife and appears to be very dependent on her emotionally. He said that he has good relationships with his daughters with the exception of one. He is in touch with his son but they do not appear to be close.

His wife was seen individually and many of her observations and comments are noted above. She was pleasant, well-spoken, and astute. She was very forthcoming and able to effectively verbalize her concerns and observations. She related that she began to notice improvement in her husband after he was able to talk with Mr. Richter, but before the deposition. It also helped their relationship because previously he would not talk about the abuse with her or with her present. He was ashamed to talk about it with her and was fearful that she would abandon him. She has not done so, of course, but he still seeks constant reassurance. If she is out of the home, visiting children or grandchildren, or working he calls her constantly and often asks her to come home. He still does not cope well when alone. She said that "I am his life" – "his love, support, mother, wife, friend, the person he talks to". He has adjustment issues sleeping separately but she said that it is for her safety although she knows his behavior is not under his direct control. She said that it is very stressful for her and that she sees herself as a victim also. She copes through working, her children and grandchildren, involvement in her church and reads voraciously as a way to escape.

Summary:

To summarize, Mr. Doe's situation is obviously complex. He has been diagnosed with depression and PTSD by both Dr. Thode at the VA and by Ms. Whalen. He has suffered several traumas that could lead to PTSD including sexual abuse at age 6 although this does not

necessarily appear to be a proximate cause. A house fire resulting in the deaths of his estranged first wife and sons was considered a primary cause of his PTSD and depression by Dr. Thode at the VA. However, based on Ms. Whalen's findings, Mr. Doe's voiced distress, and the evaluation with him and his wife, the sexual abuse and recovered memories appear to be a primary cause of his PTSD as well as a significant exacerbator of his PTSD and depression. It is very noteworthy that the repression of his memories was so significant that he even had no recall of ever having attended 7th grade when the abuse occurred. At that time in our Church, he had no one to tell who would believe him, and he also believed that he had somehow caused it. These were male teachers who took an interest in him and who had power over him, especially the primary perpetrator. At that time in our Catholic school system male teachers were venerated to a considerable degree and he was just a powerless kid who was also a poor student. He had been sent to various schools because of his poor academic performance and problematic behaviors such as "sleeping in school" and cutting school, by an abusive, rejecting father. Why would he cause even more trouble for himself for 'telling on' these teachers, especially perceived powerful men? He certainly lost more than he gained from their disrespectful and abusive attentions. He lost his faith in our Church, his self-esteem and faith in himself, his desire to attend high school and secure an education, his belief that he could be treated fairly by others, especially those in authority. How else could he cope if not by repressing these memories? This repression enabled him to have a functional life and his belief that he had a "damned good life until he remembered that crap" and all that is associated with those recovered memories.

It would appear that there is no question beyond a reasonable doubt that Mr. Doe repressed the memories of the abuse by the male teachers in order to survive emotionally. However, there have been lifelong negative repercussions in terms of jobs, relationships, poor health behaviors, psychological and emotional challenges. However, he was functional. Recovering these memories has been another trauma in itself and has had a serious impact on his ability to function effectively in his life. It is hoped that with continuing psychological intervention with Ms. Whalen he will continue to recover and move beyond the emotional destruction wrought by the abuse and the memories of that abuse.

Sincerely,


Sally M. Duffy, PhD
Licensed Psychologist
SC # 663
NC # 1683

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Page 10

1 A. Yes.
2 Q. And how many times have you done
3 that?
4 A. Five times.
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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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13 [REDACTED]
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15 [REDACTED]
16 [REDACTED]
17 Q. Okay. Has the court ever appointed
18 as a court expert witness?
19 A. I believe so.
20 Q. Okay. When did that happen?
21 A. In some of those five cases.
22 Q. Okay. Which ones?
23 A. I think in -- to the best of my
24 memory -- two of them.
25 [REDACTED]

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Page 23 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 25 1 Q. Was he running away to get away 2 from the abuse by the teachers? 3 A. That's my understanding. 4 Q. Okay. Why did he continue to run 5 away even in his teenage years? 6 A. Because of the pain of the abuse 7 and the way his life was going. 8 Q. And he has specifically attributed 9 his running away to the pain of the abuse he 10 was undergoing at the time? 11 A. That's what he told me. 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]

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10 [REDACTED]
11 Q. Yes. How does his perception that
12 he is shunned by his biological family
13 contribute to his emotional state?
14 A. Yeah. I'll say it a little
15 differently. I think it's the PTSD that is
16 contributing to his shame that causes him to
17 perceive that he's being shunned by his family.
18 Q. [REDACTED]
19 [REDACTED]
20 [REDACTED]
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5 A. I think it's a manifestation of his
6 victimization. One of the -- a symptom of PTSD
7 is that he endorses his hypervigilance in
8 waiting for something awful to happen.
9 And he sees -- he saw his bosses at
10 Publix as men who were after him, who wanted
11 him fired. He saw them as perpetrators just as
12 he saw those other perpetrators as trying to
13 victimize him.
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Q. Let's define his paranoia.
20 A. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 A. Paranoia. It's not clinical
25 paranoia; it's Mr. Doe's paranoia. It is

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1 intense, almost irrational worrying that the
2 worst is going to happen to him -- that his --
3 his survival is going to be threatened. It's
4 fear, it's terror.
5 Q. And you view that as a symptom of
6 his PTSD?
7 A. Yes.
8 Q. What other manifestations of PTSD
9 does he have?
10 A. Okay. He has emotional and
11 flashbacks. He has terrifying nightmares of
12 abuse and being attacked. He can't sleep.
13 He has symptoms of very distorted
14 negative thoughts of himself, negative thoughts
15 of the world, shame. He has symptoms of
16 depression, extreme anxiety and fear. I've
17 already referred to that. He has times of
18 dissociative states.
19 Q. What is that?
20 A. When things don't seem real to him
21 -- when -- it's as if he's looking at himself
22 like outside himself. That's
23 depersonalization.
24 And times in therapy when he'll say
25 I'm not here is when the anxiety and the terror

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 A. So are you asking me how did his
 8 mental state affect his ruthlessness?
 9 Q. Yes.
 10 A. Very much so. In PTSD there's a
 11 loss of control. There's a loss of stability.
 12 So I would interpret clinically that
 13 ruthlessness as the flight that takes place
 14 after trauma -- that lack of stability and
 15 control.
 16 Q. Okay. And that was manifesting
 17 itself as early as his late teens or ---
 18 A. Even earlier when he ran away so
 19 many times.
 20 Q. Okay. And you attribute that to
 21 the abuse by the teachers?
 22 A. Yes.
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 35

1 [REDACTED]
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 11 [REDACTED]
 12 Q. What kind of questions do you ask
 13 for healing?
 14 A. In the case of Mr. Doe he had a
 15 number of distorted thoughts about the abuse
 16 and I asked questions to help him recognize the
 17 distortions of his thinking and to clarify and
 18 correct his negative distortions about the
 19 abuse.
 20 Q. What distorted thoughts did he
 21 have?
 22 A. For example, he thought he was
 23 responsible for the abuse by the teachers.
 24 Q. And how did you correct that?
 25 A. Well, first I try to understand

Page 36

1 from his perspective how he understood the
 2 abuse. What was his narrative, if you will?
 3 His understanding of what happened, why it
 4 happened, how he -- how and why he felt
 5 culpable for the -- the abuse.
 6 And then I would ask questions and
 7 actually provide education on child sexual
 8 abuse to help him understand that it's never a
 9 child's fault when adults perpetrate.
 10 Q. And that's in my list of things to
 11 ask you. When you provided information and
 12 education about sexual abuse what exactly did
 13 you provide him?
 14 A. I talked about victimization, how
 15 there is -- we call it the abuse triad -- a
 16 triangle. At one point there's the perpetrator
 17 in the triangle. In the second point of the
 18 triangle there's the victim. And the third
 19 point of the triangle is the rescuer.
 20 This is a very simple model that
 21 you can draw on a whiteboard to explain how
 22 when you're a child a child is weak and
 23 vulnerable and a perpetrator is more powerful
 24 and perpetrates and offends a child. And the
 25 goal of the treatment is to help the victim,

Page 37

1 Mr. Doe, to access his inner rescuer to begin
 2 to heal.
 3 Q. Okay. And how do you get him to
 4 access his inner rescuer?
 5 A. In the beginning it's to explain
 6 what happened, to understand the circumstances,
 7 to put it in context. Then provide education
 8 and information about, as I said before, what
 9 child sexual abuse is, to correct the distorted
 10 thoughts about how he was responsible.
 11 And for some people that's very
 12 helpful and liberating to recognize that they
 13 weren't responsible. And in the case of Mr.
 14 Doe, with that rescuer, in addition to him
 15 rescuing himself, so to speak, also used a
 16 psychological spiritual orientation to therapy
 17 where we try to access the teachings of the
 18 Catholic church, sacraments to help him heal
 19 spiritually.
 20 [REDACTED]
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22 [REDACTED]
23 Q. And that confusion existed
24 throughout his adolescents and into his
25 adulthood?

Page 64

1 A. I don't know how to answer that
2 question because for a long time those memories
3 weren't available to him.
4 [REDACTED]
5 [REDACTED]
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8 [REDACTED]

9 [REDACTED]

10 Q. What's your treatment plan for him?

11 A. I think the primary goal right now

12 is to help him -- to use a grief and loss model

13 to help him accept what happened, to forgive

14 himself and to move on with his life.

15 Q. Okay. That's -- the grief and loss

16 model is the one thing I haven't asked you

17 about. What -- explain the grief and loss

18 model and how you address it in your therapy.

19 A. Well, I could look at it both

20 clinically and spiritually. If we were to use

21 the Kubler-Ross model where there are five

22 stages of loss, he's experienced many of them --

23 - the denial, the shock.

24 We can liken that to the

25 disassociation -- the anger, the bargaining --

Page 67

1 "If only I had reported it." The depression

2 and the final stage would be the acceptance.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

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7 [REDACTED]

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10 [REDACTED]

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 16 [REDACTED]
 17 Q. Have you had any role in restoring
 18 those memories? And by that, I mean drawing
 19 them out.
 20 A. No, I don't draw out. I receive.
 21 Q. Do you do any sort of -- I call it
 22 regression analysis?
 23 A. I don't think so because I don't
 24 even know what it is.
 25 Q. Okay. Picture yourself as that

Page 73

1 young child at Sacred Heart school. What is
 2 happening to you?
 3 A. No.
 4 Q. Okay.
 5 A. No. It's not the way I was
 6 trained.
 7 Q. Okay. And you'll agree with me
 8 there are some psychotherapists who are trained
 9 that way?
 10 A. Yes.
 11 Q. What do you think of that
 12 technique?
 13 A. I think it's invasive. I think
 14 it's disrespectful. It doesn't treat the
 15 person he -- person with dignity. The psyche
 16 knows what the person needs and it will come
 17 out when the space is safe.
 18 [REDACTED]
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 10 So I know the -- the Catholic school
 11 abuse resurfaced. I think the -- when he was
 12 six that resurfaced but it's ---
 13 Q. And those resurfacings are only his
 14 reports to you?
 15 A. That's what I understand.
 16 Q. Okay.
 17 A. But it's -- may I add one more
 18 thing?
 19 Q. Absolutely.
 20 A. It's not just the memory of the
 21 event that colors this perspective that you've
 22 just drawn; it's all the associated emotions
 23 and psychological states. It's the whole thing
 24 that has come forth.
 25 So he did "have a pretty damn good
 life until he remembered that crap." But it

Page 76

1 was only when the, you know, the wound that
 2 poked that everything came back -- the
 3 feelings, the memories, the psychological
 4 state, the visceral feelings in his body.
 5 [REDACTED]
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12 [REDACTED]
13 Q. I see. Is dealing with his
14 obsessive compulsive disorder any part of your
15 therapy?
16 A. I've not diagnosed him with
17 obsessive compulsive disorder.
18 Q. He's the one who says that?
19 A. Yeah.
20 [REDACTED]
21 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Q. How long -- well, tell me how you
18 got into the therapy world.
19 A. I graduated from undergraduate
20 school in 1973 and was a stay-at-home mom for a
21 while. And then when I was in my thirties I
22 decided I wanted to get a Master's degree in a
23 helping profession.
24 And I looked at a number of
25 different types of degrees that would allow me

Page 86

1 model on child sexual abuse.
2 MR. DUKES: Used to
3 be.
4 THE WITNESS: As of
5 2016 no longer. I was a trainer for it for
6 twelve years.
7 So they look for children who are
8 vulnerable and they can assess that -- I think
9 first visibly and then they do what we call
10 grooming.
11 They do different types of grooming
12 -- soc -- psychologically they'll groom the
13 child which means they'll approach the child
14 and they will befriend the child and they'll
15 see where the child's weaknesses are, where the
16 strengths are. Does the child have a mother or
17 father? Are there problems in the family?
18 So then social -- then they'll try
19 to endear themselves to that child. Then
20 they'll do some social grooming where they'll
21 groom the environment. They may befriend the
22 parents and try to win the trust of the
23 parents.
24 Then they may try to physically
25 groom the child by touching the child,

Page 87

1 caressing the child, just preparing the child
2 for victimization.
3 So through some very -- really
4 accomplished social skills and psychological
5 evaluation perpetrators know how to choose the
6 child and groom them for perpetration.
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Q. Do you find or can you say that
22 abuse victims may be even more extensively
23 impacted or permanently impacted when the abuse
24 is at a hand -- at the hand of a particularly
25 trusted figure such as a -- this is not a

Page 88

1 priest abuse case -- but you can plug that into
2 the example -- or a teacher as we are dealing
3 with ---
4 A. I think ---
5 MR. DUKES: I'm going
6 to need to object to the form and I'm going to
7 object to the admissibility of that.
8 MR. RICHTER: Okay.
9 Go ahead. You can answer.
10 THE WITNESS: I think
11 when the perpetrator is somebody who is trusted
12 by the victim -- somebody with whom the victim
13 has a relationship with, especially a close
14 relationship -- I think that the impact can be
15 very devastating -- maybe more so than a
16 stranger.
17 BY MR. RICHTER:
18 Q. Thank you. When you -- in your
19 professional status when you have been exposed
20 to victims -- studied victims -- do you find
21 that this self-blame by a child victim is a
22 typical reaction by a child?
23 A. Yes.
24 [REDACTED]
25 [REDACTED]

Page 89

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 THE WITNESS: My
5 answer is yes and I think the clinical writing
6 points to that because of the way that
7 perpetrators groom a child. They have a way of
8 putting the blame on the child.
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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Page 91 1 [REDACTED] 2 Q. Okay. Do you know that the -- in 3 South Carolina the repressed memory syndrome 4 has been recognized in our law and that it is a 5 syndrome in South Carolina that has --- 6 MR. DUKES: Object to 7 form. 8 MR. RICHTER: --- that 9 has been a part of proof in cases for some time 10 now? 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 93 1 CERTIFICATE 2 STATE OF SOUTH CAROLINA 3 COUNTY OF HORRY 4 I, Cecelia Englert, 5 Professional Verbatim Reporter and Notary 6 Public for the State of South Carolina, certify 7 that I did have DOROTHY WHALEN to appear before 8 me at 10:00 a.m. on the 19th day of September, 9 2019, in the office of Turner, Padgett, Graham 10 and Laney, Greenville, South Carolina; that the 11 witness was duly sworn to tell the truth, the 12 whole truth and nothing but the truth; that the 13 foregoing pages constitute a true and accurate 14 transcript of the testimony given at that time 15 and place. 16 I further certify that I am not of 17 counsel or kin to any of the parties to this 18 cause of action, nor am I interested in any 19 manner in its outcome. 20 IN WITNESS WHEREOF I have hereunto 21 set my hand and seal this 22nd day of 22 September, 2019. 23 _____ 24 Cecelia Englert, Notary Public 25 My Commission expires June 6, 2028

24 (Pages 90 - 93)

9-19-19

1 CERTIFICATE

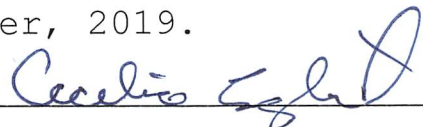
2 STATE OF SOUTH CAROLINA

3 COUNTY OF HORRY

4 I, Cecelia Englert,
5 Professional Verbatim Reporter and Notary
6 Public for the State of South Carolina, certify
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8 me at 10:00 a.m. on the 19th day of September,
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24 _____

24 Cecelia Englert, Notary Public

25 My Commission expires June 6, 2028

RAYL REPORTING SERVICE

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EXHIBIT O

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 10,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5520

**AMENDED ORDER ON LIMITED
COLLATERAL REVIEW**

2017 MAY -4 AM 11:15
JULIE J. AMSTUTZ
CLERK OF COURT

FILED

CASE NO.: 2010-CP-10-7233

JANE DOE 11,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

FATHER DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-4175

CASE NO.: 2013-CP-10-4176

JOHN DOE 245 AND FATHER DOE 245,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE DIOCESE
OF CHARLESTON, IN HIS OFFICIAL
CAPACITY; ROBERT J. BAKER, FORMER
BISHOP OF CHARLESTON, IN HIS OFFICIAL
CAPACITY; LAWRENCE E. RICHTER, JR.;
DAVID K. HALLER; RICHTER & HALLER,
LLC,

DEFENDANTS.

CASE NO.: 2015-CP-10-5486

JOHN DOE 297,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT GUGLIEMONE,
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; REV. MONSIGNOR
MARTIN LAUGHLIN, FORMER
ADMINISTRATOR OF THE DIOCESE OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
ROBERT J. BAKER, FORMER BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
LAWRENCE E. RICHTER, JR.; DAVID K.
HALLER; AND RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2016-CP-10-1632

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence
E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the "Lawyer
Defendants") to alter and amend the Court's order of December 7, 2015, denying the Lawyer

Defendants' motion for summary judgment on motions to alter or amend the Court's Order on Limited Collateral Review entered on October 26, 2016 filed by Plaintiffs and the Diocese Defendants. Specifically, the Lawyer Defendants moved that the Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the Lawyer Defendants' motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (*See, e.g.* -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a "limited collateral review" of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: "(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied." *Id.* at 660, 591 S.E.2d at 619-20.

The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South

Carolina.¹ The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published.

In addition, the Court concludes as to Plaintiff John Doe 193, who alleges that he lived in South Carolina but had a repressed memory at the time of class notice, that it would be inconsistent with due process to bind him to the class action settlement if he in fact had a repressed memory of sexual abuse at the time that notice was published. Therefore, if he can prove a repressed memory by a preponderance of the evidence, he will not be bound by the class action settlement. This Order does not address the merits of whether John Doe 193 in fact had a repressed memory as he has alleged.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

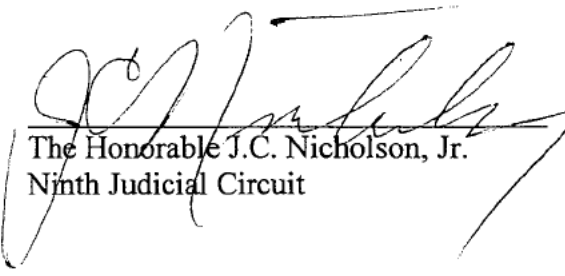
WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Court has conducted a limited collateral review as set forth above. The Court further grants Plaintiffs' motion to alter and amend to the extent that the Court has corrected the caption to include all *Doe* cases assigned to the Court and to the extent that the Court has clarified the treatment of John Doe 193. The Court denies the Diocese Defendants'

¹ The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

motion to alter or amend.

AND IT IS SO ORDERED.

May 3, 2017
Charleston, South Carolina



The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CA No. 2018-CP-10-3929
	)	
John Doe,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF’S MOTION
	)	TO ALTER OR AMEND
Bishop of Charleston, a Corporation Sole	)	
and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
_____	)	

TO: THE DEFENDANTS AND THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that the plaintiff will move, in ten (10) days at the Charleston County Courthouse for an order pursuant to SCRCP Rules 52 and 59(e) for an order altering or amending the Court’s grant of summary judgment entered July 7, 2025. The grounds for the motion are as follows:

- 1. The court erred in holding, “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*.”**

The court first erred in changing the standard by holding the abuse must be “objectively verified.” The term used by the Supreme Court is *Moriarty* is “corroborating,” which is defined as “to give support to” as opposed to ‘verifiable,’ which means “demonstrated to be true, accurate or justified.” The stricter standard imposed by the court on the plaintiff is an error of law.

Corroborating evidence, which may be either direct ***or circumstantial***, includes:

“(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.”

Moriarty, at 336, 680. The record includes multiple pieces of evidence of the abuse, including: 1) Doe’s testimony that he was forced to engage in fellatio with Hartnett and essentially kidnapped to Columbia for a sex party (Ex. I); 2) proof that Doe was a student at Sacred Heart (Ex. F); 3) proof that Hartnett as Doe’s teacher (Ex. G); and 4) the Diocese’s admissions that sexual abuse and rape of children routinely occurred by its priests and agents and those rapes were-- as a matter of Diocesan policy-- covered up (Ex. H). To the best of the plaintiff’s knowledge, there are no cases defining the degree and weight of corroborating evidence of a “proof of a chain of facts.” What is shown here is: 1) a connection of all of the parties from the Diocese’s own business records and 2) Doe’s testimony of his abuse. At the summary judgment stage, these are sufficient connections and circumstantial evidence to meet the corroborating evidence standard. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005). The plaintiff requests the court alter its order accordingly.

2. The court erred in holding that “Plaintiff failed to present the expert evidence required to establish repressed memory syndrome under *Moriarty v. Garden Sanctuary*.”

The record reflects that three doctors testified that Doe suffered from repressed memory of his abuse. See Ex. H, I, J, and K. “[Doe] does clearly appear to have non-volitionally repressed memories of the abuse by schoolteacher to the point of not remembering that he actually was in the 7th grade.” Ex. L. The court’s ruling essentially picks one expert over three when the standard is the court should believe a jury will believe the plaintiff’s set of facts. Again, this is a weight of the evidence determination, not a determination of whether a genuine issue of material fact exists on the question of Doe’s repression of the abuse. “In determining whether any triable issue of fact

exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007). The plaintiff requests the court alter its order accordingly.

WHEREFORE the plaintiff prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

s/ David K. Haller

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July 15, 2025

Charleston, South Carolina

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.

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO ALTER OR
AMEND JUDGMENT**

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") oppose Plaintiff's Motion to Alter or Amend Judgment. The Court properly applied *Moriarty v. Garden Sanctuary Church of God*¹ to find that Plaintiff failed to present sufficient proof to establish his claim of repressed memory syndrome to toll the statute of limitations. As such, the Court correctly determined that Plaintiff's claims must be dismissed.

In *Kitchen Planners v. LLC v. Friedman*² the South Carolina Supreme 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." Plaintiff failed to satisfy his burden of proof at summary judgment stage, and the

¹ 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000)

² *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).

Court properly granted summary judgment to Defendants. Further, Plaintiff's Motion to Alter or Amend does not state grounds sufficient to obtain relief from the Order granting Defendants' Motion for Summary Judgment, and for the reasons set forth below, the Motion should be denied.

LEGAL STANDARD

Under Rule 59(f), SCRCP, a Rule 59(e) motion may in the discretion of the court be determined on the briefs filed by the parties without oral argument. Rule 59(f), SCRCP. Hence, the grant or denial of a Rule 59(e) motion is within the discretion of the circuit court. Such motions are limited in scope and are not to be used to repeat the same arguments previously presented.³ A motion to alter or amend cannot be granted where the moving party simply seeks to have the Court rethink its decision.⁴ The South Carolina Supreme Court has explained that, "our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion": (1) when a party 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; or (2) when an issue or argument has been raised, but not ruled upon.⁵

Although Plaintiff's Motion is presented as a Motion to Alter or Amend, Plaintiff references Rule 52, SCRCP. "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon."⁶

³ *Dockins v. Benchmark Commc'n*, 180 F.R.D 294, 295 (D.S.C. 1998). "[W]here the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive." *Unisun Ins. V. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 562 (Ct. App. 2000) (citing *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987)). Other than a difference in the time frame in which to file a Rule 59 Motion, Rule 59 SCRCP and Rule 59 Fed. R. Civ. Proc. are substantially the same. See Rule 59, SCRCP and Rule 59, Fed. R. Civ. Proc. See also *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical").

⁴ *Id.*

⁵ *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

⁶ Rule 52(a), SCRCP.

“‘The rule is directorial in nature[,] so ‘where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court’s judgment for lack of an explicit or specific factual finding.’”⁷ “We do not require a lower court to set out findings on all the myriad factual questions arising in a particular case.”⁸ Rather, Rule 52 simply requires that the lower court’s findings “be sufficient to allow. . .[the appellate court]. . .to ensure the law is faithfully executed below.”⁹

ARGUMENT

1. Plaintiff’s Motion is procedurally improper and should be denied.

Plaintiff fails to meet any of the requirements for relief under Rule 59(e), and his Motion amounts a presentation of matters previously made to, considered and rejected by the Court. The parties had a full and fair opportunity to present their respective positions to the Court, both through written briefs and at a hearing held on June 10, 2025. Between briefing and oral argument, there is no issue that the Court failed to consider that Plaintiff is now seeking the Court to consider. The applicable law remains unchanged, and Plaintiff fails to identify any argument, fact or issue that was not available for the Court’s consideration at the time Defendants’ Motion for Summary Judgment was heard and ruled upon. Plaintiff’s Motion simply expresses dissatisfaction with the Court’s ruling.¹⁰ The Court carefully considered the law and correctly applied it to the evidence of this case. Plaintiff’s Motion contains no justification for amending the Order, and therefore the Motion should be denied.

⁷ *Church v. McGee*, 391 S.C. 334, 345–46, 705 S.E.2d 481, 487 (Ct. App. 2011) (quoting *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002)).

⁸ *Church*, 391 S.C. at 346, 705 S.E.2d at 487 (quoting *Luckabaugh*, 351 S.C. at 133, 568 S.E.2d at 343).

⁹ *Id.*

¹⁰ See *McCall v. Williams*, 59 F. Supp. 2d 556, 558 (D.S.C. 1999) (“mere disagreement with how the law is applied does not support a Rule 59(e) motion.”).

Regarding Rule 52, SCRCP, Plaintiff's Motion does not argue that the Court failed to make specific findings of fact. Although the Motion references Rule 52, Plaintiff only argues that the Court erred in its holding, not that the Court failed to make sufficient findings of fact. As set forth herein, the Court provided specific factual bases for why it chose to grant summary judgment, and Plaintiff has not articulated any reason why the Court's Order should be amended under Rule 52.

2. Plaintiff's Motion should be denied because Plaintiff failed to establish by requisite proof the *Moriarty* factors, and, on that basis, Plaintiff's claims were properly dismissed.

The Court correctly found that Plaintiff failed to present evidence of the required elements for tolling the statute of limitations under *Moriarty v. Garden Sanctuary Church of God*.¹¹ In his Motion, Plaintiff asserts that the Court's standard of "objectively verifiable evidence" of the abuse is an error of law under *Moriarty*. Contrary to Plaintiff's assertion – the Supreme Court specifically held "that a plaintiff must present independently verifiable, objective evidence that corroborates a repressed memory claim in order to assert the discovery rule contained in S.C. Code Ann. § 15–3–535."¹² The Supreme Court later reiterated: "The focus in this setting is not on whether the corroborating evidence is direct or circumstantial. The focus is on whether the evidence is 'objectively verifiable,' such that it corroborates the plaintiff's recovered memories."¹³ The Supreme Court concluded by restating once again: "However, the plaintiff must present—both at the summary judgment stage and at trial—objectively verifiable evidence to corroborate a repressed memory claim in order to use the discovery rule."¹⁴

Plaintiff's assertion in his Motion is simply incorrect. Plaintiff is re-arguing what he

¹¹ 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000)

¹² 341 S.C. at 336, 534 S.E.2d at 680.

¹³ 341 S.C. at 338, 534 S.E.2d at 681.

¹⁴ 341 S.C. at 340, 534 S.E.2d at 682.

previously presented to the Court. This Court correctly applied the clear dictate from *Moriarty* that Plaintiff was required to present independently verifiable objective evidence that corroborates his alleged abuse.

Moreover, the evidence Plaintiff suggests in his Motion fails to meet the standard of independently verifiable objective evidence that corroborates the alleged abuse. Plaintiff's Motion argues that his self-reporting of the abuse, the fact that he was a student at the school and that Harnett was his teacher at the school corroborate the alleged abuse. Additionally, he argues that "the Diocese's admissions that sexual abuse and rape of children routinely occurred by its priests and agents and those rapes were – as a matter of Diocesan policy – covered up" (Exhibit H) is corroborating evidence. Exhibit H is the Order Certifying Classes and Giving Preliminary Approval to Settlement and does not support this statement. None of Plaintiff's offered evidence corroborates his alleged abuse by these teachers as mandated by *Moriarty*¹⁵. Rather, Plaintiff re-argues what has already been briefed, argued, and decided by this Court.

In short, Plaintiff did not come forward with admissible evidence that satisfies the heavy burden imposed by *Moriarty* to establish repressed memory and thereby 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. The Court correctly determined that there is no basis for tolling the statute of limitations under *Moriarty* and that Plaintiff's claims are time-barred.

¹⁵ 341 S.C. at 338, 534 S.E.2d at 681.

3. Plaintiff's Motion should be denied because this Court correctly found that Plaintiff failed to present the expert evidence required to toll the statute of limitations due to repressed memory syndrome under *Moriarty*.

The *Moriarty* Court further held that “[t]he plaintiff must use expert testimony to establish the abuse and the fact of the repressed memories.”¹⁶ As the Court correctly ruled, “Plaintiff failed to come forward with admissible evidence that satisfied the heavy burden placed upon him by *Moriarty v. Garden Sanctuary Church of God*.” As before, Plaintiff’s Motion is not proper under Rule 59 because Plaintiff fails to identify any issue that the Court failed to consider. Plaintiff’s Motion simply expresses dissatisfaction with the Court’s ruling.

Notwithstanding that procedural failing, there is no admissible expert testimony that pinpoints when Plaintiff actually recalled being abused. There is no expert testimony that Plaintiff’s alleged recovered memories are 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 does and does not remember. The Court correctly concluded that Plaintiff had failed to meet the standard set in *Moriarty*. Plaintiff’s Motion offers nothing to alter that ruling.

CONCLUSION

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

¹⁶ *Moriarty*, 341 S.C. at 340, 534 S.E.2d at 682.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

July 24, 2025

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ATTORNEYS FOR DEFENDANTS

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

John Doe,

Plaintiff,

vs.

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

Defendants.

**DEFENDANTS' MEMORANDUM
REGARDING INADMISSIBILITY OF
EXPERT TESTIMONY UNDER RULE 702**

Defendants Bishop of Charleston, a Corporation Sole, and the incorrectly and improperly named Bishop of the Diocese of Charleston, in his official capacity (hereinafter "Defendants") hereby submit the following memorandum of law in support of their pending motions for summary judgment involving the lack of any admissible evidence regarding repressed memory syndrome. Plaintiffs have failed to provide expert testimony sufficient to maintain any action based on repressed memory syndrome. 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 702.¹ 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.² 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.

FACTS

This case arises out of a claim that the Plaintiff suffered sexual abuse as a child. The Plaintiff further claims that he repressed the memories of those alleged acts of abuse, only for them to reemerge later in adulthood. In his Complaint, Plaintiff states "other litigation, news reports, and other occurrences have led to Plaintiff now becoming so aware [of the alleged abuse], and Plaintiff could not have so known or learned previously. His memory was repressed." Given the age of the Plaintiff at the time of the alleged abuse (and the time since Plaintiff had reached the age of majority), the statute of limitations had long since run on any

¹ *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010).

² Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p.63.

causes of action related to Plaintiff's childhood sexual abuse claims by the time Plaintiff filed this claim.

In order to attempt to prove both the fact of the abuse and the repression of the memories, Plaintiff has named two experts in this litigation: Sally Duffy, Ph.D. and Dorothy Whalen. Dr. Duffy is a licensed psychiatrist with a Ph.D. Ms. Whalen is a clinical social worker.

Defendants have named James I. Hudson, M.D., Sc.D.; Janine Shelby, Ph.D.; and, Elizabeth Loftus, Ph.D. as experts for the purposes of repressed memory syndrome. Dr. Hudson is a professor of Psychiatry at Harvard Medical School and Director of the Biological Psychiatry Laboratory at McLean Hospital, which is Harvard's principal psychiatric teaching hospital. Dr. Hudson opined that the theory of "repressed memory" is not scientifically valid. In his words, from Exhibit A of his affidavit: "Repressed memory is not generally accepted in the relevant scientific community; it has never been demonstrated to occur in a methodologically sound peer-reviewed published study; and it is not subject to an ascertainable error rate."³ His report notes that the hypothesis of repressed memory syndrome has been described as "a piece of psychiatric folklore, . . . a fairy tale belief, and a clinician's cold fusion." He opines that the theory of repressed memory "has not even remotely achieved 'general acceptance' in the relevant scientific community."

Dr. Shelby is a licensed psychologist specializing in trauma who serves as an Associate Clinical Professor in the Geffen School of Medicine at the University of California, Los Angeles. In her affidavit, Dr. Shelby opined in part,

"A central issue of this case is the degree to which Mr. John Doe is able to accurately report on abuse he claimed to recall after a delay of several decades.

Such memories are implicitly subject to distortion and bias. There are many

³ Affidavit and Appendix A of Hudson Report, p. 6.

factors that shape memory. Mr. Doe's LSD and other substance use around the same time as the abuse described in this claim may have influenced his perception of events.”⁴

Finally, Dr. Loftus is Distinguished Professor at the University of California, Irvine where she is the director of the Center for Psychology & Law. Dr. Loftus holds a Ph.D. in Psychology from Stanford University. Dr. Loftus has authored more than 600 published papers, the majority of which concern the topic of human memory. Dr. Loftus opines the following in her affidavit:

“Briefly, the idea that one can repress horrible brutalization into the unconscious and reliably recover the experiences later has received virtually no credible scientific support. The notion is best described as folklore that continues to be advanced by some mental health professionals who uncritically accept abuse reports, no matter how dubious, and claims of repression, no matter the lack of scientific support.”⁵ (emphasis added).

ARGUMENT

The Court, in its function as gatekeeper for the admissibility of expert testimony, must exclude the reports and testimony of Plaintiff's experts. Neither witnesses are qualified to testify as to repressed memory syndrome given their lack of research and education in the field. Further, and most critically, neither witness can satisfy the reliability requirement of Rule 702 because (1) repressed memory syndrome has no credible scientific basis as a theory or diagnosis and (2) as a result, the testimony of the Plaintiff (itself unreliable as will be shown) is the only basis for the expert opinion that Plaintiff has repressed memories.

⁴ Affidavit and report of Shelby, p. 14.

⁵ Affidavit and Report of Loftus, paragraph 9.

In *Moriarty v. Garden Sanctuary Church of God*, the Court of Appeals explicitly held that expert testimony, proving that (1) sexual abuse occurred and that (2) the plaintiff repressed memories of the abuse, is a requirement in order to proceed with a cause of action based on repressed memory syndrome.⁶ This evidence is required at both the summary judgment stage and the trial stage.⁷ If particular subject matter requires expert testimony, then the expert must meet the qualifications necessary to give opinion testimony. In *Moriarty*, Judge Anderson wrote that the trial judge must qualify any expert in repressed memory syndrome under Rule 702, SCRE.⁸ However, a careful analysis under Rule 702 precludes any such expert testimony from being admitted into evidence or considered by the Court.

The admission of expert testimony in South Carolina is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.⁹ Unlike lay testimony, in which a witness may not provide opinion testimony requiring specialized knowledge, expert witnesses are allowed to provide testimony of their opinions as long as such testimony is based on the types of evidence relied upon in the particular expert's field.¹⁰

Because of this heightened standard for the admission of expert opinion, the Court plays a critical role as the gatekeeper for admissibility of such testimony. To be admitted into

⁶ *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. Appeals 1999).

⁷ *Id.*

⁸ *Id.*

⁹ *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010).

¹⁰ *Id.*

evidence, expert testimony must pass the trial court's affirmative and meaningful gatekeeping duty.¹¹ This gatekeeping function includes preventing the introduction of "junk science" and pseudoscience into evidence. Such testimony faces "additional scrutiny relative to other evidentiary decisions,"¹² requiring three "key" preliminary findings "which are fundamental to Rule 702" before a jury (or Court at summary judgment) may hear and consider expert testimony:

- (1) The trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.
- (2) The trial court must find that the proffered expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.
- (3) The trial court must evaluate the substance of the testimony and determine whether it is reliable.¹³

To be clear, the above requirements must be met as a threshold matter of admissibility.

These are not factors for a jury to consider in weighing the credibility of the testimony. The Supreme Court stated this truism powerfully:

The familiar tenet of evidence law that a continuing challenge to evidence goes to "weight, not admissibility" has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability."¹⁴

If these factors are not satisfied, the opinions must be excluded from the evidence before the Court. Expert testimony is not admissible unless it satisfies all three of the above requirements regarding subject matter, expert qualifications, and reliability. In short, "only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the

¹¹ *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009)(clarifying that Rule 702 requirements must be met whether the evidence is "scientific" or "non-scientific").

¹² *Watson*, 389 S.C. at 445-446, 699 S.E.2d at 174-175 (internal citations omitted).

¹³ *Id.*

¹⁴ *White*, 382 S.C. at 273, 676 S.E.2d at 688 (2009).

expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.”¹⁵

The opinions of Plaintiff’s experts must be excluded and must not be considered for purposes of summary judgment because of the complete lack of reliability of the testimony under Rule 702 as well as their lack of qualification. The exclusion of the testimony under Rule 702, SCRE leads inevitably to the result that Plaintiff cannot provide admissible expert evidence that can satisfy the requirements of *Moriarty*. Furthermore, without expert testimony regarding the theory of repressed memory, Plaintiff may not testify regarding his own recovered memories.

I. The Plaintiff’s experts cannot satisfy the “reliability” requirement of the Rule 702 admissibility analysis.

a. **The theory of repressed memory syndrome is inherently unreliable, unproven, unsound, and by no means generally accepted in the scientific community.**

Reliability is a “central feature of Rule 702 admissibility.”¹⁶ Regardless of whether it is scientific, technical, or testimony that requires special knowledge, expert testimony must satisfy the Rule 702 criteria, and that includes the trial court’s gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury’s ultimate consideration.¹⁷ The admissibility of scientific evidence is “dependent on the degree to which the trier of fact must accept, on faith, scientific hypotheses not capable of proof or disproof in court and not even generally accepted outside the courtroom.”¹⁸ There are several factors the court must consider when analyzing whether an expert’s scientific opinion testimony is reliable, such as:

(1) the publications and peer review of the technique;

(2) prior application of the method to the type of evidence involved in the case;

¹⁵ *Id.*

¹⁶ *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009)

¹⁷ *Id.*

¹⁸ *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979).

- (3) the quality control procedures used to ensure reliability; and
- (4) the consistency of the method with recognized scientific laws and procedures.¹⁹

Plaintiff's experts cannot satisfy any of the above requirements for a reliability analysis.

i. Publications and peer review

There are no peer reviewed studies, articles, or publications supporting the theory of repressed memory. By their own admission, neither Dr. Duffy nor Ms. Whalen relied on any reliable scientific studies or papers on which any of their opinions regarding repressed memory syndrome were based. Dr. Duffy submitted an 8-page report of her "Documentation Review and Psychological Evaluation" in which she discusses Plaintiff's alleged repression of memories. The report is devoid of any sources or citations upon which Dr. Duffy bases her opinions and contains no bibliography or table of authorities to show any such foundation. Dr. Duffy has not authored any scientific, peer-reviewed studies of the theory of repressed memory, nor has she participated in any such studies. The same holds for Mrs. Whalen – who said she might have read an article about repressed memory years ago.

In stark contrast, Dr. Hudson's report and Appendix A, as contained in his affidavit, show that, since 2000, repressed memory has been rejected by the scientific community as little more than a myth. He informs that "repressed memory" hypothesis has been rejected by the scientific community on two grounds: (1) it has not been proven and (2) because proponents of repressed memory rely upon studies with substantial and

¹⁹ *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

obvious flaws that do not meet basic scientific standards.²⁰ He describes the studies purporting to “prove” or “support” the theory of repressed memories as “scientifically almost valueless.”²¹ In contrast to Plaintiff’s proffered experts, Dr. Hudson has authored hundreds of articles that have been published in peer reviewed journals and publications, and is the co-author of a treatise on memory.

Dr. Elizabeth F. Loftus, Ph.D.’s affidavit comes to similar conclusions regarding any peer-reviewed studies relied upon by mental health professionals as “evidence” that repressed memory syndrome is a valid scientific concept. Dr. Loftus is one of the 100 Most Eminent Psychologists of the 20th Century; Distinguished Professor at the University of California, Irvine; prolific author; recipient of over \$1 million grants; member and past president of the Association for Psychological Science; and, inductee to the National Academy of Sciences. She has not only reviewed studies regarding memory but also conducted such studies herself. She notes that the studies typically relied upon by mental health professionals²² are highly controversial and questionable.²³ She and others having carefully analyzed the studies, they have reached the conclusion that it is “misleading to use [those studies] as proof of amnesia.”

What *has* been demonstrated by peer-reviewed scientific studies is that memory “does not work like a video recording device.”²⁴ Humans do not simply record events and then play them back later. According to Dr. Loftus, the process is much more complex and involves

²⁰ Affidavit and Appendix A of Hudson Report, p. 29 – 30.

²¹ *Id.*

²² As distinguished from scientists

²³ Affidavit of Elizabeth Loftus, Ph.D., paragraph 12.

²⁴ Affidavit of Elizabeth Loftus, Ph.D., paragraph 5.

combing traces from an original experience with other bits and pieces of information that are acquired from other sources.²⁵

It is worth noting the conclusions of Harvard University clinical psychologist and tenured faculty member Richard McNally, whose work “Remembering Trauma” Dr. Loftus cites in her affidavit:

ii. The evidence points to three conclusions. First, people remember horrific experiences all too well. Victims are seldom incapable of remembering their trauma. Second, people sometimes do not think about disturbing events for long periods of time, only to be reminded of them later. However, events that are experienced as overwhelmingly traumatic at the time of their occurrence rarely slip from awareness. Third, there is no reason to postulate a special mechanism of repression or dissociation to explain why people may not think about disturbing events for long periods. A failure to think about something does not entail an inability to remember it (amnesia).²⁶

ii. Prior application of the method to the type of evidence in the case

A foundational barrier for Plaintiff’s experts in the “reliability” analysis is the fact that there is no “method” by which they arrived at their opinions that Plaintiff has repressed memory syndrome. Dr. Duffy explained multiple times in her deposition testimony that there is no “test” or objective tool that can be used to determine whether an individual has repressed memories. This would include anything from standard questionnaires and interview questions to radiographic diagnostic tools such as CT scans. Her report and testimony do not show any methodology whatsoever for how she arrived at her opinion that Plaintiff suffers from “repressed memory syndrome.” Simply put, and as Dr. Duffy readily admits, there is no “method” for determining whether a person has repressed memories. There are no neuropsychiatric tests. There is no objective method

²⁵ Affidavit of Elizabeth Loftus, Ph.D., paragraph 5.

²⁶ Affidavit of Loftus, paragraph 11(ii).

by which the fact of memory repression can be analyzed. It cannot be determined by an MRI or a CT scan. None of plaintiff's experts have conducted multi-modal, multi-source forensic examinations. There is just no reliable evidence for the Court to consider as to the prior application of such a method to this type of evidence. Dr. Duffy's conclusory statements that Plaintiff suffers from "repressed memory syndrome" do not satisfy the burden of proving a reliable method used to arrive at that conclusion.

iii. Quality control put in place to ensure reliability

Plaintiff's experts have not and cannot point to any quality control measures put in place to ensure the reliability of the expert testimony and opinions. This is likely at least partly to do with the fact that studies attempting to prove repressed memory have no error rates, controls, or standardization.²⁷ In fact, in reviewing typically relied-upon studies attempting to prove "repressed memory syndrome," Dr. Hudson puts the error rates of most retrospective and prospective studies of "repressed memories" at or near 100% due to fundamental scientific flaws in the manner in which those studies were constructed and carried out.²⁸

True scientific error rates (beyond the 100% Dr. Hudson estimates based on the form of the studies) and controls do not exist with regard to the studies attempting to prove the theory. There are no generally accepted quality controls relating to any "method" utilized by Plaintiff's experts in attempting to show Plaintiff has repressed memories. Again, this is primarily the result of the fact that there is no established methodology for determining whether a given person has repressed memories. There is no scientifically sound guideline or test for determining whether a patient is "repressing"

²⁷ Affidavit and Appendix A of Hudson Report, p. 41.

²⁸ *Id.*

memories, so no quality control or error analysis can be done with regard to Plaintiff's expert's opinions in this case.

iv. Consistency of the method with recognized scientific laws and procedures

Plaintiff bears the burden of proving that the expert's methods are consistent with recognized scientific laws and procedures. There has been no testimony or evidence from Plaintiff's experts of any method utilized to form the opinion that Plaintiff has repressed memory syndrome. Even if one reads Dr. Duffy's testimony and report of reviewing documentation and interviewing Plaintiff once as a "method" of arriving at such an opinion, the overwhelming evidence shows that the theory of repressed memory itself is not consistent with recognized laws and scientific procedures.

In his affidavit, Dr. Hudson goes into great detail about the fact that studies regarding repressed memories are so fundamentally flawed in their design and application as to be essentially worthless.²⁹ His analysis of the few commonly cited research studies, both retrospective and prospective, show a failure by the studies' curators to ask routine follow-up questions such as why they did not mention past memories when interviewed (i.e. had they chosen not to mention them, had they simply forgotten them?).³⁰ Such failures lead to astronomical estimated error rates and a deviation from scientific procedures.³¹

Putting aside the fact that the theory of repressed memory itself has not been scientifically proven, there is no scientifically supported method for evaluating a patient for repressed memory syndrome. As such, there is no consistent, scientific method by

²⁹ Affidavit and Appendix A of Hudson Report, p. 29 – 30.

³⁰ Affidavit and Appendix A of Hudson Report, p. 30 -31.

³¹ Affidavit and Appendix A of Hudson Report, p. 41.

which to establish the consistency necessary to satisfy this factor of the reliability analysis.

b. As Plaintiff's expert witnesses concede, there are no scientifically validated methods to test the veracity of a claimed repressed memory, nor is there any way to test the reliability and accuracy of a claimed recovered memory.

In her deposition, Dr. Duffy stated that there is no scientific ability or technological process to prove that repressed memories exist.³² Dr. Duffy agrees that that repressed memory syndrome is highly controversial among psychologists.³³ She also testified that memory is not always consistent.³⁴

Dr. Duffy conceded in her deposition that the American Psychological Association as well as similar associations in England, Australia, and Canada confirmed as recently as 2012 that there was no general acceptance of repressed memory syndrome.³⁵ Dr. Duffy speculates in her deposition that there may be a way to scientifically prove repressed memory syndrome "within the next five to ten years."³⁶ No test currently exists to prove repressed memory syndrome, and, although Dr. Duffy does neuropsychological testing on some of her patients, she has not used it on repressed memory patients.³⁷ Dr. Duffy testified in her deposition that that it is not currently known how the psyche represses a memory from physiological standpoint.³⁸ Critically, Dr. Duffy provided the following testimony:

A. Because, you know, I mean, testing is -- psychologists, we like our tests. Because we -- because they are -- especially verifiable tests that have been around for a long time and they've had lots of studies to prove

³² Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p. 24 - 25.

³³ *Id* at 50.

³⁴ *Id* at 53.

³⁵ Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p.63.

³⁶ *Id* at 64.

³⁷ *Id* at 68.

³⁸ *Id* at 78 – 79.

they're -- to prove -- to prove their validity and to prove that they actually -- you've got to look at validity and reliability. You know, are they valid in terms of testing what they say they're valid? And are they reliable for -- in terms of result from person to person?

Q. And we don't have either of those for repressed memory?

A. Not yet. We're coming close.

Q. Okay.

A. I -- I hope.³⁹

As a result, according to Dr. Duffy, she can only rely on the reporting of her patient with regard to the alleged repressed memories.⁴⁰ Further complicating matters, there is no way to determine whether the patient is being honest with the treating provider.⁴¹ Dr. Duffy agrees that memory is malleable and can be changed based on implanted memories or suggestion.⁴² During her testimony, Dr. Duffy admits that she has no way of differentiating whether Plaintiff is choosing not to report a past event or instead is suffering from repressed memory syndrome because her evaluation was “a one-shot deal.”⁴³

Further, Dr. Duffy was unable to envision how a prospective test could even be set up to determine how many victims of sexual abuse would suffer from repressed memory syndrome.⁴⁴

Dr. Duffy agreed that sometimes a so-called “recovered memory” simply is not true.⁴⁵ There is

³⁹ *Id* at 72 – 73.

⁴⁰ Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p. 74.

⁴¹ *Id*.

⁴² *Id* at 75– 76.

⁴³ *Id* at 86 – 87.

⁴⁴ *Id* at 95 – 96.

⁴⁵ *Id* at 101.

no way to test whether a memory that is recovered is part of another memory disorder, such as dementia or simply forgetting as opposed to repressed memory syndrome.⁴⁶

c. Plaintiff's experts rely solely on the testimony of Plaintiff, which they admit is unreliable.

Dr. Duffy states that it is her opinion that Plaintiff began repressing memories when he was in seventh grade.⁴⁷ However, Dr. Duffy cannot say when Plaintiff began to remember these alleged repressed memories.⁴⁸ Dr. Duffy acknowledges there are inconsistencies in the memories Plaintiff does and does not have from the time period in question.⁴⁹ Dr. Duffy described Plaintiff's deposition testimony as "very hard to read" and "full of inconsistencies."⁵⁰ She "could not make heads or tails of some of that stuff."⁵¹

According to Dr. Loftus, "it is virtually impossible to tell the difference between a true memory and a false one without independent corroboration."⁵² Such memories are susceptible to distortion from suggestions, even for those with otherwise extraordinarily good memories.⁵³ Dr. Loftus cites studies showing that people, who are not purposely lying, have become convinced that something occurred to them that is false.⁵⁴ Such evidence creates incredible gaps in reliability of victim testimony that cannot be overcome by any known method.

d. There is no corroborating evidence

Both *Moriarty* decisions express deep concerns from the respective courts about "repressed memory syndrome." In addition to noting its divisive position in the psychiatric and psychological communities, both courts acknowledged "the horrific possibility of false

⁴⁶ *Id* at 103 – 104.

⁴⁷ *Id.*

⁴⁸ *Id* at 107.

⁴⁹ *Id* at 112 – 113

⁵⁰ *Id* at 120.

⁵¹ Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p. 102.

⁵² Affidavit of Loftus, paragraph 7.

⁵³ *Id.*

⁵⁴ *Id* (citing Loftus & Ketcham, 1994; Pendergrast, 1999).

accusations” and acknowledged that, in addition to expert evidence, 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.”⁵⁵

As a prerequisite for application of the discovery rule to toll the statute of limitations, 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.⁵⁶

Plaintiff has failed to provide any admissible evidence falling within any of the above eight categories of objectively verifiable evidence of Plaintiff’s being sexually abused. He testified that he did not report the abuse to anyone. He did not see a doctor or any other health care provider. Neither accused teacher was convicted, nor did either ever confess to abusing this Plaintiff. There is a complete lack of contemporaneous circumstantial evidence that this plaintiff was abused. As a result, the admission of expert testimony as to repressed memory syndrome in this case would realize the worst fears of the *Moriarty* courts, which is a Plaintiff having “the

⁵⁵ *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. Appeals 1999).

⁵⁶ *Id.*

ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff's mind."

e. The presence of "dissociative amnesia" in the DSM 5 does not indicate reliability.

The *DSM-5* is the most recent edition of the official diagnostic manual of the American Psychiatric Association. "Dissociative amnesia" is a broad term embracing "both scientifically legitimate and accepted memory phenomena...together with the dubious and highly controversial phenomenon of "repressed memory."⁵⁷ According to Dr. Hudson, the inclusion of the broad category of "dissociative amnesia" in the *DSM-5* is in no way indicative of general acceptance of "repressed memory." Rather, he analogizes such a proposition to a zoological text recognizing the category of "equine mammals," which would include subcategories such as horses and zebras, as thereby also recognizing fantastical and fictional equines, such as unicorns.⁵⁸

The United States Supreme Court was skeptical about the DSM's utility in a legal setting because a diagnosis that is present in the DSM "may mask vigorous debate within the profession."⁵⁹ Even the DSM itself contains strict caution against the use of psychiatric diagnoses in forensic settings, stating in its introduction:

"When the DSM-UV categories, criteria, and textual descriptions are employed for forensic purposes, there are significant risks that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern to the law and information contained in a clinical diagnosis."⁶⁰

Therefore, the inclusion of dissociative amnesia should not be read as in any way endorsing or validating the subcategory of "repressed memory."

⁵⁷ Affidavit and Appendix A of Hudson Report, p. 41.

⁵⁸ *Id.*

⁵⁹ *Clark v. Arizona*, 548 U.S. 735, 774, 126 S. Ct 2709, 2734 (2006).

⁶⁰ *Id.* (citing Introduction to DSM-IV-TR at xxxii-xxxiii).

II. Plaintiff's experts lack the necessary qualifications to provide opinion testimony regarding repressed memory syndrome.

a. Debra Whalen

Debra Whalen is a clinical social worker who provided counseling to Plaintiff after his allegations of resurfacing memories of childhood abuse at the hands of teachers from Sacred Heart. Ms. Whalen, who has not made a diagnosis of repressed memory syndrome, is also not qualified to present opinion testimony as to repressed memory syndrome. According to Ms. Whalen's deposition testimony, Ms. Whalen has never written any articles or conducted any studies on repressed memory syndrome.⁶¹ She testified she had "done some reading" about it "a number of years ago."⁶² She acknowledged that there "has been controversy about repressed memories" and agreed that there are many psychologists who do not think it is a viable scientific theory.⁶³ Ms. Whalen does not possess any specialized knowledge about repressed memory syndrome, and cannot be qualified as an expert in that field given her lack of education, training, or experience in the field of repressed memories.

b. Sally Duffy, Ph.D.

Dr. Duffy has never been qualified by a court of any jurisdiction as an expert in the field of repressed memory syndrome.⁶⁴ Dr. Duffy has only been published, by her recollection, twice in a peer-reviewed journal, which was during her education. Neither of the articles was related to repressed memory syndrome, a topic on which she has never been published.⁶⁵ Dr. Duffy could not point to any specific study that establishes that the theory of repressed memory syndrome has

⁶¹ Depo. Tr. of Dorothy Whalen, Sept. 19, 2019, p. 64.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Depo. Tr. of Sally Duffy, Ph.D., Nov. 26, 2019, p. 35 – 37.

⁶⁵ *Id.* at 55 – 57.

been proven to be scientifically valid.⁶⁶ Dr. Duffy cannot identify studies examining the rate of patients who suffer the normal act of forgetting as opposed to repressing memories.⁶⁷

In contrast, Defendant's experts are highly qualified scientists on the leading edge of memory studies and have participated in research studies and reviews in order to form their opinions of repressed memory syndrome. Like any hypothesis, the theory must be tested and proven to be accurate before the theory can be deemed reliable. As Dr. Duffy stated regarding the unconscious mind – she did not believe in the theory until a scientific test was developed that proved its existence. Repressed memories cannot be tested scientifically, the fact of the repression cannot be verified, and the truth of the recovered memory cannot be ascertained.

III. Plaintiff's experts cannot provide admissible testimony because of the risk that the experts will "vouch" for Plaintiff's credibility.

Dr. Duffy testified in her deposition that she "believes" Plaintiff regarding the allegations of abuse and repression of the memories.⁶⁸ This statement creates substantial problems for Dr. Duffy's ability to provide admissible evidence as recently discussed by the Court of Appeals. In *Makins*, the trial court allowed a therapist to testify as both an expert in child sexual abuse trauma and as a fact witness regarding the child victim's allegations of sexual abuse. The Court agreed that allowing such dual testimony was error, as allowing the person who examined the victim to opine as to the allegations themselves "runs the risk that the expert will vouch for the alleged victim's credibility."⁶⁹

The Court found this danger present whether the bolstering of the victim's credibility was direct or indirect. They cited with approval the case of *State v. Dawkins*, 297 S.C. 386 377 S.E.2d 298 (1989), which held that a treating psychiatrist improperly bolstered the credibility of

⁶⁶ *Id* at 61.

⁶⁷ *Id* at 92.

⁶⁸ *State v. Makins*, 2019 S.C. App. LEXIS 79, 2019 WL 4180050 (Ct. App. September 4, 2019).

⁶⁹ *Id*.

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.'"⁷⁰ The impermissible harm from improper bolstering "is compounded' when the witness is 'qualified as an expert'"⁷¹ because fact witness testimony is often improperly given more weight when offered by an expert. As a result of Plaintiff's experts' treatment of Plaintiff, they cannot provide admissible testimony as to whether the abuse actually occurred as such would do irreparable harm to the case of Defendants by improperly bolstering Plaintiff's testimony.

CONCLUSION

Plaintiff must produce admissible expert testimony to prove the fact of his abuse and the fact of his repression of memories of that abuse. Plaintiff can produce neither. Neither Sally Duffy nor Dorothy Whalen qualify as experts in the field of repressed memory syndrome by education, knowledge, or experience. As importantly, neither expert can satisfy the reliability requirement for admission of expert testimony under Rule 702, SCRE. The theory of repressed memory syndrome is largely discredited in the scientific community, and the proposed experts did not utilize or show 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. As a result of the lack of admissible expert evidence, Plaintiff has failed to satisfy the expert evidence requirement of *Moriarty* and summary judgment must be granted in favor of Defendants.

[Signatures on next page]

⁷⁰ *State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989).

⁷¹ *Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017).

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

Re: John Doe v. The Bishop of Charleston, et al.

EXPERT REPORT
James I. Hudson, M.D., Sc.D.
October 16, 2019

I. Qualifications

My name is James I. Hudson, M.D., Sc.D. I am a Professor of Psychiatry at Harvard Medical School and Director of the Biological Psychiatry Laboratory at McLean Hospital in Belmont, MA, which is Harvard's principal psychiatric teaching hospital. I am the author of more than 400 peer-reviewed scientific communications, including articles, chapters, reviews, proceedings of meetings, and books on many areas of psychiatry. In particular, I have researched and published widely on the diagnosis and treatment of mood disorders, anxiety disorders, substance abuse, and eating disorders; the effects of sexual abuse; the "repressed memory" controversy; methodological considerations in the design and interpretation of studies; and many other topics. In addition, I have taught these topics to numerous students at the pre-doctoral, medical-school, and post-doctoral levels at Harvard Medical School. I also have more than 35 years of clinical experience in treating or consulting on more than 2,000 patients with a wide range of psychiatric disorders, including hundreds of individuals who have reported that they have experienced sexual abuse, and individuals reporting other traumatic experiences. The attached curriculum vitae provides a more detailed summary of my professional experience and qualifications.

Over the last 30 years, I have been retained by attorneys around the United States to provide expert opinion in over 50 cases, including many cases involving the "repressed memory" controversy. In the course of my work on these cases, I have provided expert testimony at numerous hearings or trials in state and federal courts. These cases have involved civil and criminal proceedings, and I have been retained by attorneys representing both plaintiffs and defendants.

II. Scope of Report and Materials Reviewed

I was asked to consider the question of whether the plaintiff, Mr. John Doe, "repressed" and subsequently "recovered" the memories of the alleged sexual abuse by two teachers in the fall of 1970. I reviewed the following documents provided by the law firm of Turner, Padget, Graham & Laney: complaint; answer to complaint; plaintiff's responses to first interrogatories; medical records from Dorothy Whalen, LICSW; and four deposition transcripts (John Doe; Mrs. John Doe; Dorothy Whalen; and Jason Flassing).

III. Did Mr. Doe Have “Repressed Memories” with Subsequent “Recovered Memories”?

Mr. Doe has alleged that he was sexually abused by two teachers, Hal Brooks and Chris Hartnett, employed by Sacred Heart School in Charleston, SC, in the fall of 1970 (at the age of 13) [complaint, ¶12; response to interrogatories, p. 11; Mr. John Doe deposition, pp. 113-117]. A summary of the specifics of the allegations is as follows:

“Plaintiff [Mr. Doe] was taken on a field trip by Mr. Hartnett where he was supposed to be going to a museum in Columbia. Instead Mr. Hartnett took him to a house party in Columbia where Mr. Brooks was also present. Plaintiff was given alcohol and marijuana and was forced into both oral and anal sex by both perpetrators. At some point Mr. Hartnett and Mr. Brooks took the Plaintiff to a bar outside Columbia where they left him. Plaintiff then had to hitchhike back home to Charleston. To the best of his recollection, he was about 13 years old at the time.

“Defendant Mr. Hartnett abused him inside a classroom at Sacred Heart School and behind the stage at the school hall. Mr. Hartnett also inappropriately touched him between the school and rectory buildings at Sacred Heart.” [Response to interrogatories, p. 11]

At some time point after these alleged incidents of sexual abuse had occurred, Mr. Doe claims that he then developed loss of memory for all of the incidents [Whalen deposition, p. 16], and alleges that “his memory was repressed” [complaint, ¶16]. He claims that this putative loss of memory for the incidents lasted for years until later in adulthood, until at some point he became able to “recover” these previously inaccessible memories. The time of this adult “recovery” of the memories is somewhat unclear from the materials available to me, but it appears that it was not later than 2016 [John Doe deposition, pp. 121-123; Whalen deposition pp. 16-17; response to interrogatories, p. 16]. In short, on the basis the materials available to me at this time, it appears that Mr. Doe is claiming to have experienced “repressed memory” and subsequent “recovery of memory” after an intervening period of many years of amnesia. However, it would appear from the records reviewed that no qualified health practitioner has ever made a diagnosis of “repressed memory” in Mr. Doe’s case.

The term “repressed memory,” as used in forensic settings throughout the United States, refers to the notion that an individual could become literally *unable* to remember a traumatic event, as opposed to merely developing ordinary forgetfulness for the event. In cases of ordinary forgetfulness, an individual would still be able to remember the event if reminded about it or asked about it. By contrast, the hypothesis of “repressed memory” proposes that an individual could somehow expel the memory of a traumatic event from consciousness, such that he or she could not remember the event even if directly asked about it. However, the hypothesis of “repressed memory” allows that at some point, perhaps years later, the individual could somehow “recover” this previously inaccessible memory.

Note that the notion of “repressed memory” should also be distinguished from various other forms of amnesia, such as infantile amnesia, amnesia due to head injury or intoxication, and so-called “global amnesia” – a rare phenomenon in which an individual develops amnesia for an entire block of autobiographical information (e.g., the individual’s name, address, occupation, etc.), as opposed to developing amnesia only for a traumatic event.

In the present case, it appears that Mr. Doe is claiming to have “repressed memory” for traumatic events that would seem normally unforgettable (e.g., anal sex). Mr. Doe is clearly not claiming simply ordinary forgetfulness. There is also no evidence that Mr. Doe’s alleged amnesia is attributable to other factors, such as infantile amnesia, head injury, intoxication, or other biological factors.

Having introduced the above terminology, I have several opinions, all to a reasonable degree of scientific and medical certainty, regarding the theory of “repressed memory.” The basis for these opinions is spelled out in detail in Appendix A of this report, where I provide a detailed critique of the concept of “repressed memory” entitled, “Analysis of the Scientific Validity and Acceptance of ‘Repressed Memory’ Theory.” I summarize these opinions briefly here:

1) Traumatic experiences are strongly memorable. As most people know from personal experience, terrifying or painful experiences are vividly remembered long after they have happened. This impression is supported by numerous scientific studies where individuals who were known to have experienced a traumatic event were evaluated for psychological symptoms that they displayed after the event had occurred. In Appendix A, I have summarized 77 such studies, evaluating more than 10,000 victims of various traumas. None of the studies reported a case of any individual who was neurologically intact and beyond the age of early childhood who was unable to remember the traumatic event that he or she had experienced.

2) Nevertheless, some have claimed that it is possible for certain people to “repress” the memory of a traumatic event – that is, to become *unable* to remember the event because the memory is somehow excluded from consciousness. This theory is often termed the theory of “repressed memory.”

3) However, the theory of “repressed memory” (sometimes also called “systematized dissociative amnesia”) is not generally accepted in the relevant scientific community. Indeed, the annual number of peer-reviewed scientific articles published worldwide on the theory of “repressed memory” has fallen almost to zero in the last ten years. Specifically, as shown in Appendix A, the leading medical search engine, PubMed, yielded a total of only 73 articles written in the entire world scientific literature in the last nine years that were identified by the search term “dissociative amnesia” (which is the term now used to cover “repressed memory” and several other forms of amnesia). By contrast, when one enters other psychiatric diagnoses for comparison, one finds that PubMed identified 3,072 articles for panic disorder; 4,867 articles for anorexia nervosa; 6,590 articles for obsessive compulsive disorder; 13,049 articles for attention-deficit/hyperactivity disorder; and 18,263 articles for bipolar disorder. As can be

seen, the rate of publication on “dissociative amnesia/repressed memory” is tiny in comparison to that for other psychiatric disorders. Moreover, within the 73 articles on “dissociative amnesia,” the great majority describe forms of amnesia other than “repressed memory.” Indeed, there are fewer than ten articles describing purported cases of “dissociative amnesia/repressed memory” in the last nine years indexed by PubMed. When one compares this number – only one or two such articles per year – against the hundreds or thousands of papers published annually regarding other psychiatric disorders, it becomes clear that there is hardly any remaining scientific attention to the notion that individuals could develop amnesia for a seemingly unforgettable traumatic event, and then somehow recover this memory at a later date.

4) Although the theory of “repressed memory” has been the subject of peer review and publication, none of these publications has successfully demonstrated the existence of “repressed memory” in a methodologically sound manner.

5) No medical or psychological test can provide objective verification that an individual has “repressed” a memory or has later “recovered” the memory after a period of “repression.” Thus, a diagnosis of “repressed memory” is ultimately based only on an individual’s self-report of having experienced amnesia – and such self-reports have been shown in peer-reviewed studies to be unreliable.

6) Given the absence of an objective test for “repressed memory,” and the consequent need to rely on individuals’ self-reports, there is no way to calculate an error rate when the diagnosis of “repressed memory” is proposed – and indeed that error rate may well be 100%.

Since there is no methodologically sound scientific evidence for the existence of “repressed memory,” what would explain Mr. Doe’s claim that he “repressed” and later “recovered” the memory of his alleged experiences of sexual abuse? Logically, there are two scientifically plausible explanations for his account, namely 1) that some or all of the alleged sexual contact actually occurred, and that Mr. Doe was in fact *able* to remember the abuse prior to 2014, despite his claim to the contrary; or 2) that the alleged sexual contact did not in fact occur, and that the reason Mr. Doe was unable to remember it is that it did not exist to be remembered in the first place.

Each of these two explanations, in turn, logically divides into two subcategories. The first two of these are that: 1a) some or all of the sexual contact actually occurred, and Mr. Doe knows that he has always been able to remember it, but is deliberately feigning that he had amnesia; or 1b) some or all of the sexual contact occurred, but Mr. Doe genuinely believes (albeit erroneously) that he was unable to remember it. The second two subcategories are that: 2a) the alleged sexual contact did not in fact occur, and Mr. Doe knows this, but is intentionally fabricating the story; or 2b) the alleged sexual contact did not in fact occur, but Mr. Doe has unintentionally developed false memories for these events, and now believes (albeit erroneously) that they actually happened. In many instances where an individual is alleging “repressed memory,” the actual case may be a combination of the above four possibilities.

Let me elaborate further with regard to explanation 1b. Even assuming, for purposes of discussion, that one could prove that the abuse happened exactly as described, one still also has the burden to prove that Mr. Doe was *unable* to remember the abuse. In this case, however, from the records I have reviewed, there appears to be no independent or objective evidence that Mr. Doe actually experienced amnesia relating to the putative abuse. Rather, there is only his personal statement that he could not remember it. However, research has shown that such statements are not trustworthy, because individuals may genuinely believe that they had forgotten an event for a long period of time, even though it can be proven that they were in fact able to remember the event during that period of alleged amnesia. This type of error has been called the “forgot-it-all-along” effect (Schooler, Bendiksen, & Ambadar, 1997).

Many studies have demonstrated this phenomenon of forgetting of prior remembering under laboratory conditions. For example, Geraerts and colleagues (Geraerts et al., 2006) recruited study participants who reported a history of sexual abuse, some of whom claimed to have always remembered the abuse and others of whom claimed that they had forgotten, and subsequently “recovered” memories of the abuse. The investigators also recruited a third group of participants reporting no history of abuse. In one experiment, the investigators presented subjects from all three groups with a memory task involving words (“visit 1”). Following the presentation, the subjects returned for two further visits at which they received two successive cue-recall tests of their memory for the words (visits 2 and 3). The investigators found that at the time of visit 3 (the second round of cue-recall testing), subjects often forgot that they had remembered a given item at the time visit 2 (the first round of cue-recall testing); in other words, they forgot that they had previously been able to remember the item. Interestingly, these errors – forgetting of prior remembering – were more frequent in the participants who claimed to have forgotten and subsequently “recovered” memories of childhood sexual abuse, as compared to the group of participants who had always remembered sexual abuse and as compared to the group who reported no history of sexual abuse. These findings suggest that individuals claiming to have recovered previously forgotten memories of childhood sexual abuse were more prone to the “forgot-it-all-along” effect.

Geraerts and colleagues then considered a possible criticism of their findings, namely that underestimating one’s previous remembering of neutral words might not necessarily indicate a tendency to underestimate prior remembering of autobiographical events such as sexual abuse. Therefore, in a second experiment, the investigators again recruited the same three types of participants: those reporting continuous memories of childhood sexual abuse, those reporting that they had forgotten and subsequently “recovered” memories of sexual abuse, and participants reporting no history of sexual abuse. Participants in all groups were then asked at visit 1 to recall various childhood events that they had experienced. Subsequently, the participants were reevaluated regarding their recall of these childhood events after two months at visit 2 and after a further two months at visit 3. As in the previous experiment involving words, participants often failed at visit 3 to recall that they had successfully remembered a given autobiographical event at visit 2. Once again, these errors of underestimating prior remembering were more common in the group reporting a history of

“recovered” memories of childhood sexual abuse as opposed to the group reporting continuous memories of abuse and the group reporting no history of abuse. The investigators concluded that individuals claiming to have “recovered” previously forgotten memories of childhood sexual abuse were likely more vulnerable to “forgot-it-all-along” errors than other individuals. These and other reports (Arnold & Lindsay, 2002; Padilla-Walker & Poole, 2002; Raymaekers, Peters, Smeets, Abidi, & Merckelbach, 2011) demonstrate that one should not accept at face value an individual’s self-report that he or she had been unable to remember an event at an earlier point in time.

The above discussion represents only an example of an analysis of one of the four possibilities under consideration. It is beyond the scope of my report to attempt to discriminate among these possibilities in detail in Mr. Doe’s case. However, it is my opinion, to a reasonable degree of scientific and medical certainty, that one or a combination of these four possible explanations (rather than “repressed memory”) accounts for Mr. Doe’s claims regarding his memory for the events in question. In other words, regardless of which of these possibilities (alone or in combination) is true, Mr. Doe did not “repress” and subsequently “recover” “memories” of the alleged sexual abuse by Mr. Brooks and Mr. Harnett.

In summary, the scientific literature has shown that traumatic events are strongly memorable. Nevertheless, some have claimed that it is possible to “repress” the memory of a traumatic event, such that the individual becomes *unable* to remember the event afterwards. However, this theory of “repressed memory” is not scientifically valid. It is not generally accepted in the relevant scientific community; it has never been demonstrated to occur in a methodologically sound peer-reviewed published study; and it is not subject to any ascertainable error rate. Therefore, if an individual claims to have “repressed” the memory of a traumatic event, it follows that either 1) the event occurred and the individual was actually able to remember it, despite his or her claim to the contrary, or 2) the event did not occur and the “memory” represents either a fabricated or a false memory, despite his or her claim to the contrary.

Respectfully submitted,



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IV. References

Arnold, M. M., & Lindsay, D. S. (2002). Remembering remembering. *J Exp Psychol Learn Mem Cogn*, 28(3), 521-529.

Geraerts, E., Arnold, M. M., Lindsay, D. S., Merckelbach, H., Jelicic, M., & Hauer, B. (2006). Forgetting of prior remembering in persons reporting recovered memories of childhood sexual abuse. *Psychol Sci*, 17(11), 1002-1008.

Padilla-Walker, L. M., & Poole, D. (2002). Memory for previous recall: a comparison of free and cued recall. *Applied Cognitive Psychology*, 16(5), 515-524.

Raymaekers, L., Peters, M. J., Smeets, T., Abidi, L., & Merckelbach, H. (2011). Underestimation of prior remembering and susceptibility to false memories: two sides of the same coin? *Conscious Cogn*, 20(4), 1144-1153.

Schooler, J., Bendiksen, M., & Ambadar, Z. (1997). Taking the middle line: can we accommodate both fabricated and recovered memories of sexual abuse? In M. Conway (Ed.), *Recovered memories and false memories* (pp. 251-292). Oxford: Oxford University Press.

Appendix AANALYSIS OF THE SCIENTIFIC VALIDITY AND ACCEPTANCE
OF “REPPRESSED MEMORY” THEORY**I. Introduction and Definition of the Term “Repressed Memory”**

To begin with, I note that this analysis constitutes a summary (together with numerous updates) of a recently published chapter that I have co-authored in a volume published by West Group, summarizing the scientific status of the hypothesis of “repressed memory,” (H. G. Pope & Hudson, 2012) (hereinafter referred to as the “Pope-Hudson 2012 Chapter”). This chapter is provided as a supplement to this analysis. This analysis also contains additional scientific material that has appeared in the interval since the publication of the 2012 Chapter.

In order to address the scientific status of the “repressed memory” hypothesis, it is first necessary to define our terms.

When I use the term “repressed memory” or “repression” in the following analysis, I am referring to the hypothesis that an individual could develop amnesia for an *entire traumatic event*, such that the person was unable to remember the event for a prolonged interval afterwards. In addition, the hypothesis of “repressed memory” allows that at some later date, an individual would be able to “recover” the previously “repressed” memory of a traumatic event, even though that individual had previously been unable to remember that traumatic event during the interval prior to the memory “recovery.”

These terms – “repressed” and “recovered” memory – *have generally been defined in forensic settings throughout the United States in the same manner that I have just defined them above*. In a typical forensic case, an individual experiences a traumatic event, such as childhood sexual abuse at, say, age 13, and then claims to have lost all conscious access to this memory starting at some point after the abuse occurred. The individual typically claims that he or she was able to remember other events from this period of life (e.g., going to school, other activities as a teenager, etc.), but claims that he or she was unable to remember the childhood sexual abuse for a prolonged period until the “recovering” this memory many years or decades later. For example, the individual might claim to have “recovered” the memory at age 35, and might seek to toll a statute of limitations by claiming that he or she was unable to remember the sexual abuse prior to that time, and hence was unable to discover the injury until age 35.

Note that “repressed memory” must *not* be confused with ordinary forgetfulness, or with simply finding the memory so distressing that the individual did not want to think about it. Mere forgetfulness or mere avoidance of a memory would clearly not be sufficient to toll the statute of limitations in my example above, because the individual must establish that he or she was *unable to discover* the episode of sexual abuse because he or she was *unable* to remember it. Clearly, if one could toll a statute of limitations purely on the grounds of simple

forgetfulness, then the concept of a statute of limitations would effectively cease to exist. Therefore, setting aside any semantic considerations about what psychological professionals may mean by the term “repressed memory,” the fact remains that for *forensic* purposes, the term “repressed memory” must indicate specifically that an individual was literally unable to remember an event.

It follows that the term “repressed memory” does *not* refer to cases where an individual had simply not recalled a given event for a long period of time, but would have been perfectly capable of recalling the event if specifically asked about it. For example, most people, if asked, can recall events from when they were in elementary school, and can probably also recall various details from a particular class – perhaps even a traumatic event in which they were scolded by a teacher or embarrassed in front of their classmates. They may not have thought about these events in years, but this does *not* represent “repressed memory,” as it must be defined for forensic purposes, because these individuals were still *able* to remember the events.

Finally, it is useful to clarify what is meant by “unable to remember.” In the example in above, the claim of “repressed memory” would imply that someone could have approached our hypothetical plaintiff prior to the time of his memory “recovery” at age 35 and asked him, “do you remember, when you were 13 years old, that [defendant] performed [a sexual act] with you?” Under the hypothesis of “repressed memory,” our plaintiff would reply in complete honesty, “no, I have no memory of any such thing.” However, after the plaintiff's putative “recovery” of the formerly “repressed” memory at age 35, he then would be able to report that he could in fact remember these events for which he formerly had amnesia.

II. There are Many Scientifically Recognized Forms of Forgetfulness or Apparent Forgetfulness, and These Must *Not be Confused* with “Repressed Memory”

Ordinary forgetfulness: Having now defined the term “repressed memory,” it is important to be certain that this term is not confused with other, scientifically accepted, forms of forgetfulness or amnesia. First, as already explained above, “repressed memory” must not be confused with simple ordinary forgetfulness, as illustrated by our example above of memories of being in grammar school. Such memories are not “repressed,” because the individual would be able to recall them specifically asked. Similarly, it is commonplace that one may simply develop a better understanding of an event at a later time point after it happened. For example, one might be touched inappropriately as a child, but not recognize this event as sexual abuse because one was too young to understand what was happening. Then, as an adult, one might be reminded of the event, reflect upon it from the vantage point of an adult, and recognize that it was in fact an episode of sexual abuse. But again, this scenario does not represent a “recovery” of a “repressed memory,” because the individual was always *able* to remember the event, even though they did not fully understand its significance at the time that it happened.

Ordinary forgetfulness misconstrued as “repressed memory”: It should also be noted that individuals may *believe* that they were unable to remember a traumatic event during some earlier period of life, even though in fact they were perfectly able to remember that event. Indeed, both individual published case reports and subsequent scientific studies have shown that individuals may often *forget that they were able to remember* an event. I will discuss this research in greater detail below. And even more detailed discussion of these studies is supplied in section § 20:10, Part 1 of the Pope-Hudson 2012 Chapter.

Thus, it is important to realize that it is insufficient for individuals to merely *believe* or *claim* that they were unable to remember a traumatic event, since such claims have been demonstrated to be very fallible.

Amnesia due to biological causes: The hypothesized phenomenon of “repressed memory” likewise should not be confused with amnesia due to biological causes, such as the amnesia that might occur as a result of a head injury in a car accident, or following an epileptic seizure, or as a result of a “blackout” attributable to drug or alcohol intoxication. In one respect, these types of biological amnesia are somewhat similar to “repressed memory,” in that the individual is unable to remember a block of time. However, in contrast to the notion of “repressed memory,” the individual with biological amnesia is never able to *recover* the memory because a biological insult to the brain has prevented the memory from being encoded in the brain at the time. In other words, stated colloquially, the memory is never laid down on the brain’s “hard drive” in the first place, and thus by definition cannot later be recovered. Moreover, biological amnesia also differs from “repressed memory” in that “repressed memory” presumably applies to a traumatic event, whereas biological amnesia would affect memory for *all* events, good and bad, in a given time interval, regardless of whether they were traumatic or not.

Early childhood amnesia: Another form of amnesia due to biological causes is the amnesia that we all experience for events that occurred in the first years of early childhood. Once again, amnesia for events occurring at ages 1 or 2 does not represent “repressed memory,” because it is simply attributable to the biological immaturity of the developing brain, and thus has a simple neurological origin, rather than being a response to a traumatic experience. Like other forms of biological amnesia, memories of very early childhood cannot be recovered, because the immature brain was not sufficiently developed to encode them in the first place. Also like other forms of biological amnesia, early childhood amnesia affects memory for *all* events, good or bad, regardless of whether they were traumatic or not. Indeed, many people will report that their earliest childhood memories involve traumatic childhood events, rather than benign events – and this is exactly the opposite of what would be predicted by the hypothesis of “repressed memory,” which would claim that one more frequently should have amnesia for traumatic events than for benign events. In short, early childhood amnesia is entirely different from, and should not be confused with, the notion of “repressed memory.”

Incomplete encoding: Likewise, “repressed memory” should not be confused with the common phenomenon of amnesia for certain *parts* of a traumatic experience. For example, if one is threatened with a gun, one may remember vividly what the gun looked like, but may not

be able to remember the assailant's face, because all of one's attention was focused on the threat of the gun. This is not "repressed memory," but a normal phenomenon known as "incomplete encoding," in which one focused on elements critical to their survival (i.e., the threat to their life posed by the gun) while ignoring less critical aspects of the situation (the assailant's facial appearance). By contrast, the theory of "repressed memory" would postulate that it would be possible for someone to develop amnesia for the *entire* traumatic experience of being threatened with a gun.

Generalized amnesia: In rare cases, individuals are seen who develop global amnesia for their entire identities, or for an entire block of decades of time. In a typical case of such global amnesia, an individual may be brought to an emergency department with no knowledge of his or her name, address, occupation, or any other identifying features. In other cases, the individual may still retain the memory of some autobiographical information, but may lack all memory of events that happened over, say, the last 14 years. In some of these rare cases of generalized amnesia, it is possible to identify a neurological lesion in the brain that has caused the phenomenon, but sometimes cases of generalized amnesia are observed where it is not possible to identify a specific neurological etiology. Such cases are sometimes called, by default, "psychogenic amnesia," because there is no documented neurological cause. However, it should be recognized that the absence of a recognizable neurological lesion provides no evidence that the amnesia was caused purely by some psychological problem. Moreover, generalized amnesia is different from "repressed memory" for a traumatic event in any case, in that the individual experiences amnesia for an *entire block of time or even a lifetime of information, encompassing events both good and bad, traumatic and nontraumatic, rather than selective or systematized amnesia for a particular traumatic experience.*

Feigned amnesia: There are also scientific reports of individuals who may feign amnesia even though they are actually able to remember. Such cases clearly do not represent "repressed memory," in that the "repressed memory" hypothesis presumes that the individual's amnesia is genuine rather than feigned. Feigned amnesia may be apparently intentional (e.g., a murderer who claims to have amnesia for his act of murder, but later admits to having been able to remember his actions). Alternatively, feigned amnesia may be seemingly unintentional, as in the case of so-called "*pseudoneurological*" or "*functional*" amnesia, where the amnesia may occur in conjunction with other apparently feigned symptoms, such as pseudoseizures or pseudoanesthesia.

It is of relevance that the international standard for psychiatric diagnosis, the International Classification of Diseases, has acknowledged that pseudoneurological "amnesia" represents a legitimate diagnosis. The International Classification of Diseases, 10th Edition, (ICD-10) classifies "dissociative amnesia" under the heading of "F44—dissociative (conversion) disorders," along with "dissociative convulsions," "dissociative anesthesia and sensory loss," and other pseudoneurological symptoms. In this instance, ICD-10 is using the term "dissociative amnesia" in the context of disorders that have no genuine biological basis in the brain. Thus, ICD-10 is indicating that "dissociative amnesia," (the category that would be most closely

related to “repressed memory”) is effectively a feigned symptom, such that its relationship to true amnesia is similar to the relationship of pseudoseizures to true seizures.

For a more detailed discussion of feigned amnesia, please see § 20:14 in the Pope-Hudson 2012 Chapter.

Deliberate nondisclosure: Many scientific studies have documented that individuals will often simply choose not to disclose sensitive information that they actually remember perfectly well. Such nondisclosure is particularly common when individuals are asked about sensitive topics such as alcohol or drug use, history of legal infractions or incarceration, or HIV status. It would of course be naïve to mistakenly diagnose such deliberate nondisclosure as “repressed memory,” because in fact such individuals are perfectly capable of remembering the events, but have simply chosen to withhold the information.

Summary: In summary, there are many forms of forgetfulness, amnesia, or seeming amnesia that are well recognized by scientists, and that are abundantly documented in the scientific literature. These include **1) ordinary forgetfulness; 2) biological amnesia; 3) incomplete encoding for part of a traumatic event; 4) generalized amnesia; 5) feigned or pseudoneurological amnesia; and 6) deliberate nondisclosure.** It is critical that one not confuse these well-known and scientifically accepted phenomena with the highly controversial notion of “repressed memory,” which is not scientifically accepted. As will be shown in the course of the remainder of my discussion below, there are no published scientific studies of human forgetfulness or amnesia that cannot be readily explained by one or more of the above six well-recognized phenomena. Thus there is no need to postulate the existence of a novel hypothesis, namely “repressed memory,” to explain any of the existing studies in the scientific literature.

III. It is Important to Avoid Several Other Terms Currently in Use, Because They Have Ambiguous Meanings and Hence are Potentially Misleading

“Dissociation”: There are a number of other terms that sometimes appear in both forensic and scientific documents, but which unfortunately have no agreed-upon meaning, and hence may be seriously misleading as a result of their ambiguity. One of these terms is “dissociation.” The term “dissociation” has been used in the scientific literature to describe a wide range of very different phenomena. For example, when one is intensely focused on a task, one may fail to pay attention to surrounding events or to the exact passage of time, and this phenomenon is sometimes called “dissociation.” Alternatively, in situations involving severe anxiety, one may feel that everything going on around oneself is unreal or as if “in a dream.” This common phenomenon, which is technically called “depersonalization” or “derealization” in psychiatry, is also often labeled as a form of “dissociation.” The ambiguity of the term “dissociation” becomes even more evident when one looks at the widely used Dissociative Experiences Scale, which contains 28 individual items presumed to be features of “dissociation.” These items include such ordinary phenomena as becoming so absorbed in watching television that one

becomes unaware of events going on around oneself, or staring off into space and not being aware of the passage of time, or talking aloud oneself. But also included among these items is the phenomenon of having auditory hallucinations (people who “hear voices inside their head that tell them to do things or comment on things that they are doing”). Thus, the term “dissociation” has become so broad and so ambiguous that it can be used to describe everything from ordinary distractibility to full-scale hallucinations. Indeed, one major research group with expertise in this area conducted a study on the features of “dissociation” and concluded that the term as a “misnomer.” This study (Briere, Weathers, & Runtz, 2005) is discussed and cited in the Pope-Hudson 2012 Chapter, section § 20:16, Part 1.

Widespread use of the term “dissociation” provides no evidence that scientists accept “repressed memory”: Since the term “dissociation” is so broad and has such a wide range of meanings, it is not surprising to see that this term frequently appears in scientific papers. However, the frequent use of this term does *not provide any evidence that scientists accept “repressed memory,”* since the term “dissociation” covers a wide range of different phenomena, many of which have nothing to do with the hypothesis of “repressed memory” at all.

“Dissociative amnesia”: An even more misleading term, with similar ambiguity of meaning, is the term “dissociative amnesia.” In the past, many writers have used this term as though it were synonymous with “repressed memory,” – and even I have used term in prior publications in earlier years as though it were synonymous with “repressed memory” (e.g., (H. G. Pope, Poliakoff, Parker, Boynes, & Hudson, 2007a). However, it has become obvious in recent years that numerous peer-reviewed scientific papers are using the term “dissociative amnesia” to refer to phenomena entirely different from “repressed memory,” such as incomplete encoding, generalized amnesia, and even pseudoneurological amnesia – terms that I have just discussed above. For a detailed presentation of the ambiguity of the term, “dissociative amnesia,” together with citations to specific scientific articles that use this term in entirely different ways, please see the Pope-Hudson 2012 Chapter, section § 20:16, part 2.

Use of the term “dissociative amnesia” provides no evidence that scientists accept “repressed memory”: Since the term “dissociative amnesia” has so many different meanings, it should be avoided in forensic settings because of its potential ambiguity. As just mentioned, the term “dissociative amnesia” has now come to embrace various phenomena that are scientifically accepted (e.g., incomplete encoding, generalized amnesia, and pseudoneurological amnesia) together with another phenomenon that is highly controversial and not scientifically accepted, namely “repressed memory.” Therefore, recent articles using the term “dissociative amnesia” provide no evidence that scientists accept one particularly dubious subcategory of “dissociative amnesia,” namely “repressed memory.” I will discuss these recent articles in a subsequent section of this report.

“Traumatic amnesia”: The term “traumatic amnesia” is also sometimes used as if it were synonymous “repressed memory,” but should also be avoided because of its potential ambiguity. In particular, the term “traumatic amnesia” is also widely used in neurology to refer

to amnesia caused by biological trauma such as a head injury. Thus, I will avoid the term “traumatic amnesia” in the following discussion as well.

“Psychogenic amnesia”: As already mentioned above, the phenomenon of global amnesia, wherein individuals may forget their entire identities, or entire decades of time, is sometimes referred to as “psychogenic amnesia” by default in instances where no clear neurological etiology can be demonstrated. However, as also noted above, there is no methodologically sound evidence that such amnesia is in fact caused by psychological factors, simply because investigators have failed to identify a specific neurological lesion in certain cases. In any case, the term “psychogenic amnesia” should not be confused with “repressed memory,” because “psychogenic amnesia” can refer to generalized amnesia for an individual's entire history or entire identity, rather than for a particular traumatic event. Thus, the term “psychogenic amnesia” must also be avoided because of ambiguity.

“Recovered memory”: Some individuals use the term “recovered memory” to refer to memories that have allegedly been “recovered” after a prior period of “repression.” However, the term “recovered memory” is also widely and commonly used to refer to the more ordinary phenomenon of recalling something after an interval of ordinary forgetfulness. Therefore, the term “recovered memory” should also be avoided because of its potential ambiguity. Specifically, all scientists recognize that individuals can experience an ordinary “recovered memory” for something that has been forgotten for a while, but this does not imply that scientists accept that individuals could “recover” a memory for something that had been “repressed” – i.e., that the individual had previously been completely *unable to remember*.

IV. Studies of Brain Mechanisms Provide No Evidence of the Existence of “Repressed Memory”

It should also be recognized that various mechanisms have been proposed to explain how “repressed memory” might hypothetically occur – i.e., how the brain might hypothetically be able to develop amnesia for a seemingly unforgettable traumatic event. Such studies include both human and animal studies involving cellular biology, neuroimaging of the brain, and other such scientific methods. But once again, the putative psychological or neuropsychological mechanism by which “repressed memory” might hypothetically occur in the brain is irrelevant to the question of whether or not the hypothesis of “repressed memory” is scientifically accepted in the first place. In other words, *speculations about how the brain might hypothetically “repress” a memory do not tell us whether real people actually can “repress” a memory.*

To illustrate the above logic with an analogy, consider the observation that animals with larger brains are generally more intelligent than animals with smaller brains: dogs are more intelligent than sparrows, and people are more intelligent than dogs. Consider also the abundant evidence that on average, men have larger brains than women. Combining these two observations, one might speculate that men are smarter than women. But such speculation

would be valueless, or even worse than valueless; to assess the question of relative intelligence, one would need to test actual men and actual women.

By analogy, in our present discussion of the notion of “repressed memory,” we must not be distracted by speculations about possible mechanisms whereby “repressed memory” could hypothetically occur. Instead, we must focus on the question of whether “repressed memory” actually *does* occur – and as will be shown, there are no methodologically sound scientific studies that have ever shown that this phenomenon actually occurs in real human beings.

V. The Theory of “Repressed Memory” is Not Generally Accepted in the Relevant Scientific Community

Having now carefully defined our terms in sections I-III above, I will now demonstrate that the hypothesis of “repressed memory” does not even remotely approach the threshold of having achieved general scientific acceptance. I will also demonstrate that the hypothesis of “repressed memory” has never been documented to exist in any methodologically sound peer-reviewed scientific studies. Finally, I will demonstrate that even if one were to examine studies that purport to demonstrate “repressed memory” (or that have been misinterpreted as evidence of “repressed memory”), these studies exhibit no demonstrable error rate.

A. There is large literature of recent peer-reviewed scientific studies in prestigious journals, together with major chapters and books published by internationally recognized scientists, which have repeatedly questioned the validity of “repressed” and “recovered” memory.

Over the last 25 years, numerous peer-reviewed articles have appeared in major scientific publications, questioning the validity of the hypotheses of “repressed” and/or “recovered” memory (e.g. (Berntsen & Rubin, 2014; Boakes, 1995; Bonanno, 2006; Bonanno et al., 2002; Brandon, Boakes, Glaser, & Green, 1998; Brown, Nicholson, Aybek, Kanaan, & David, 2014; Campbell, 1995; Epstein & Bottoms, 2002; Frankel, 1993, 1995; Geraerts et al., 2006; Giger, Merten, & Merckelbach, 2012; Goodman et al., 2003; Hayne, Gary, & Loftus, 2006; Holmes, 1990; Huntjens, Verschuere, & McNally, 2012; Kihlstrom, 1997, 2002, 2004; Lief, 2003; Lindsay, Hagen, Read, Wade, & Garry, 2004; Lindsay & Read, 1995; E. Loftus, 1993; E. F. Loftus & Davis, 2006; E.F. Loftus & Pickrell, 1995; Lynn et al., 2014; Lynn, Lock, Loftus, Krackow, & Lilienfeld, 2003; McElroy & Keck, 1995; McHugh, 1995, 2008; R. McNally, 2003; R. J. McNally, 2007; R. J. McNally & Geraerts, 2009; Merskey, 1996; Ofshe & Singer, 1994; Paris, 1996; Patihis, Ho, Tingen, Lilienfeld, & Loftus, 2014; Patihis, Lilienfeld, Ho, & Loftus, 2014; Piper, 1997; Piper, Lillevik, & Kritzner, 2008; Piper, Pope, & Borowiecki, 2000; H. Pope & Hudson, 1995; H. G. Pope, Jr., Hudson, Bodkin, & Oliva, 1998; Rofé, 2008; Schacter & Curran, 1995) These include peer-reviewed articles in many of the world's most prestigious medical and psychiatric journals, such as the *New England Journal of Medicine*, the *Lancet*, the *American Journal of Psychiatry*, and many others.

Prestigious scientists in these major publications have referred to "repressed memory" as "a piece of psychiatric folklore," (R. McNally, 2003) a "fairy tale belief," (Hayne et al., 2006) and the "clinician's cold fusion" (Bonanno, 2006).

In the face of these publications and commentaries, it would be impossible to assert that there is any "general acceptance" of the "repressed memory" hypothesis in the relevant scientific community; in fact, there is widespread and vociferous skepticism.

As a scientist and psychiatrist who is educated and trained in the scientific method, who participates in designing studies and carrying out research for testing hypotheses, and who is readily familiar with the threshold of required agreement in the scientific community before a particular phenomenon is considered "generally accepted," I state here that the "repressed memory" hypothesis has not even remotely achieved "general acceptance" in the relevant scientific community.

Indeed, as my colleagues and I have also noted in a recent publication (H. G. Pope, Barry, Bodkin, & Hudson, 2006), scientific studies of "repressed memory" rose to a sharp peak in the 1990's, and then rapidly waned, with a large portion of recent papers expressing skepticism of "repressed" and/or "recovered" memory. I will discuss this survey, together with subsequent analyses looking at the number of scientific studies regarding "repressed memory" published over the last several decades, in greater detail below.

B. Even if the "relevant scientific community" were narrowed down from the overall scientific literature to actual psychiatrists, the evidence demonstrates that there is still no "general acceptance" of the "repressed memory" hypothesis.

In my opinion, to a reasonable medical certainty, the material cited above in section A alone clearly demonstrates that there is no general scientific acceptance of "repressed memory." However, even if one were to assume that the writers of the above publications could somehow be dismissed or ignored, perhaps by alleging that they are not truly members of the "relevant scientific community," and arguing that the real "relevant scientific community" is instead represented by the opinions of actual psychiatrists, rather than by scientific publications, the evidence still shows that there is no general acceptance of "repressed memory."

Specifically, in a study published in the prestigious peer-reviewed *American Journal of Psychiatry* (H. G. Pope, Jr., Oliva, Hudson, Bodkin, & Gruber, 1999), we surveyed 301 board-certified psychiatrists and asked them if they felt that "dissociative amnesia" should be included without reservations in the American Psychiatric Association's diagnostic manual, *DSM-IV*. Only 35% of the psychiatrists responded that "dissociative amnesia" should be included without reservations, with 48% feeling that it should be included only with reservations (for example as a "proposed" diagnosis in the Appendix), 9% feeling that it should not be included at all, and 9% having no opinion.

This finding is particularly striking when it is remembered that the term “dissociative amnesia” *embraces several phenomena that are widely accepted by scientists (e.g., incomplete encoding and generalized amnesia) in addition to embracing “repressed memory,”* as noted above. Therefore, one might assume that some psychiatrists responding to our study, even if they were highly skeptical of “repressed memory” *per se*, would still endorse the broader term “dissociative amnesia,” because the term is sometimes used to describe legitimate and accepted phenomena. In light of this consideration, it becomes even more striking that only 35% of psychiatrists endorsed inclusion of this term without reservations. These data provide objective quantitative evidence that there is no consensus among board-certified psychiatrists about the validity of “repressed memory.”

We have also published a similar survey of Canadian psychiatrists (Lalonde, Hudson, Gigante, & Pope, 2001), showing that these individuals displayed even greater skepticism about the validity of “dissociative amnesia” – and, by extension, greater skepticism about particularly controversial subcategory of “repressed memory” – than their American counterparts.

There are no subsequent studies using similar methodology that show an opposite finding; in other words, in more than 15 years since the appearance of my study there have been no quantitative surveys suggesting that there *is* a consensus among psychiatrists or psychologists on the validity of “repressed memory.”

It is important to note that some proponents of “repressed memory” have attempted to favorably interpret surveys by arguing that a substantial majority of practicing clinicians feel that “repressed memory” is either valid or at least “possibly” valid. There are two major fallacies to this argument. First, practicing clinicians are not the “relevant scientific community,” since clinicians may or may not have sufficient scientific training to be able to evaluate the merits of a theory such as “repressed memory.” Indeed, in many states of the United States, individuals can hold themselves out as “therapists” with very little academic training. The informal observations of such therapists may be useful in generating hypotheses, but they are not properly utilized for *testing* hypotheses. For these reasons, as I have noted above, articles in the peer-reviewed scientific literature represent the true gauge of the opinions of the relevant scientific community.

Second, even if one were to assume that all clinicians were somehow legitimate scientists, it is not appropriate to pool responses of “possibly” valid with responses of “valid.” For example, many scientists would agree that there is “possibly” some form of life on Mars, at least on a bacterial level. A search for evidence of such life on Mars is currently underway. But the fact that many scientists think that this is “possible” does not mean that it is *generally accepted* in the relevant scientific community that there actually is life on Mars.

C. Consensus statements by various medical and psychiatric organizations indicate no general scientific acceptance of “repressed memory.”

Over the years, various professional organizations, such as the American Psychiatric Association, American Psychological Association, American Medical Association, and the British Royal College of Psychiatrists have issued policy or consensus statements bearing on the issue of “repressed memory” (American Medical Association, 1994; American Psychiatric Association, 2000; American Psychological Association Working Group on Investigation of Memories of Childhood Abuse, 1998; Royal College of Psychiatrists, 1997). All of these statements note the *controversy* surrounding the issue of “repressed” and “recovered” memory – showing, once again, that there is no *consensus* in the scientific community about the validity of these entities. The statements all strongly caution about accepting “recovered” memories at face value, and all acknowledge that false memories of sexual abuse or other traumas can occur.

One must not be misled by the fact that none of the consensus statements flatly states that “repressed memory” is *invalid*. This fact in no way implies that “repressed memory” is *generally accepted*. Specifically, it is entirely contrary to the advancement of science and the scientific method to assume *a priori* that a hypothesized phenomenon is valid until it is proven invalid. Rather it is the burden of those proposing a given hypothesis, such as the hypothesis of “repressed memory,” to show that the relevant scientific community considers it to be *valid*.

Stated differently, it is not my scientific burden to show that “repressed memory” has been *rejected* by a substantial majority of the scientific community, because this approach would fallaciously assume that the hypothesis of “repressed memory” is automatically valid at the outset. Instead it is the burden of “repressed memory” advocates to produce evidence that the hypothesis of “repressed memory” has come to be *accepted* by a substantial majority of the scientific community. There is nothing in any of the position statements, with their many precautions, to support the latter; the only statement that arguably comes close is the American Psychiatric Association statement in 1993 of the possibility that “...these coping mechanisms result in a lack of conscious awareness of the abuse for varying periods of time.” But by 2000, this statement no longer exists, and has been changed to “In the presence of severe or prolonged stress, people may suffer an impairment of the retention, recall and accuracy of the memories.”

In reviewing these position papers, it is also important not to be misled by statements to the effect that events such as sexual abuse can be “forgotten” for long periods of time and later remembered. As I have already cautioned above, mere *forgetting* does not equal “repressed memory.” To qualify for “repressed memory,” one would have to be *unable* to remember an entire traumatic event. No position statements from any medical or psychiatric organizations suggest that there is any scientific consensus that individuals could become *unable* to remember a traumatic event – i.e. to have the memory inaccessible to consciousness for an interval of time, and yet later be able to “recover” the memory.

As a scientist and psychiatrist familiar with the applicable threshold of acceptance applied to other hypothesized medical phenomena in determining whether there is “general acceptance,” I state here unequivocally that the material in Parts A, B, C above provides overwhelming evidence that “repressed memory” is *not* generally accepted in the scientific community.

D. Inclusion of “dissociative amnesia” as a diagnosis in *DSM-5* provides no evidence of general acceptance of “repressed memory.”

Some advocates of “repressed memory” have noted that the diagnosis of “dissociative amnesia” is included in *DSM-5*, the most recent edition of the official diagnostic manual of the American Psychiatric Association (American Psychiatric Association, 2013). However, as explained above, the term “dissociative amnesia” embraces both scientifically legitimate and accepted memory phenomena (e.g., incomplete encoding, global amnesia, etc.) together with the dubious and highly controversial phenomenon of “repressed memory.” Therefore, even though *DSM-5* recognizes the broad and heterogeneous category of “dissociative amnesia,” it does not follow that *DSM-5* indicates general scientific acceptance of the questionable *subcategory* of “repressed memory.”

By analogy, scientists in the field of zoology agree that there exists a category of “equine mammals,” which includes horses and zebras. However, there are also equine animals that are pure fantasy, such as unicorns. Just because scientists accept the existence of “equine mammals,” it does not follow that scientists accept unicorns. **Similarly, to claim that by recognizing “dissociative amnesia,” *DSM-5* therefore demonstrates general scientific acceptance of “repressed memory,” would be analogous to saying that by recognizing the existence of “equine mammals,” scientists generally accept the existence of unicorns.**

I would note that *DSM-5* describes various categories of “dissociative amnesia,” including “localized,” “generalized,” and “systematized” forms of “dissociative amnesia” – and the latter might be interpreted by some people as evidence that *DSM-5* implicitly recognizes “repressed memory.” However, even if one were to accept this position, the fact remains that the committee writing this portion of *DSM-5*, in their own publications describing the writing process (Spiegel et al., 2013; Spiegel et al., 2011), fails to cite any recent scientific articles describing cases that would meet our definition of “repressed memory.” Instead, the recent articles about “dissociative amnesia” cited by the committee are largely articles about global amnesia, cases likely attributable to incomplete encoding, or other phenomena.

E. Further evidencing a lack of “general acceptance,” cases of individuals with putative “repressed memory” have largely disappeared from the scientific literature in recent years.

The technique of bibliometric analysis: The paucity of recent peer-reviewed scientific articles reporting cases of “repressed memory,” as just noted in my comments regarding *DSM-5* above, provides *objective, quantitatively testable*, documentation of the absence of general scientific acceptance of the concept of “repressed memory.” We can perform such a test using

the technique of “bibliometric analysis.” This method – the tracking of publication rates for scientific articles on a given topic – is a well-established field, with hundreds of papers published in this area over the last 20 years. The methods of bibliometric analysis were developed in sociology starting more than 40 years ago, and are presented in detail by Menard (Menard, 1973). As summarized by Sprock and Herrmann (Sprock & Herrmann, 2000):

The method used here, called bibliometric analysis, was developed in sociology as a means of studying the dissemination of scientific knowledge (see Menard, 1973). Bibliometric analyses use quantitative methods to describe patterns of scholarly communication and include procedures such as publication counts (bibliographic analysis) and citation analysis. Computerized databases have facilitated literature reviews, the identification of articles on particular topics, and the use of references as data for bibliometric studies.

Bibliometric analysis has been used in the past to assess the degree of clinical interest and scientific acceptance regarding various diagnostic categories in psychiatry. For example, Mendlowicz and colleagues (Mendlowicz, Braga, Cabizuca, Land, & Figueira, 2006) examined publication trends for the diagnoses of “social phobia” and “avoidant personality disorder.” They found that publications regarding social phobia increased steadily over a 25-year period, whereas publications about “avoidant personality disorder” were infrequent or even declining, leading the authors to conclude that “it is unlikely that the publication of scientific articles on APD [avoidant personality disorder] will provide the empirical evidence required to validate this disorder in a foreseeable future.” Over the years since the analysis by Mendlowicz et al., publication rates for “avoidant personality disorder” have continued to be feeble, reinforcing the impression of these authors that “avoidant personality disorder” may not be a valid psychiatric disorder, but merely a cluster of features seen in patients who have primary anxiety disorders such as social phobia. Thus, bibliometric analysis suggests that “avoidant personality disorder” has not gained general acceptance in the relevant scientific community.

Bibliometric analysis has also been used as a metric for assessing whether a given disorder merited inclusion in DSM. For example, Blashfield et al. (Blashfield & Intoccia, 2000) have tracked publication rates for personality disorders and published a paper specifically suggesting criteria for inclusion of a given psychiatric diagnosis in the DSM. One of these criteria is that the disorder should show an adequate publication rate – that is, sufficient scientific interest to suggest that the disorder is scientifically accepted (Blashfield, Sprock, & Fuller, 1990). In particular, these authors suggest that for inclusion in the DSM, an article should have generated at least 50 scientific papers within the past 10 years, including at least 25 empirical studies. This recommendation should be viewed with recognition that it was written in 1990, when the overall flow of scientific papers was much less than it is currently. Specifically, if one looks at PubMed, one of the largest and most widely used medical search engines, and enters the search term “psychiatry,” one finds that the annual number of published articles brought up by the search term was between 7,000 and 8,000 for the years 1988-1990. By comparison, the annual number of such articles in 2016 to 2018 ranged from 32,000 to more than 40,000.

Thus, extrapolating the criteria of Blashfield et al. from 1990 to 2019, it would seem reasonable to expect at least 200 scientific papers, including 100 empirical studies, over the last decade to consider a diagnosis scientifically accepted today. As I will show below, the notion of “repressed memory” does not even remotely approach this “inflation-adjusted” criterion of 100 empirical studies required to merit inclusion in DSM-5.

Applying bibliometric analysis to the topic of “repressed memory”: in 2006, we conducted a survey of the number of papers published annually about various diagnostic entities in psychiatry (H. G. Pope et al., 2006). To do this, we entered various diagnoses, such as “anorexia nervosa,” “schizophrenia,” and “alcohol abuse” as search terms or keywords into PsycINFO, a major medical index, in order to find out how many articles had been published in a given year that referred to the particular diagnosis in question. For each of the three diagnoses just mentioned, we found that there was a steady flow of new published papers over the last two decades, with a gradual increase, on average, in the number of papers appearing with each passing year. However, when doing a similar search, entering the terms “repressed memory” and “dissociative amnesia” into PsycINFO, we found that there was a sharp peak of articles in the 1990s, followed by an equally sharp decline thereafter. Specifically, we found more than 100 publications in our search using these keywords for the year 1997, but by 2001-2003, the annual number of such publications had dropped to only about 25. Furthermore, upon reviewing the publications generated by our PsycINFO search for the year 2003, we only found two explicit cases of individuals with putative “repressed memory” among all publications for 2003 combined. We have also conducted subsequent analyses, looking at 2004 (H. G. Pope, Barry, Bodkin, & Hudson, 2007b) and 2005 (H. G. Pope, Barry, Bodkin, & Hudson, 2007a); these updated analyses continued to show waning scientific interest in “repressed memory,” continuing skepticism about the concept, and hardly any reports of cases. In our paper, we also tracked the annual publication rates for 25 other psychiatric diagnoses from 1990 to 2003, using the same methods. All showed a steady or rising rate of annual publications; none showed the “bubble” pattern of “repressed memory,” where a brief period of fashion was followed by a withering of interest. These findings further demonstrate that “repressed memory” has not attained general scientific acceptance.

Updated bibliometric analysis through 2018: To bring these findings up to date, I have performed an updated analysis, by looking at the term “dissociative amnesia” in the PubMed search engine, for the last nine full years, from 2010-2018. This search yielded only 73 articles throughout these nine most recent years on the topic of “dissociative amnesia.” I then compared the number of articles generated by PubMed over the same nine-year period for five other psychiatric diagnoses: panic disorder, anorexia nervosa, obsessive-compulsive disorder, attention-deficit/hyperactivity disorder, and bipolar disorder. As will be seen in Figure 1, the number of scientific articles on “dissociative amnesia” in the last nine full years is extremely small in comparison to the number of articles on any of these other psychiatric diagnoses. Indeed, on average, there have been only 8.1 articles per year on “dissociative amnesia,” as compared to 341 articles per year on panic disorder, 541 articles per year on anorexia nervosa, 732 articles per year on obsessive compulsive disorder, 1,450 articles per year on attention-

deficit/hyperactivity disorder, and 2,029 articles per year on bipolar disorder. In short, “dissociative amnesia” has an extremely small presence in the scientific literature – again indicating that there is little scientific attention on this topic.

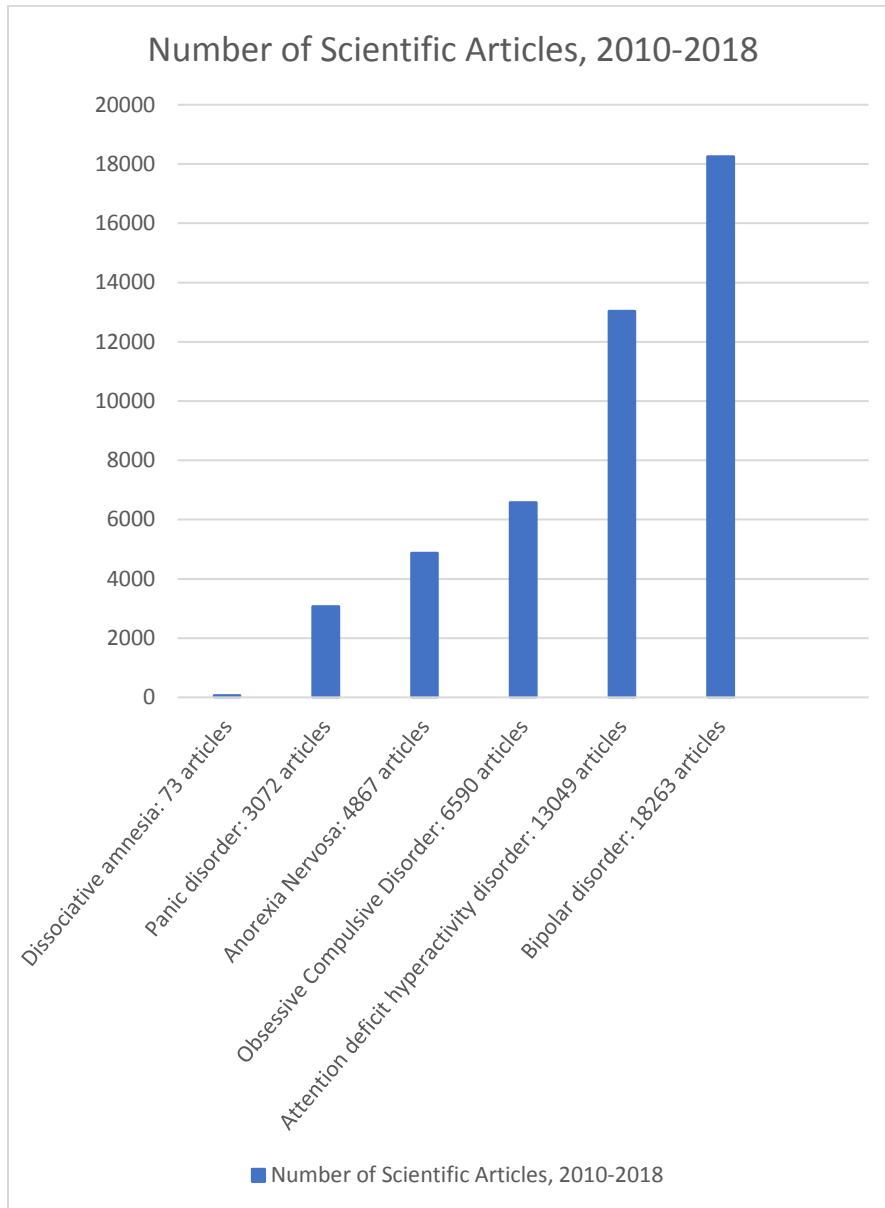


Figure 1. Number of published scientific articles identified by the PubMed search engine for “dissociative amnesia” and five representative comparison diagnoses in the four-year period from 2010-2018.

Furthermore, when we break down the small group of 73 articles on “dissociative amnesia” from 2010-2018, we find that most of these articles did not actually describe any cases of “repressed memory” at all. For example, many of the articles described only cases of generalized amnesia, where individuals developed amnesia for their entire identities, or for months or years of their lives, embracing both good events and bad, rather than developing amnesia for a specific traumatic event. For example, Staniloiu and colleagues (Staniloiu, Markowitsch, & Kordon, 2018) describe 28 cases of “dissociative amnesia,” in which almost every individual is reported to have lost memory for his or her “total life.” Similarly, many of the other 73 papers described cases of generalized amnesia for an individual’s entire identity or amnesia for months or years of time (e.g., (Chechko et al., 2018; Comparelli, Kotzalidis, Di Pietro, Casale, & De Carolis, 2013; Kuo, Lee, & Yang, 2013; Tripathi, Bharath, Desai, & Mehrotra, 2013). Clearly, these cases of generalized amnesia are entirely different from “repressed memory,” in which individuals are claimed to selectively lose their memory for a traumatic event while still having a normal memory for non-traumatic items such as their address, their occupation, or where they went to school or church.

Another large segment of the 73 articles is composed of reviews or comments on the literature that do not present any data or actual cases of their own (e.g., (Dieguez & Annoni, 2013; Granacher, 2014; Sar, 2014; Spiegel et al., 2011)). Yet another large group of articles consists of studies where the diagnosis of “dissociative amnesia” was made on the basis of items on an interview instrument or an answer on a self-administered questionnaire. For example, many of the 73 articles used the Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D) (Steinberg, 1994) to diagnose “dissociative amnesia” (e.g., (Belli et al., 2017; Ural, Belli, Akbudak, & Tabo, 2015; Weniger et al., 2013; Yayla et al., 2015)). However, the SCID-D does not ask whether the patient has experienced amnesia for a traumatic event, but instead asks more generally about “gaps in your memory” or “hours or days that seem to be missing” or finding yourself “in a place away from home and being unable to remember who you were.” Thus, one could obtain a diagnosis of “dissociative amnesia” on the SCID-D even if one had never actually had amnesia for a specific traumatic event. Among the 73 articles, still others describe amnesia associated with neurological diseases, such as traumatic brain injury (Iselin, Le Brocque, Kenardy, Anderson, & McKinlay, 2010) or encephalitis (Witt et al., 2015); some express skepticism about claims of amnesia for committing a crime (Giger et al., 2012; Peters, van Oorsouw, Jelicic, & Merckelbach, 2013), and others express skepticism about the notion that trauma can cause amnesia or dissociation in the first place (Berntsen & Rubin, 2014; Lynn et al., 2014).

In summary, after subtracting out all of the various categories of articles above, we are left with only with a small fraction of the original 73 articles that actually present data or cases suggestive of “repressed memory.” When we compare this number – only one or two such articles per year – against the hundreds or thousands of papers published annually regarding other psychiatric disorders, it becomes clear that there is hardly any remaining scientific attention to the notion that individuals could develop amnesia for a seemingly unforgettable traumatic event, and then somehow recover this memory at a later date.

Possible objections to my above analysis: In conclusion, I consider seven possible objections that might be raised in response to the analysis above and explain why none of these objections has merit.

First, people have claimed that dissociative amnesia is a common phenomenon in individuals with posttraumatic stress disorder and use this claim to support their opinion that “dissociative amnesia” is generally accepted in the scientific community. Therefore, is it possible that scientists are actually writing many articles about “dissociative amnesia,” but these articles are classified instead under the term “posttraumatic stress disorder” in PubMed, and therefore were missed in the bibliometric count? If we go into PubMed once again, and enter the term “posttraumatic stress disorder,” we find 10,340 articles published between 2010 and 2018. But if we then look for publications about posttraumatic stress disorder that also include the keyword “dissociative amnesia,” (i.e., publications that come up in PubMed when we enter the terms “posttraumatic stress disorder” and “dissociative amnesia” together in the search bar), we find that there have been only nine such publications worldwide from 2010 through 2018. This is telling evidence that scientists clearly accept the diagnosis of “posttraumatic stress disorder,” but that practically no scientists are writing about “dissociative amnesia” as a feature of posttraumatic stress disorder.

One might try to argue that perhaps scientists do accept the notion of “dissociative amnesia” in patients with posttraumatic stress disorder, but they simply have not included “dissociative amnesia” as a keyword when they published their papers. However, this argument does not withstand inspection. When a scientist submits a paper to a peer-reviewed journal, the journal will typically ask the author to suggest five or more keywords as part of the submission process. Therefore, if one were submitting an article about, say, neuroimaging findings in people with posttraumatic stress disorder, one might provide a string of keywords such as “posttraumatic stress disorder,” “war trauma,” “neuroimaging,” “MRI,” and “hypothalamus,” – or some similar string. After accepting the article, the journal would typically use the suggested string of keywords, but might change one or more of the keywords or add additional keywords of its own. But even though papers typically have five or more keywords, we find from PubMed that out of more than 10,000 papers on PTSD, only nine papers listed “dissociative amnesia” as *any* of the keywords.

Indeed, even if we do a search using the terms “posttraumatic stress disorder” and the far broader generic term “amnesia,” there are still only 50 articles for 2010 through 2018 – and many of these articles are about amnesia caused by traumatic brain injury, which is of course completely unrelated to “dissociative amnesia.”

A second possible objection to our findings is that “dissociative amnesia” is a rare disorder, and that there would be fewer publications on rare disorders as opposed to common disorders. However, according to estimates from DSM-5, in any given year, 1.8% of the American population will exhibit dissociative amnesia, which translates as more than *5 million individuals* with this disorder in the United States alone in any given year. This 12-month prevalence figure is in the same general range as the estimated 12-month prevalence for panic

disorder (2.5%), obsessive-compulsive disorder (1.2%), attention-deficit/hyperactivity disorder (2.5% of adults) and bipolar disorder (1.8%), according DSM-5 estimates, and far greater than the 12-month prevalence for anorexia nervosa quoted by DSM-5 (0.2%). Thus, the dearth of publications on “systematized dissociative amnesia”/ “repressed memory” cannot be explained by alleging that “repressed memory” is scientifically accepted, but simply rare.

Third, it might be argued that there would be many publications for disorders supported by extensive research funding, but fewer publications for disorders that lack extensive funding. Perhaps “repressed memory” simply does not get much research funding. However, even if we assume that there is a correlation between research funding and publication rates, it must be remembered that research funding itself is correlated to a degree with clinical acceptance of a disorder: disorders that are widely recognized will tend to generate research funding, whereas disorders that are not widely accepted will be less likely to generate funding. Therefore, lack of funding by itself is an inadequate explanation for the lack of publications on “repressed memory.”

Fourth, one might speculate that some disorders are more exciting than others, and that scientists may publish disproportionately about interesting and exotic disorders to the detriment of more commonplace disorders. This phenomenon has been suggested with regard to publications about neurological conditions (Al-Shahi, Will, & Warlow, 2001), where it was found that the number of publications in 1998 about stroke and transient ischemic attack was small relative to the number of people who actually experience strokes and ischemic attacks, whereas publications about certain rare neurological conditions (e.g., Creutzfeldt-Jakob disease) were frequent relative to the very small number of actual cases. However, when we look at actual numbers, we see that there were 42 articles about Creutzfeldt-Jakob disease versus 4,562 about stroke and transient ischemic attack during the year 1998. Therefore, even though the proportion of articles about stroke was still small relative to the massive numbers of actual people with stroke, the rate of publication was still robust. Thus, this argument cannot be used to explain away the dearth of articles on “systematized dissociative amnesia.”

Fifth, it might be claimed that scientists actually agree on the validity of “dissociative amnesia,” and that since this issue is no longer controversial, there are few publications. But this argument is clearly false, because other disorders with established validity, such as anorexia nervosa or obsessive compulsive disorder, have continued to generate hundreds or even thousands of publications every year.

Sixth, it might be argued, as some have (Clement, Singh, & Burns, 2003), that an analysis restricted to PubMed would miss articles that were not indexed in PubMed, and that an ideal search should use multiple search engines in order to capture the full range of publications on a given diagnosis. Although it is certainly true that PubMed does not capture all published articles, this argument would not be relevant for our comparison of publication rates across different diagnoses using PubMed across the board, since the searches for all of the different diagnoses would be similarly limited by the use of a single search engine. Moreover, it could be argued that it is actually superior to use PubMed alone, because this search engine is restricted

to well-recognized scientific journals (so-called “indexed journals”), and thus excludes lower-level journals and “fringe” journals that are less likely to represent the views of the mainstream scientific community.

Seventh, it might be argued that the term “dissociative amnesia” does not capture all of the articles written on the subject, because some may be listed under other search terms such as “repressed memory,” “recovered memory,” “psychogenic amnesia,” or “traumatic amnesia.” However, the first three of these alternative terms collectively yielded only about two dozen articles in 2010-2018 not already captured by the term “dissociative amnesia,” and the term “traumatic amnesia” generates almost entirely neurological studies involving the aftereffects of traumatic brain injury and other biological injuries. Moreover, a similar argument could be applied to comparison diagnoses in a bibliometric analysis. For example, the term “anorexia nervosa” would likely fail to capture many papers discussing anorexia nervosa but classified under keywords such as “eating disorders.”

In conclusion, even when we allow for some possible effects associated with the seven potential methodological objections enumerated in the paragraph above, these effects still could not account for differences on the order of a hundredfold between articles on “dissociative amnesia” and articles on other DSM-5 diagnoses. Moreover, when we look at articles in the last seven years that specifically address the so-called “systematized” subtype of dissociative amnesia – which corresponds to the concept of “repressed memory” as it is generally used in the courts – the number of such articles is only a small fraction of the overall articles on “dissociative amnesia,” so that we are now talking of differences on the order of the thousand fold between articles on “systematized dissociative amnesia” and articles on other diagnostic entities. A difference of this magnitude is so large that it cannot possibly be explained on the basis of the seven possibly confounding factors discussed above. Thus, our bibliometric analysis admits to only one plausible interpretation, namely that “dissociative amnesia” has garnered almost negligible scientific interest, and thus has failed to gain acceptance in the general scientific community.

F. Popular belief in “repressed memory” provides no evidence that the theory is accepted in the relevant scientific community.

Another equally spurious argument about “repressed memory” is that portrayals of this hypothesized phenomenon appear often in Hollywood movies, novels, dramas, and television shows, and that this popular acceptance is somehow evidence of scientific acceptance. But the fact that a concept enjoys *popular* belief provides no logical evidence that the *relevant scientific community* accepts the concept. For example, many mothers will claim that chicken soup is helpful for the common cold, but this popular belief has no support among infectious disease researchers, and we would certainly not allow an expert witness to testify to a jury about the medical benefits of chicken soup. Similarly, many elephant owners in Southeast Asia reported that their animals somehow anticipated the December 26, 2004 earthquake and tsunami in the Indian Ocean, and ran away from the shore well in advance of the earthquake – but

seismologists would tell us that it is not scientifically accepted that elephants can predict earthquakes. Popular belief must not be confused with scientific acceptance.

Indeed, my colleagues and I have published a scientific study suggesting that “repressed memory” is little more than a Victorian-era myth: nowhere in the literature of the world prior to 1780, in any published work, in any language, in fiction or in nonfiction, is there even a single description of an individual who exhibited a “repressed memory” (H. G. Pope, Poliakoff, et al., 2007a). Instead, “repressed memory” emerged as a romantic philosophical notion in the 1780’s, long before it was ever portrayed as a “scientific” notion. *(Note that this paper employs the term “dissociative amnesia,” rather than “repressed memory,” because the paper was written prior to the time that we recognized that the term “dissociative amnesia” had become an ambiguous term that could be misleading, as described previously. Therefore, in reading the paper today, is important to recognize that the paper is specifically talking about the concept of “repressed memory” as it is defined here in this analysis, and does not refer to the heterogeneous and ambiguous term, “dissociative amnesia.”)*

The paper reporting this study begins by noting that real psychological phenomena, which genuinely occur in human beings, such as delusions, hallucinations, dementia, depression, anxiety, and even neurologically induced amnesia, appear in published works throughout the ages – because writers observed these phenomena in people around them, and then described these phenomena in their works. Now if “repressed memory” were a genuine psychological phenomenon – an innate capacity of the brain to banish from consciousness the memory of a traumatic event – then in the thousands of years prior to 1780, numerous people would have witnessed individuals who exhibited this phenomenon, and then described cases of “repressed memory” in the course of written works. Consequently, one would expect to find numerous examples of “repressed memory” in both nonfictional works and fictional characters before 1780.

To test this question, we advertised in three languages on more than 30 Internet web sites and discussion groups, and also in print, offering \$1,000 to the first individual who could find a case of “repressed memory” for a traumatic event in any fictional or nonfictional work before 1800. The search generated more than 100 responses from individuals all over the world; it produced numerous examples of ordinary forgetfulness, infantile amnesia, and biological amnesia throughout works in English, other European languages, Latin, Greek, Arabic, Sanskrit, and Chinese before 1800, but no descriptions of individuals showing “repressed memory” for a traumatic event. Eventually one individual found a case a few years before 1800, in 1786, and was awarded the \$1,000 prize. However, this case does not change our fundamental argument that “repressed memory” is merely a recent romantic notion; it simply sets the threshold for the development of this belief a couple of decades earlier than we had originally postulated.

The absence of cases of “repressed memory” before 1780 cannot be explained simply by arguing that our ancestors understood or described psychological phenomena so differently as to make these descriptions unrecognizable to modern readers – because spontaneous

complete amnesia for a major traumatic event, in an otherwise lucid individual, is so graphic that it would be recognizable even through a dense veil of cultural interpretation. More specifically, our ancestors were certainly capable of describing trauma in their written works, and they were certainly capable of describing individuals with amnesia (such as amnesia due to head injury or dementia, for example). Therefore, if our ancestors had witnessed anyone who developed amnesia for a traumatic event, they would certainly have been capable of writing such a description – even if they did not fully understand what they had witnessed. By analogy, our ancestors had a very different notion of delusions and hallucinations from that which we have today, but descriptions of delusions and hallucinations are nevertheless readily recognizable in numerous works written prior to 1780. Therefore, if “repressed memory” existed, why would it not be identifiable in numerous texts as well?

Our paper considers several other arguments such as the one above, and concludes that there is no plausible manner in which “repressed memory” could be a genuine human psychological phenomenon, and yet somehow never appear in any written work prior to 1780. One is left, by default, with the conclusion that “repressed memory” is simply a romantic notion peculiar to our recent Western culture.

For a full scientific discussion of the above points, I refer the reader to our published paper, together with our published responses to writers who have questioned our findings (H. G. Pope, Jr., Poliakoff, Parker, Boynes, & Hudson, 2009, 2010; H. G. Pope, Poliakoff, Parker, Boynes, & Hudson, 2007b, 2007c).

In summary, the findings of the paper can be reduced to a single sentence: if “repressed memory” were a genuine phenomenon that occurred often individuals who had experienced trauma, how is it possible that no one, anywhere, in any language, in any culture prior to 1780, ever happened to notice and describe even a single case?

G. Laboratory studies of “forgetting” provide no evidence that “repressed memory” is generally accepted in the scientific community.

Laboratory studies have been conducted where individuals attempted to deliberately remember certain stimuli (such as words in a word list) and to forget others (Anderson & Green, 2001; Anderson et al., 2004). Although these studies suggest that people have some control over their ability to remember or forget words on a word list, this observation does not permit any inference that there is a scientific consensus that individuals can develop complete amnesia for a traumatic life event.

More generally, as already discussed above, any discussion of laboratory observations is tangential and potentially misleading, in that it merely distracts us from the real question of whether there is a scientific consensus on the validity of “repressed memory” for actual human beings experiencing actual traumatic events in real life. To leap from laboratory studies using word lists, brain-imaging results, or other such data, to the question of “repressed memory” in

real life represents a similar fallacy. Relying on such studies as evidence of “repressed memory” is an example of drawing conclusions without a scientific basis.

H. Looking at all of the evidence above, and even taking the position most favorable to proponents of “repressed memory,” one could not possibly maintain that the concept of “repressed memory” is *generally accepted* in the relevant scientific community.

Looking at all of the material presented in sections A through G above, and even when interpreting this material from a position most favorable to advocates of “repressed memory,” one would still, at an absolute minimum, have to concede that the concept of “repressed memory” is at the very least *controversial*. But even by admitting that “repressed memory” is *controversial*, we are already admitting that “repressed memory” is not *generally accepted* in the relevant scientific community, since it is logically contradictory to conclude that a concept is controversial and yet is simultaneously generally accepted.

Note, as a corollary to the above paragraph, it is not the burden of those who challenge the general acceptance of “repressed memory” to demonstrate that “repressed memory” is generally *rejected* in the relevant scientific community. Rather, it is sufficient for them to demonstrate simply that it is *controversial*, because this demonstration alone establishes that the concept is not *generally accepted*.

VI. Peer Reviewed Publication Concerning “Repressed Memory” has Resulted in Rejection of the “Repressed Memory” Hypothesis by the Scientific Community, Both on Grounds That it Has Not Been Proven and Because Proponents of Repressed Memory Rely Upon Studies with Substantial and Obvious Flaws That Do Not Meet Basic Scientific Standards

A. Studies of trauma victims overwhelmingly show *no* evidence of “repressed memory.”

An enormous literature of studies of individuals who had experienced numerous types of trauma has shown that individuals remember traumatic events vividly. To illustrate this fact, the Pope-Hudson 2012 Chapter contains a list and table (Appendices A and B of the Chapter) showing a non- review of studies covering more than 11,000 individuals who had experienced all manner of traumas in 77 studies. These studies contain no mention of anyone who was *unable* to remember an entire traumatic event for any reason other than the ordinary known causes of amnesia, such as 1) head injury, drug intoxication, or other biological insults to the brain, as discussed above; or 2) the amnesia of early childhood, wherein memories for most events before age 5 and virtually all events before age 3 are lost because the brain is still developing, as discussed above. Also, one must exclude, in reviewing these studies, cases where individuals reported amnesia merely for some piece of a traumatic event, since this phenomenon may well represent so-called “incomplete encoding,” as explained above (e.g., having a memory of a gun, but not the assailant's face, after an incident being threatened with a gun).

Moreover, an exhaustive review was conducted of the aftereffects of childhood sexual abuse, published by Kendall-Tackett, Williams, and Finkelhor in 1993 (Kendall-Tackett, Williams, & Finkelhor, 1993). This review examined 45 studies covering 3,369 individuals who had experienced childhood sexual abuse; although the review documents numerous sequelae of sexual abuse reported by the various studies, “repressed memory” for the abuse never appears anywhere in the review. This finding is particularly remarkable when it is considered that Linda Williams, one of the co-authors of this article, was the same Williams whose 1994 study (described below) is often cited as evidence of “repressed memory” by proponents of the hypothesis.

Adding up the more than 14,000 individuals reported in more than 120 studies covered by the above reviews, it is inconceivable that “repressed memory” could be a valid and generally accepted scientific hypothesis, yet not be demonstrated in a single unequivocal case reported throughout this vast literature. Of course, it should be acknowledged that the investigators in many of the 120 studies did not specifically ask the study participants about “repressed memory” *per se*. However, if “repressed memory” were a genuine phenomenon, it is inconceivable that none of the 120 studies would have commented, even in passing, about even a single case of “repressed memory” among the 14,000 individuals who had experienced trauma.

Given the numerous prestigious scientific papers that question “repressed memory,” as described above, together with the even more numerous studies of thousands of individuals who had experienced trauma that fail to show evidence of “repressed memory,” as just cited, it is clear that the peer-reviewed scientific literature offers no consensus that the theory is valid.

While there are some peer-reviewed papers that do purport to provide evidence, or are claimed by others to provide evidence, for “repressed memory,” it must be remembered that even if one accepts these latter papers completely at face value, this still would not permit the conclusion that there is a scientific *consensus* regarding “repressed memory”; instead, there is a scientific *controversy* regarding “repressed memory.” Furthermore, there are many severe methodological deficiencies in papers purporting to accept “repressed memory,” several of which I summarize in sections B through E below.

B. Retrospective studies purporting to document “repressed memory” fail to meet basic scientific standards and are scientifically almost valueless.

As mentioned above, there are some studies that do purport to show “repressed memory,” or studies that have at least been interpreted by some writers as providing some evidence of “repressed memory.” However, the great majority of these studies are *retrospective* investigations. In retrospective studies, individuals in the present are asked to recall whether or not they had a period of purported forgetting in the past. In the typical retrospective study, a sample of subjects (say, 1000 college students) is surveyed to ask if they recall having ever been sexually abused. A certain percentage will answer “yes” (say, 100 of the students). These individuals are then asked if there were ever a period of time during which

they could not remember the abuse. Almost always, at least some of the individuals will answer “yes” to this question. I refer to studies of this type as “do-you-remember-if-you-forgot” studies.

Some proponents of “repressed memory” have inappropriately interpreted these studies as evidence that the individuals actually “repressed” the memory of the abuse for some period of time. But in fact, such studies provide no acceptable scientific evidence of “repressed memory” at all. First, most of the studies failed to obtain confirmation that the purported episode of recalled sexual abuse actually occurred. Second, even if the episode did occur, almost none of the studies made an effort to *validate* the meaning of a “yes” answer to the question about having forgotten the event for a period of time. For example, a “yes” might mean that the subject simply had not thought about the event for some period of time, but it does not mean that the subject was *unable to remember* the event during that period of time. We could not conclude that “yes” responses indicated actual “repressed memory” unless we could go back in time, meet the individuals during the period of purported amnesia, and ask them specifically if they remembered the episode of sexual abuse in question, as explained in our hypothetical example above. Without such validation, a “yes” answer is uninterpretable. This issue has been discussed in detail in the Pope-Hudson 2012 Chapter and elsewhere (H. G. Pope, 1997).

One group of investigators did attempt to assess the validity of a “yes” answer in a retrospective study. Melchert and Parker (Melchert & Parker, 1997) surveyed 429 adults and asked them about a history of childhood abuse. Of these, 111 reported a history of sexual abuse, 78 a history of physical abuse, and 101 a history of emotional abuse. The investigators then asked the individuals, “has there ever been a time when you could not remember the sexual/physical/emotional abuse that happened to you?” The investigators received a “yes” answer from 22 of the subjects who reported childhood sexual abuse. They then asked, “If there was a time when you could not remember the abuse, why do you think you couldn’t remember it?” Among the various options for answering this question were “because I didn’t want to think about it,” and “because I was afraid of remembering it.” The option closest to “repressed memory” was “because I simply had no memories of it ever happening.” Remarkably, among the 46 subjects reporting they had forgotten one of the three forms of abuse, *there was not a single individual who endorsed the response, “because I simply had no memories of it ever happening.”* This finding graphically illustrates the fallacy of equating a “yes” response in any retrospective study with “repressed memory.” Even if some of the subjects had responded that they had “no memories of it ever happening,” one still would not have a scientifically valid test, because there is no assurance that these subjects would actually have displayed amnesia in real life if we were to go back to the time of the purported forgetfulness and ask them directly and contemporaneously whether they remembered the episode of abuse. Indeed, this point highlights a fundamental flaw in the process of attempting to retrospectively assess amnesia in cases alleging “repressed” and “recovered” memory: for those who claim that a memory has been “repressed” in the past and is now “recovered,” there is no scientifically valid method to establish that these individuals were, in fact, *unable* to remember the event at some point in the past.

A further source of error in retrospective studies is that people may *believe* that they were unable to remember, whereas in fact they have forgotten that they actually were able to remember. For example, there are cases where individuals believed that they had forgotten an experience for many years, and then were surprised when others told them that they had, in fact, remembered and discussed the experience during the period of alleged amnesia (Schooler, Bendiksen, & Z., 1997). I have already discussed this phenomenon above, and I will discuss it in greater detail in section C immediately below.

A subsequent study by Epstein and Bottoms (Epstein & Bottoms, 2002) also used the “do-you-remember-whether-you-forgot” design and concluded that the recollection of having forgotten reported by subjects would “*not* meet the [legal] standard set by the more common delayed discovery doctrine adopted by many states to accommodate repressed memories of abuse...” [p. 222; italics mine].

The mere number of retrospective studies of the above “do-you-remember-whether-you-forgot” type – about 60 studies over the last 15 years – does not heighten the validity of the findings. Even if there were 150 or 250 studies with the same flaws, this would not make “repressed memory” any more scientifically credible. For example, there have been many thousands of documented Elvis sightings since the time of Elvis Presley’s death. But the sheer number of such sightings does not permit the scientific inference that Elvis is alive.

Recent *case reports* purporting to document “repressed memory” are also almost valueless. Such reports are sometimes advanced in favor of “repressed memory,” claiming to show individual instances of “repressed” and “recovered” memories of childhood trauma. Two such case reports that are sometimes cited are those of Duggal and Srofe (Duggal & Sroufe, 1998) and Corwin and Olafson (Corwin & Olafson, 1997). However, these reports disintegrate upon critical inspection. With regard to Duggal and Srofe, an analysis by Piper and colleagues (Piper et al., 2000) concludes (page 196), “in sum, Duggal and Srofe offer neither evidence that the child experienced any traumatic, memorable event nor evidence that if she did, it occurred beyond the age of childhood amnesia. The authors also fail to support their contention that the respondent’s putatively recovered memory accurately reflected some childhood mistreatment.” Similarly, with regard to Corwin and Olafson’s case of “Jane Doe,” an investigation by Loftus and Guyer (E. F. Loftus & Guyer, 2002) exposed numerous flaws in the report that undermine its credibility. Loftus and Guyer conclude, “in sum, we believe that there are ample reasons to doubt whether Jane Doe was physically or sexually abused by her mother and to doubt much of the ‘supporting evidence’ used to support the abuse hypothesis.”

C. Recent laboratory investigations provide a simple, scientifically tested, alternative explanation for cases where individuals may come to believe that they have “repressed” and subsequently “recovered” a memory. Specifically, such individuals have suffered from ordinary forgetfulness, and there is no need to postulate some special mechanism of “repression” to explain their experiences.

A recent series of elegant laboratory investigations, conducted by the research group of Richard McNally and colleagues at Harvard University, has provided a simple and compelling explanation for the phenomenon where adult individuals may come to believe that they have “repressed” and subsequently “recovered” a memory of childhood sexual abuse. This explanation is well summarized by Dr. McNally in one of his recent papers (R. J. McNally, 2007), and therefore I quote it at some length here:

“In our research program, the typical recovered memory participant reports having been nonviolently molested (e.g., fondled) by a trusted adult (e.g., uncle) on 1 or more occasions, and having been confused and upset, but not terrified. Aged only 7 or 8 years, the average survivor did not fully understand the unpleasant experience as sexual abuse. Understanding such episodes as sexual abuse likely amplifies its negative emotional impact and hence its memorability. In the absence of such understanding, the episode is less likely to be as memorable as it would otherwise be. Lacking a conceptual framework for the molestation, the CSA [childhood sexual abuse] survivor managed not to think about the experience for many years, and this ordinary forgetting was fostered by the absence of reminders (e.g., perpetrator moved away). Years later, the abuse survivor encounters reminders that trigger recollection of the long-forgotten experience from the perspective of an adult. Because the event was not understood when it occurred and was not experienced as traumatic, no special dissociative mechanism is needed to explain why the person did not think about it for so long. Once CSA survivors in our research program have recalled the event as adults, usually outside the context of therapy, they tend to experience intense distress, and nearly one third of them qualify for PTSD.” (p. 1086)

In a paper, entitled “A New Solution to the Recovered Memory Debate,” (R. J. McNally & Geraerts, 2009), McNally and co-author Elke Geraerts expand upon the above explanation and provide scientific documentation from studies in their own laboratory to support it. Specifically, they point out that in their studies, many adults who had apparently experienced childhood sexual abuse indicate that they were not terrified or extremely traumatized at the time of the abuse, but merely perceived the experience as bizarre, disgusting, or confusing. As children, these individuals typically failed to understand the experience as sexual or abusive at the time, and thus failed to perceive it as particularly striking or memorable. Therefore, especially in the absence of reminders about the sexual abuse, these individuals hardly ever thought about it in the ensuing years, even though there was in fact no evidence that they were actually *unable* to remember it. Indeed, in some cases, these individuals simply forgot the fact that they had recalled the abuse from time to time, thereby giving themselves the illusion that they had had amnesia for it.

Indeed, McNally's research group has shown, under laboratory conditions, that many individuals could recall specific autobiographical events during one visit to the laboratory, and then would forget that they had remembered these events when they returned to the laboratory two months later and were asked specifically whether they had remembered the events at the time of the previous visit (Geraerts et al., 2006). This experiment provides graphic evidence that individuals can feel that they have “recovered” a memory of an event, even though in reality they were demonstrably able to remember the event earlier. Thus, there is no need to postulate a novel brain mechanism of “repressed memory” to explain the phenomenon where individuals report that they have recently “recovered” a memory that they believe was previously inaccessible.

D. Prospective studies purporting to document “repressed memory” also contain fatal scientific flaws.

As the above paragraphs have illustrated, retrospective studies are fraught with severe methodological flaws, including the simple fact that people demonstrably forget that they were capable of remembering all along. Therefore, a more scientifically valid method for testing the validity of “repressed memory” is through *prospective studies*. In prospective studies, a traumatic event is known to have occurred, and subjects are interviewed at a later date to see if they remember the experience.

Although this design is fundamentally sound if correctly performed (see Section VII below), the available prospective studies *provide no acceptable scientific evidence* that “repressed memory” actually occurred in any of the cases (for a detailed discussion of these studies, see the Pope-Hudson 2012 Chapter section § 20:24, Part 5c).

For example, subjects in some prospective studies were under age five, and in some cases even under age one, at the time of the purported trauma, and hence likely to have experienced amnesia simply as a result of ordinary childhood amnesia (a phenomenon attributable to the immaturity of the developing brain, as discussed above, and having nothing to do with “repressed memory”). Second, many of the available prospective studies provided inadequate documentation that the purported traumatic event actually occurred. Third, some studies included individuals who had experienced relatively minor episodes of sexual abuse (for example, simply being touched inappropriately, perhaps only on a single occasion) – which may not have been perceived by a young child as particularly memorable, and hence simply forgotten (as described above). Fourth, and most importantly, subjects in some of the studies (most notably the often-quoted study of Williams (Williams, 1994)) were *never actually asked* whether or not they remembered the purported episode of childhood sexual abuse; instead, they were simply asked about memories of sexual abuse or traumatic events in general. If subjects did not mention the index episode of sexual abuse when asked, the investigators *did not follow up and specifically ask the subjects about their known abuse incident to find out whether the subjects remembered it or not*.

It is a grave error to conclude that *nondisclosure* of an event indicates that one has *repressed the memory* of that event. This fact is demonstrated in an extensive body of studies that have consistently revealed substantial rates of underreporting by people interviewed about all manner of life events. For example, a series of studies undertaken by the United States Department of Health, Education, and Welfare (reference citations in the Pope-Hudson 2012 chapter) addressed the question of whether individuals would correctly report known events from their past to interviewers. One study, for example, found that 28% of individuals interviewed by trained researchers failed to report a one-day hospitalization they were known to have undergone within the previous year. In another, 35% of respondents, when interviewed, did not report a doctor's visit that had occurred within the past two weeks. In another example, 54% failed to report a hospital admission occurring within 10 to 11 months prior to the interview. Nondisclosure has also been documented in many other studies in settings in which people are interviewed about sensitive or embarrassing information, including alcohol consumption, cigarette smoking, drug use, history of drunk driving charges, arrest records, HIV infection, epilepsy, history of psychiatric disorders, and history of having been a victim of a crime. Examples of underreporting relative to crime can be seen in a 1981 report from the National Crime Survey, wherein known crime victims underreported burglaries by 14%, robberies by 24%, and assaults by 64%. These findings are consistent with underreporting when interviewees are asked about sexual abuse. These findings completely undermine the notion that such nondisclosure can be equated with "repressed memory."

Another prospective study of childhood physical and sexual abuse by Della Femina et al. (Della Femina, Yeager, & Lewis, 1990) provides graphic evidence that nondisclosure should not be erroneously equated with "repressed memory." In this study, the investigators interviewed a group of 69 young adult men about whether they had been abused as children. Eighteen of the 69 men in this group denied on interview that they had been abused in childhood, even though the investigators had old records showing that the abuse had actually occurred. However, Della Femina et al. did not make the error of assuming that these men exhibited "repressed memory," and instead managed to go back and perform "clarification interviews" with eight of these 18 men. In the clarification interview, the investigators asked the men directly about their known history of abuse, and importantly *all of these men admitted that they actually remembered the abuse, but had simply chosen not to disclose it at the time of their initial interview*. This finding illustrates once again that it is inappropriate and naïve to take initial non-disclosure at face value as evidence of "repression." Failure to disclose, for a variety of reasons, is a well-known and well-documented occurrence in survey studies.

Another large prospective study by Goodman et al. (Goodman et al., 2003) followed 175 individuals who had experienced documented childhood sexual abuse and failed to find evidence of any "special memory mechanisms unique to traumatic events" (p. 117). The study cautioned that "failure to report CSA [childhood sexual abuse] should not necessarily be interpreted as evidence that the abuse is inaccessible to memory..." (p. 113).

The conclusions of Williams and colleagues are even further repudiated by another recent study by Bonanno and colleagues (Bonanno et al., 2002), who interviewed 67 individuals

who had experienced documented child sexual abuse, obtained from records of Child Protective Services in Washington DC. These individuals were at least age 6 at the time of the documented abuse (and hence unlikely to be the subject of infantile amnesia). All had experienced genital contact or penetration from a family member. The investigators interviewed these individuals at a mean 7.1 years after the initial abuse assessment. First, without disclosing their knowledge of the subjects' history of sexual abuse, the investigators simply asked the interviewees to describe "the most distressing event or series of events they had ever experienced." In response to this question, only 44 (66%) of the interviewees described the experience of sexual abuse, whereas 23 (34%) did not. This figure is very similar to that obtained in the Williams study, where 38% did not disclose their known index episode of sexual abuse when asked a generic question. However, Bonanno and colleagues did not make Williams' error of assuming that the non-disclosers had "repressed" the memory. Instead, they conducted a subsequent structured interview asking more directly about sexual abuse experiences. On this second interview, virtually all of the non-disclosers acknowledged experiences of sexual abuse, with only two subjects still denying abuse. Interestingly, these two subjects were rated as showing high levels of shame on interviewing, suggesting that they had not forgotten their abuse experience, but were still intentionally withholding the information from the interviewer. Bonanno and colleagues make no suggestion that these two individuals were "repressing" their memories.

In summary, as I have discussed in greater detail in the Pope-Hudson 2012 Chapter, there are currently a total of seven prospective studies of memory of childhood sexual abuse, and none provides any satisfactory evidence of "repressed memory." Specifically, four of the studies, including the Della Femina, Goodman, and Bonanno studies cited immediately above, together with one other study by Widom and Morris (Widom & Morris, 1997), do not even purport to show evidence for "repressed memory," and all of these four studies specifically mention the issue of nondisclosure as a phenomenon that may readily explain participants' failure to report a known episode of sexual abuse. The remaining three studies, which include the Williams study just cited, together with two other much smaller, even more seriously flawed studies (Bagley, 1995; Burgess, Hartman, & Baker, 1995), are sometimes claimed to show evidence of "repressed memory," but none has provided any evidence that non-reporting was in fact attributable to "repressed memory," as opposed to simple nondisclosure, together with factors such as ordinary forgetfulness and early childhood amnesia.

Moreover, as I have reviewed in the Pope-Hudson 2012 Chapter, various prospective studies of memory in individuals who had experienced traumas other than childhood sexual abuse – such as disasters, witnesses to disaster, kidnappings, concentration camps, accidental injuries, and medical procedures – have also failed to provide any evidence that individuals "repressed" their memories in these situations. In cases where forgetfulness or amnesia were reported, these could be readily explained by the ordinary causes of memory deficits that I have reviewed at the beginning of this chapter, without any need to hypothesize a novel mechanism such as "repression."

In summary, therefore, no prospective study has ever demonstrated that a group of individuals actually “repressed” the memory of a traumatic event, as opposed to simply forgetting it or simply choosing not to disclose an event that was actually remembered.

E. An extensive literature studying combat trauma, the Holocaust, natural disasters and the like similarly fails to demonstrate evidence for “repressed memory.”

In the Pope-Hudson 2012 Chapter, I also discuss in some detail the literature surrounding other types of trauma, such as wartime combat, torture, and natural disasters. Once again, a detailed review of this literature fails to show any acceptable scientific evidence that any of the individuals who had experienced trauma actually displayed “repressed memory.” The reader is referred to my chapter for a full discussion of these materials; I summarize them briefly in the next few paragraphs.

Combat Trauma. A thorough analysis of the extensive literature studying combat trauma fails to produce valid evidence to support the “repressed memory” hypothesis. Those studies that have described amnesia in wartime situations, beginning with World War I, cannot reasonably be interpreted as describing amnesia from “repressed memory,” because combat veterans were vulnerable to numerous ordinary biological causes of amnesia, such as loss of consciousness, grand mal seizures, severe sleep deprivation, profound fatigue and weight loss, and other neurological insults. Other widely documented factors place further interpretive limits on such studies. These include several studies in which either hypnosis or barbiturates – both of which can stimulate confabulation – were used to “reconstruct” memories of combat situations. Also, a number of investigators conducting wartime studies suspected malingering among those who reported amnesia, with some investigators even suggesting that most cases of combat neurosis and amnesia involved exaggeration or malingering, amidst terror and anxiety that were genuine. A few studies failed basic methodological requirements by failing to document traumatic events, and many of the studies offered only a collection of case reports subject to a high risk of false positive findings. An example of this phenomenon includes a case reported of “recovered memories” by Korean War veterans who remembered being present with a particular veteran, Edward Daily, at the No gun Ri massacre 40 years earlier (Moss, 2000). However, United States military records indicated that Daily was never present at No gun Ri, and instead had been working as a clerk and a mechanic in the prosaic 27th Ordinance Maintenance Company, well behind the front lines. Thus, these veterans’ “recovered memories” of having been with Mr. Daily were false.

A review of combat trauma literature demonstrates that the most prevalent cognitive disturbance in psychologically traumatized combat veterans is the intrusive recollection of terrifying events, i.e., the remembrance of traumatic events all too well. As is true with many people who suffer from psychiatric disorders, veterans with chronic stress reactions report problems with everyday memory and concentration. Such reports do not provide evidence of “repressed memory.” In short, decades of literature devoted to combat trauma have failed to establish evidence of “repressed memory.”

The Holocaust, Genocide, and Torture. Although several studies of prisoners of war and Holocaust survivors describe the usual disturbances of concentration and memory typically seen in depressed and anxious individuals, none report patients who “repressed” the memory of their trauma. An example of this is seen in Wagenaar and Groeneweg’s study of survivors of Camp Erika, a German prison camp in World War II (Wagenaar & Groeneweg, 1990). This study is sometimes erroneously cited as evidence favoring “repressed memory.” The results of this study, however, showed that all subjects remembered the camp very well even upon interview 40 years later. It is not surprising that the survivors had forgotten various details of the experience after four decades; in any case, this forgetfulness was random and not confined to the traumatic events.

Several other studies of concentration camp survivors, sometimes cited as evidence of “repressed memory,” do not survive inspection and application of basic scientific methodological criteria. Many cases of purported amnesia appear to be due to biological problems, such as loss of consciousness from head injury or other neurological insults. Furthermore, prisoners who endured months or years of repeated traumas cannot reasonably be expected to remember every traumatic event individually, and therefore this kind of forgetfulness has nothing to do with “repressed memory.” It simply represents the normal human tendency to forget individual events from a series of many similar events. Finally, studies have established that concentration camp survivors are often reluctant to describe gruesome memories.

Disaster Victims. Certain studies of victims of disasters, both natural and manmade, are also sometimes cited as evidence of “repressed memory.” Some of the studies described individuals who had amnesia for the disaster as a result of biological factors such as head injury, or as a result of childhood amnesia. However, none of the studies demonstrates that any individuals “repressed” the memory of the disaster. Indeed, many of the 77 studies presented in the Pope-Hudson 2012 Chapter Appendix A and B concerned disasters. Throughout these studies, individuals remembered the events vividly. One such example is the 1998 study by McFarlane, which found that firefighters who appeared more traumatized remembered events *better* than those who were traumatized less (McFarlane, 1998).

In summary, the most salient cognitive disturbance in combat veterans who have been psychologically traumatized is the intrusive recollection of horrifying events. The study of Holocaust victims and others subjected to repeated abuse and chronic deprivation imposed by other human beings demonstrates the retention of memory even after decades. Disaster victims likewise retain memories all too well. Decades of study focused upon trauma in these areas have failed to provide evidence of “repressed memory.” For further details on these matters, I again refer to the Pope-Hudson 2012 Chapter, where I have discussed in greater detail methodological considerations regarding wartime studies, Holocaust studies, disaster studies, and others, and explained in detail why none of these studies provides valid scientific evidence for the existence of “repressed memory.” Many of these same methodological deficiencies have been noted by other writers in the scientific literature (for example, Professor McNally’s recent book, *Remembering Trauma* (R. McNally, 2003)).

VII. Although the Hypothesis of “Repressed Memory” Can be Tested, No Methodologically Sound Test Has Demonstrated That “Repressed Memory” Can Actually Occur

A. “Repressed memory” is a readily testable hypothesis, and there is fundamentally no serious disagreement among scientists about the criteria that would be required to test it.

In Section VI above, I have summarized the scientific flaws of *retrospective studies*, *individual case reports*, and *prospective studies*. However, it would be perfectly possible to conduct a scientifically sound test of the validity of “repressed memory,” using a prospective study *if properly designed*.

As proposed in the Pope-Hudson 2012 Chapter, and also discussed in my earlier publications (H. Pope & Hudson, 1995; H. G. Pope, Jr. et al., 1998), a prospective study offering a satisfactory demonstration of “repressed memory” must satisfy two simple criteria. First, there must be evidence that a given traumatic event actually did occur. Second, there must be evidence that a group of individuals developed amnesia for the event, and that this amnesia cannot be explained by any of the more ordinary causes of forgetfulness or seeming forgetfulness enumerated in section II – such as ordinary forgetfulness, biological amnesia, early childhood amnesia, etc. In particular, one would also need to exclude the possibility of deliberate nondisclosure by individuals who actually did remember, and be certain not to misclassify such individuals as having amnesia.

A scientifically acceptable prospective study would therefore collect a large group of individuals who had experienced trauma, where the trauma was clearly documented, where the individuals were over age five at the time that the trauma occurred, where no biological causes of amnesia were present, and where the event was sufficiently traumatic that no ordinary person would be expected to forget it. Then, an investigator would interview these people some years after the time of the trauma, and ask them if they remembered the event. If any of the subjects initially denied remembering the trauma, the interviewer would follow up with a description of the known event and ask them again, in order to assess whether they were in fact *unable* to remember the event. If a substantial number of participants in this hypothetical study continued to report amnesia for the traumatic event even with this follow-up questioning, and there was no reason to expect that they would have any reason to be deliberately feigning amnesia, we would then have good scientific evidence that “repressed memory” actually occurs.

These two simple criteria represent the minimum that scientific methodology requires – but there is *no published study even remotely approaching these criteria that has ever shown a group of people who developed amnesia for a traumatic event*. As I have explained above, the prospective studies currently published that most closely approach these minimum methodological criteria have explicitly *failed* to find any evidence of “repressed memory” among individuals who had experienced childhood sexual abuse or other traumas.

B. Testing the validity of “repressed memory” would not be unusually difficult, and there is no logical reason to relax the scientific standards for testing this theory.

On a scale of complexity for the design and execution of scientific studies, the criteria for a test of “repressed memory” are not particularly complicated. Basic scientific standards require these criteria and no reasonable scientist would settle for a study that failed these criteria.

Specifically, if a study claimed that people developed “repressed memory” for a putative traumatic event, but there existed no satisfactory evidence that the event actually occurred, no reasonable scientist could accept the study as valid. For example, if one reads news reports about an individual who had recovered “repressed memory” about a battle in the Korean War, but military records indicated he was not in combat in Korea at the time (as in the example described above), such a case would not provide evidence of “repressed memory.”

With respect to the second criterion, no reasonable scientist would assume that someone has developed “repressed memory” if it turns out that there was a simpler explanation for the purported forgetting. If an individual experienced a trauma, but was only one year old at the time, this would represent ordinary childhood amnesia, rather than “repressed memory.” If an individual were drunk on alcohol, and had no memory of the events of the previous night, this again would not constitute “repressed memory.” If a child were touched in an inappropriate way on a single occasion at age seven, and cannot recall the event at age 25, this again would not represent “repressed memory,” because the event may not have been perceived by the child at the time as particularly traumatic – and thus was forgotten via ordinary forgetfulness.

Finally, if an individual initially denies remembering an event on general questioning, no reasonable scientist would take this denial at face value as proof of “repressed memory” without some confirmation that the individual truly could not remember the event – given the decades of studies confirming the tendency of individuals to not disclose or to underreport events in multiple contexts. Graphic evidence of the importance of such confirmation is shown in the study by Della Femina et al. (Della Femina et al., 1990) concerning childhood physical and sexual abuse, described above. The evidence of the Della Femina study illustrates a point that I have emphasized earlier: that it is inappropriate and naïve to take initial non-disclosure at face value as evidence of “repressed memory.” Failure to disclose, for variety of reasons, is a well-known and well-documented occurrence in survey studies. Another example of the importance of follow-up interviews is the study of Bonanno and colleagues that I have described above. This study also illustrates graphically that simple non-disclosure must not be misinterpreted as evidence of “repressed memory.”

In short, *documentation of the trauma, exclusion of alternate causes of forgetfulness, and exclusion of nondisclosure* are not arbitrary criteria, nor are they excessively demanding criteria; they are simply the minimum elements that scientific methodology would require for proof of “repressed memory.” Any study that adequately addresses these three criteria

represents an adequate test of the “repressed memory” hypothesis. The study of Della Femina et al., just described is a good example of a study that does meet these criteria. This study shows that it is feasible to do a study meeting the required scientific criteria – but in this methodologically sound study, we find no evidence that “repressed memory” actually occurs.

In conclusion, “repressed memory” is a scientific hypothesis that readily admits to scientific testing. It is fallacious to imply, as some have done, that it would be virtually impossible to perform a satisfactory scientific test of the validity of the “repressed memory” hypothesis. Admittedly, well-designed studies might be time-consuming and expensive. But just because a hypothesis is expensive to test does not constitute grounds to waive scientifically valid testing and accept the hypothesis as true after engaging flawed methodologies.

VIII. Neither Error Rates Nor Any Controls or Standardization Exist as to the Theory of “Repressed Memory”

A. It is impossible to estimate an “error rate” because the underlying studies are invalid.

Retrospective studies: As previously noted, most *retrospective studies* have used some variation on the “do-you-remember-if-you-forgot” methodology. As set forth in Section VI, Part B, it is not possible to draw the conclusion that any of the “yes” responses in these studies represents a valid instance of “repressed memory,” regardless of the percentage of “yes” responses obtained. This is graphically illustrated by the example of the Melcher and Parker study (Melchert & Parker, 1997) described above, where *none* of the 46 individuals claiming to have “forgotten” an episode of abuse indicated that they “simply had no memories of it ever happening.” In other words, the results of the Melchert and Parker study would suggest that if we had assumed that these 46 individuals had “repressed” their memories, the error rate would have been 100% in this instance. More generally, without being able to go back in time and ask subjects directly if they remember an event, there would be no way to measure error rate in the retrospective studies.

Prospective Studies: I have summarized the methodological deficiencies of *prospective studies* in Section VI, Part D. As noted, one of the most serious methodological deficiencies in some of these studies is the fact that individuals who had experienced various traumas were asked in general terms about their memory of traumatic experiences, but were *never specifically asked* if they remembered the particular traumatic event that the investigators knew that they had experienced. As I have repeatedly explained above, non-disclosure does not demonstrate “repressed memory.” For example, the above-mentioned study of Della Femina and colleagues described eight young men who denied a history of childhood abuse on initial interview, even though the investigators possessed evidence that these men had experienced childhood abuse. On a follow-up interview, however, when these men were specifically asked about their known abuse history, all eight acknowledged that they did in fact remember the abuse, but had elected not to disclose it at the initial interview. In other words, had these eight men been classified as cases of “repressed memory,” the *error rate once again would have*

been 100%. Therefore, in more general terms, it is impossible to estimate an error rate in prospective studies, because every case of putative “repression” in the studies might be erroneous due to non-disclosure.

B. It must be remembered that the burden of proof rests on those who seek to establish that “repressed memory” is scientifically validated.

Since it is impossible to know the error rate in studies of “repressed memory” as explained immediately above, one might ask whether, in some of the available retrospective and prospective studies, the error rate is *not* 100%, and whether some percentage of the cases in these studies *might be* genuine cases of “repressed memory.” However, as I have explained above, this approach to the question of whether the “repressed memory” hypothesis is valid defies proper scientific method. It is never the burden of science to prove that a novel hypothesized phenomenon is *not* valid. This approach turns logic upside down and violates a fundamental principle of science: that when a new hypothesis of causality is proposed, it remains unproven until other, already established causes have been excluded. As was stated by Isaac Newton, “we are to admit to no more causes of natural things than such as are both true and sufficient to explain their appearances” (Newton, 1726). Stating the same principle in more colloquial terms, to assume that “repressed memory” is valid until science disproves its existence would, from a legal vantage point, be comparable to allowing testimony about Martians to be admissible in court, because there is no irrefutable scientific proof that Martians do *not* exist. “Repressed memory” is a popular notion, perhaps arguably even a common notion, but it is important to recognize that however *popular* this notion may be, that fact does not place the burden on science to prove its *nonexistence*. It is the burden of proponents to prove that “repressed memory” theory is valid.

IX. Conclusion

In summary, although “repressed memory” is a testable hypothesis, 1) it has never been demonstrated to occur in any methodologically sound peer-reviewed published scientific study; 2) it is not subject to any known or potential error rate in the studies attempting to find it; and 3) it is not generally accepted by the relevant scientific community. Indeed, “repressed memory” is at best a highly controversial hypothesis – and, a hypothesis that is controversial cannot, by definition, be considered generally accepted.

X. References

- Al-Shahi, R., Will, R. G., & Warlow, C. P. (2001). Amount of research interest in rare and common neurological conditions: bibliometric study. *Bmj*, 323(7327), 1461-1462.
- American Medical Association. (1994). Report of the Council on Scientific Affairs: Memories Of Childhood Abuse. CSA Report 5-A-94. June 16, 1994.
- American Psychiatric Association. (2000). Position statement on therapies focused on memories of childhood physical and sexual abuse *American Journal of Psychiatry*, 157(10), 1722.
- American Psychiatric Association. (2013). *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. Washington: American Psychiatric Association.
- American Psychological Association Working Group on Investigation of Memories of Childhood Abuse. (1998). Final Conclusions of the American Psychological Association Working Group on Investigation of Memories of Child Abuse. *Psychology Public Policy and Law*, 4, 931.
- Anderson, M. C., & Green, C. (2001). Suppressing unwanted memories by executive control. *Nature*, 410(6826), 366-369.
- Anderson, M. C., Ochsner, K. N., Kuhl, B., Cooper, J., Robertson, E., Gabrieli, S. W., Glover, G.H., & Gabrieli, J. D. (2004). Neural systems underlying the suppression of unwanted memories. *Science*, 303(5655), 232-235.
- Bagley, C. (1995). *Child sexual abuse and mental Health in adolescents and adults: British and Canadian perspectives*. Aldershot, UK: Avebury.
- Belli, H., Akbudak, M., Ural, C., Solmaz, M., Dogan, Z., & Konkan, R. (2017). Is there a complex relation between social anxiety disorder, childhood traumatic experiences and dissociation? *Nord J Psychiatry*, 71(1), 55-60.
- Berntsen, D., & Rubin, D. C. (2014). Involuntary memories and dissociative amnesia: assessing key assumptions in ptsd research. *Clin Psychol Sci*, 2(2), 174-186.
- Blashfield, R. K., & Intoccia, V. (2000). Growth of the literature on the topic of personality disorders. *Am J Psychiatry*, 157(3), 472-473.
- Blashfield, R. K., Sprock, J., & Fuller, A. K. (1990). Suggested guidelines for including or excluding categories in the DSM-IV. *Compr Psychiatry*, 31(1), 15-19.
- Boakes, J. (1995). False memory syndrome. *Lancet*, 346(8982), 1048-1049.

- Bonanno, G. A. (2006). The illusion of repressed memory. *Behavioral and Brain Science*, 29, 515-516.
- Bonanno, G. A., Keltner, D., Noll, J. G., Putnam, F. W., Trickett, P. K., LeJeune, J., & Anderson, C. (2002). When the face reveals what words do not: facial expressions of emotion, smiling, and the willingness to disclose childhood sexual abuse. *J Pers Soc Psychol*, 83(1), 94-110.
- Brandon, S., Boakes, J., Glaser, D., & Green, R. (1998). Recovered memories of childhood sexual abuse. Implications for clinical practice. *Br J Psychiatry*, 172, 296-307.
- Briere, J., Weathers, F. W., & Runtz, M. (2005). Is dissociation a multidimensional construct? Data from the Multiscale Dissociation Inventory. *J Trauma Stress*, 18(3), 221-231.
- Brown, L. B., Nicholson, T. R., Aybek, S., Kanaan, R. A., & David, A. S. (2014). Neuropsychological function and memory suppression in conversion disorder. *J Neuropsychol*, 8(2), 171-185.
- Burgess, A. W., Hartman, C. R., & Baker, T. (1995). Memory presentations of childhood sexual abuse. *Journal of Psychosocial Nursing and Mental Health Services*, 33, 9-16.
- Campbell, T. W. (1995). Repressed memories of statutes of limitations: examining the data and weighing the consequences. *American Journal of Forensic Psychiatry*, 16, 25-51.
- Chechko, N., Stickel, S., Kellermann, T., Kirner, A., Habel, U., Fernandez, G., & Kohn, N. (2018). Progressively analogous evidence of covert face recognition from functional magnetic resonance imaging and skin conductance responses studies involving a patient with dissociative amnesia. *Eur J Neurosci*, 48(3), 1964-1975.
- Clement, S., Singh, S. P., & Burns, T. (2003). Status of bipolar disorder research. Bibliometric study. *Br J Psychiatry*, 182, 148-152.
- Comparelli, A., Kotzalidis, G. D., Di Pietro, S., Casale, A. D., & De Carolis, A. (2013). A case of rapid conversion to psychosis of delusional misidentification associated with derealisation, verbal memory impairment and FDG-PET imaging abnormalities. *Eur Child Adolesc Psychiatry*.
- Corwin, D. L., & Olafson, E. (1997). Videotaped discovery of a reportedly unrecallable memory of child sexual abuse: comparison with a childhood interview videotaped 11 years before. *Child Maltreat*, 2, 91-112.
- Della Femina, D., Yeager, C. A., & Lewis, D. O. (1990). Child abuse: adolescent records vs. adult recall. *Child Abuse Negl*, 14(2), 227-231.

- Dieguez, S., & Annoni, J. M. (2013). Stranger than fiction: literary and clinical amnesia. *Front Neurol Neurosci*, 31, 137-168.
- Duggal, S., & Sroufe, L. A. (1998). Recovered memory of childhood sexual trauma: a documented case from a longitudinal study. *J Trauma Stress*, 11(301-321).
- Epstein, M. A., & Bottoms, B. L. (2002). Explaining the forgetting and recovery of abuse and trauma memories: possible mechanisms. *Child Maltreat*, 7(3), 210-225.
- Frankel, F. H. (1993). Adult reconstruction of childhood events in the multiple personality literature. *Am J Psychiatry*, 150(6), 954-958.
- Frankel, F. H. (1995). Discovering new memories in psychotherapy--childhood revisited, fantasy, or both? *N Engl J Med*, 333(9), 591-594.
- Geraerts, E., Arnold, M. M., Lindsay, D. S., Merckelbach, H., Jelicic, M., & Hauer, B. (2006). Forgetting of prior remembering in persons reporting recovered memories of childhood sexual abuse. *Psychol Sci*, 17(11), 1002-1008.
- Giger, P., Merten, T., & Merckelbach, H. (2012). [Crime-related amnesia: real or feigned?]. *Fortschr Neurol Psychiatr*, 80(7), 368-381.
- Goodman, G. S., Ghatti, S., Quas, J. A., Edelstein, R. S., Alexander, K. W., Redlich, A. D., Cordon, I.M., & Jones, D. P. (2003). A prospective study of memory for child sexual abuse: new findings relevant to the repressed-memory controversy. *Psychol Sci*, 14(2), 113-118.
- Granacher, R. P., Jr. (2014). Commentary: dissociative amnesia and the future of forensic psychiatric assessment. *J Am Acad Psychiatry Law*, 42(2), 214-218.
- Hayne, H., Gary, M., & Loftus, E. F. (2006). On the continuing lack of scientific evidence for repression. *Behavioral and Brain Sciences*, 29, 521-522.
- Holmes, D. (1990). The evidence for repression: An examination of sixty years of research. In J. Singer (Ed.), *Repression and Dissociation: Implications for Personality, Psychopathology and Health* (pp. 85-102). Chicago: Chicago University Press.
- Huntjens, R. J., Verschuere, B., & McNally, R. J. (2012). Inter-identity autobiographical amnesia in patients with dissociative identity disorder. *PLoS One*, 7(7), e40580.
- Iselin, G., Le Brocq, R., Kenardy, J., Anderson, V., & McKinlay, L. (2010). Which method of posttraumatic stress disorder classification best predicts psychosocial function in children with traumatic brain injury? *J Anxiety Disord*, 24(7), 774-779.

- Kendall-Tackett, K. A., Williams, L. M., & Finkelhor, D. (1993). Impact of sexual abuse on children: a review and synthesis of recent empirical studies. *Psychol Bull*, 113(1), 164-180.
- Kihlstrom, J. F. (1997). Suffering from reminiscences: exhumed memory, implicit memory, and the return of the repressed. In M. A. Conway (Ed.), *Recovered memories and false memories* (pp. 100-117). Oxford: Oxford University press.
- Kihlstrom, J. F. (2002). No need for repression. *Trends Cogn Sci*, 6(12), 502.
- Kihlstrom, J. F. (2004). An unbalanced balancing act: blocked, recovered, and false memories in the laboratory and clinic. *Clinical Psychology: Science and Practice*, 11, 34-41.
- Kuo, Y. L., Lee, I. H., & Yang, Y. K. (2013). A rare variant of dissociative amnesia: back to the past. *Kaohsiung J Med Sci*, 29(1), 59-60.
- Lalonde, J. K., Hudson, J. I., Gigante, R. A., & Pope, H. G., Jr. (2001). Canadian and American psychiatrists' attitudes toward dissociative disorders diagnoses. *Can J Psychiatry*, 46(5), 407-412.
- Lief, H. I. (2003). Questions raised by the controversy over recovered memories of incest. *J Am Acad Psychoanal Dyn Psychiatry*, 31(2), 381-395.
- Lindsay, D. S., Hagen, L., Read, J. D., Wade, K. A., & Garry, M. (2004). True photographs and false memories. *Psychol Sci*, 15(3), 149-154.
- Lindsay, D. S., & Read, J. D. (1995). "Memory work" and recovered memories of childhood sexual abuse: scientific evidence and public, professional, and personal issues. *Psychiatry Public Policy and the Law*, 1, 846-908.
- Loftus, E. (1993). The reality of repressed memories. *Am Psychol* 48, 518-537.
- Loftus, E. F., & Davis, D. (2006). Recovered memories. *Annu Rev Clin Psychol*, 2, 469-498.
- Loftus, E. F., & Guyer, M. (2002). Who abused Jane Doe? Hazards of the single case history. *Skeptical Inquirer*, 26, 24ff.
- Loftus, E. F., & Pickrell, J. E. (1995). The formation of false memories. *Psychiatric Annals*, 25, 720-725.
- Lynn, S. J., Lilienfeld, S. O., Merckelbach, H., Giesbrecht, T., McNally, R. J., Loftus, E. F., Bruck, M., & Malaktaris, A. (2014). The trauma model of dissociation: inconvenient truths and stubborn fictions. Comment on Dalenberg et al. (2012). *Psychol Bull*, 140(3), 896-910.

- Lynn, S. J., Lock, T., Loftus, E. F., Krackow, E., & Lilienfeld, S. O. (2003). The remembrance of things past: problematic memory recovery techniques in psychotherapy. In S. O. Lilienfeld, S. J. Lynn & J. M. Lohr (Eds.), *Science and pseudoscience in clinical psychology* (pp. 205-239). New York: Guilford Press.
- McElroy, S. L., & Keck, P. E. (1995). Recovered memory therapy: false memory syndrome and other complications. *Psychiatric Annals*, 25, 731-735.
- McFarlane, A. C. (1998). The longitudinal course of posttraumatic morbidity: the range of outcomes and their predictors. *Journal of Nervous and Mental Disease*, 176, 30-39.
- McHugh, P. (1995). Witches, multiple personalities, and other psychiatric artifacts. *Nature Med*, 1, 110-114.
- McHugh, P. (2008). *Try to Remember: Psychiatry's Clash over Meaning Memory and the Mind*. New York: Dana Press.
- McNally, R. (2003). *Remembering Trauma*. Cambridge, MA: Harvard University Press.
- McNally, R. J. (2007). Dispelling confusion about traumatic dissociative amnesia. *Mayo Clin Proc*, 82(9), 1083-1090.
- McNally, R. J., & Geraerts, E. (2009). A new solution to the recovered memory debate. *Perspectives in Psychological Science*, 4, 126-134.
- Melchert, T. P., & Parker, R. L. (1997). Different forms of childhood abuse and memory. *Child Abuse Negl*, 21(2), 125-135.
- Menard, H. W. (1973). *Science Growth and Change*. Cambridge, Massachusetts: Harvard University Press.
- Mendlowicz, M. V., Braga, R. J., Cabizuca, M., Land, M. G., & Figueira, I. L. (2006). A comparison of publication trends on avoidant personality disorder and social phobia. *Psychiatry Res*, 144(2-3), 205-209.
- Merskey, H. (1996). Ethical issues in the search for repressed memories. *Am J Psychother*, 50(3), 323-335.
- Moss, M. (2000). The story behind a soldier's story. *New York Times May 31, 2000, Section A, page 1*.
- Newton, I. (1726). *The Principia: Mathematical Principles of Natural Philosophy*. Trans. Cohen B, Whitman A, Budenz J 1999. Oakland, California: University of California Press.

- Ofshe, R., & Singer, M. (1994). Recovered-memory therapy and robust repression: Influence and pseudomemories. *Int J Clin Exp Hypnosis*, 42, 391-410.
- Paris, J. (1996). A critical review of recovered memories in psychotherapy: Part I--Trauma and memory. *Can J Psychiatry*, 41(4), 201-205.
- Patihis, L., Ho, L. Y., Tingen, I. W., Lilienfeld, S. O., & Loftus, E. F. (2014). Are the "memory wars" over? A scientist-practitioner gap in beliefs about repressed memory. *Psychol Sci*, 25(2), 519-530.
- Patihis, L., Lilienfeld, S. O., Ho, L. Y., & Loftus, E. F. (2014). Unconscious repressed memory is scientifically questionable. *Psychol Sci*, 25(10), 1967-1968.
- Peters, M. J., van Oorsouw, K. I., Jelicic, M., & Merckelbach, H. (2013). Let's use those tests! Evaluations of crime-related amnesia claims. *Memory*, 21(5), 599-607.
- Piper, A. (1997). What the science says – and does not say – about repressed memories: a critique of Schefflin and Brown. *Journal of Psychiatry and Law, Winter*, 615-636.
- Piper, A., Lillevik, L., & Kritzner, R. (2008). What's wrong with believing in repression? A review for legal professionals. *Psychology Public Policy and Law*, 14, 223-242.
- Piper, A., Pope, H., & Borowiecki, J. (2000). Custer's last stand: Brown, Schefflin, and Whitfield's latest attempt to salvage "dissociative amnesia." *Journal of Psychiatry and Law*, 28(Summer), 149-213.
- Pope, H., & Hudson, J. (1995). Can memories of childhood sexual abuse be repressed? *Psychol Med*, 25(1), 121-126.
- Pope, H. G. (1997). *Psychology Astray: Fallacies in Studies of Repressed Memory and Childhood Trauma*. Boca Raton, FL: SIRS.
- Pope, H. G., Barry, S., Bodkin, A., & Hudson, J. I. (2006). Tracking scientific interest in the dissociative disorders: A study of scientific publication output 1984-2003. *Psychother Psychosom*, 75(1), 19-24.
- Pope, H. G., Barry, S., Bodkin, J. A., & Hudson, J. I. (2007a). Tracking scientific interest in the dissociative disorders: Reply to Dalenberg et al. *Psychother Psychosom*, 76, 403-405.
- Pope, H. G., Barry, S., Bodkin, J. A., & Hudson, J. I. (2007b). Tracking scientific interest in the dissociative disorders: Reply to Van Veldhuizen. *Psychother Psychosom*, 76, 59-60.

- Pope, H. G., & Hudson, J. I. (2012). Repressed Memories: Scientific Status. In B. J. Faigman DL, Cheng EK, Mnookin JL, Murphy EE, Sanders J. (Ed.), *Modern Scientific Evidence: The Law and Science of Expert Testimony (2011-2012 edition)* (pp. 828-913). Eagen, MN: West Group.
- Pope, H. G., Jr., Hudson, J. I., Bodkin, J. A., & Oliva, P. (1998). Questionable validity of 'dissociative amnesia' in trauma victims. Evidence from prospective studies. *Br J Psychiatry*, 172, 210-215; discussion 216-217.
- Pope, H. G., Jr., Oliva, P. S., Hudson, J. I., Bodkin, J. A., & Gruber, A. J. (1999). Attitudes toward DSM-IV dissociative disorders diagnoses among board-certified American psychiatrists. *Am J Psychiatry*, 156(2), 321-323.
- Pope, H. G., Jr., Poliakoff, M. B., Parker, M. P., Boynes, M., & Hudson, J. I. (2009). Response to R. E. Goldsmith, R. E. Cheit, & Wood, M.E.. Evidence of dissociative amnesia in science and literature: culture-bound approaches to trauma in Pope et al. (2007). *J Trauma Dissociation*, 10, 254-257.
- Pope, H. G., Jr., Poliakoff, M. B., Parker, M. P., Boynes, M., & Hudson, J. I. (2010). Response to: Ignoring Nina: Avoidance and denial in Pope, Poliakoff, Parker, Boynes, and Hudson. *J Trauma Dissociation*, 11(1), 21.
- Pope, H. G., Poliakoff, M. B., Parker, M. P., Boynes, M., & Hudson, J. I. (2007a). Is dissociative amnesia a culture-bound syndrome? Findings from a survey of historical literature. *Psychol Med*, 37(2), 225-233.
- Pope, H. G., Poliakoff, M. B., Parker, M. P., Boynes, M., & Hudson, J. I. (2007b). Is dissociative amnesia a culture-bound syndrome? Findings from a survey of historical literature. Reply to Altschuler et al. *Psychol Med*, 37, 1067-1068.
- Pope, H. G., Poliakoff, M. B., Parker, M. P., Boynes, M., & Hudson, J. I. (2007c). Is dissociative amnesia a culture-bound syndrome? Findings from a survey of historical literature. Reply to Spiegel. *Psychol Med*, 37, 1065-1067.
- Rofé, Y. (2008). Does repression exist? Memory, pathogenic, unconscious and clinical evidence. *Review of General Psychology*, 12(1), 63-85.
- Royal College of Psychiatrists. (1997). Report of the Royal College of Psychiatrists Working Group on Reported Recovered Memories of Child Sexual Abuse. London: Royal College of Psychiatrists, 17 Belgrave Square, London SW1X 8PG.
- Sar, V. (2014). The many faces of dissociation: opportunities for innovative research in psychiatry. *Clin Psychopharmacol Neurosci*, 12(3), 171-179.

- Schacter, D. L., & Curran, T. (1995). The cognitive neuroscience of false memories. *Psychiatric Annals*, 25, 726-730.
- Schooler, J. W., Bendiksen, M., & Ambadar, Z., (1997). Taking the middle line: can we accommodate both fabricated and recovered memories of sexual abuse? In M. A. Conway (Ed.), *Recovered memories and false memories* (pp. 251-292). Oxford: Oxford University Press.
- Spiegel, D., Lewis-Fernandez, R., Lanius, R., Vermetten, E., Simeon, D., & Friedman, M. (2013). Dissociative disorders in DSM-5. *Annu Rev Clin Psychol*, 9, 299-326.
- Spiegel, D., Loewenstein, R. J., Lewis-Fernandez, R., Sar, V., Simeon, D., Vermetten, E., Cardeña, E., Brown, R.J., & Dell, P. F. (2011). Dissociative disorders in DSM-5. *Depress Anxiety*, 28(9), 824-852.
- Sprock, J., & Herrmann, D. (2000). Relative size of the literatures for psychopathological disorders: number of articles pertaining to DSM-IV diagnostic categories. *J Clin Psychol*, 56(4), 491-504.
- Staniloiu, A., Markowitsch, H. J., & Kordon, A. (2018). Psychological causes of autobiographical amnesia: A study of 28 cases. *Neuropsychologia*, 110, 134-147.
- Steinberg, M. (1994). *Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D), revised*. Washington DC: American Psychiatric Association.
- Tripathi, R., Bharath, S., Desai, G., & Mehrotra, S. (2013). Therapist concerns and process issues in grappling with functional autobiographical amnesia. *Indian J Psychol Med*, 35(3), 305-308.
- Ural, C., Belli, H., Akbudak, M., & Tabo, A. (2015). Childhood traumatic experiences, dissociative symptoms, and dissociative disorder comorbidity among patients with panic disorder: a preliminary study. *J Trauma Dissociation*, 16(4), 463-475.
- Wagenaar, W. A., & Groeneweg, J. (1990). The memory of concentration camp survivors. *Applied Cognitive Psychology*, 4, 77-87.
- Weniger, G., Siemerku, J., Barke, A., Lange, C., Ruhleder, M., Sachsse, U., Schmidt-Samoa, C., Dechent, P., & Irle, E. (2013). Egocentric virtual maze learning in adult survivors of childhood abuse with dissociative disorders: evidence from functional magnetic resonance imaging. *Psychiatry Res*, 212(2), 116-124.
- Widom, C., & Morris, S. (1997). Accuracy of adult recollections of childhood victimization: part 2: childhood sexual abuse. *Psychological Assessment*, 9, 34-46.

- Williams, L. M. (1994). Recall of childhood trauma: a prospective study of women's memories of child sexual abuse. *J Consult Clin Psychol*, 62(6), 1167-1176.
- Witt, J. A., Vogt, V. L., Widman, G., Langen, K. J., Elger, C. E., & Helmstaedter, C. (2015). Loss of auto-noetic awareness of recent autobiographical episodes and accelerated long-term forgetting in a patient with previously unrecognized glutamic acid decarboxylase antibody related limbic encephalitis. *Front Neurol*, 6, 130.
- Yayla, S., Bakim, B., Tankaya, O., Ozer, O. A., Karamustafalioglu, O., Ertekin, H., & Tekin, A. (2015). Psychiatric comorbidity in patients with conversion disorder and prevalence of dissociative symptoms. *J Trauma Dissociation*, 16(1), 29-38.

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

John Doe,

Plaintiff,

vs.

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

Defendants.

**NOTICE OF FILING SUPPLEMENTAL /
 REPLY AFFIDAVITS IN SUPPORT
 THE DIOCESE'S MOTIONS
FOR SUMMARY JUDGMENT**

Pursuant to Rule 6(d), Defendants Bishop of Charleston, a Corporation Sole, and the incorrectly named party "the Bishop of the Diocese of Charleston, in his official capacity," (hereinafter collectively "the Diocese") submit the attached supplemental or reply affidavits in support of the Motions for Summary Judgment regarding Plaintiff's Amended Complaint and causes of action.

1. Affidavit of Dr. Elizabeth Loftus
2. Affidavit of Dr. James Hudson
3. Affidavit of Dr. Janine Shelby
4. Affidavit of Dr. Monica Appplewhite

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

s/Richard S. Dukes, Jr.

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December 10, 2019

ATTORNEYS FOR DEFENDANTS

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 DR. ELIZABETH
LOFTUS**

Personally appeared before me, Dr. Elizabeth Loftus, who swears and deposes as follows:

1. The undersigned is over the age of 21, and has personal knowledge regarding the matters herein.
2. I have reviewed materials in this action in order to assess the memory aspects of John Doe ("Plaintiff") related to this case. These include depositions, affidavits, and other legal documents. I was asked to review these materials and also to offer opinions regarding the relevance of scientific research in the area of human memory.

Professional Qualifications

3. My opinions are based on my extensive experience in academic psychology, in both teaching and research. I hold the position of Distinguished Professor at the University of California, Irvine. My Ph.D. is in Psychology from Stanford. I am an author of more than 600 published papers, the majority of which concern the topic of human memory. I have published more than 20 books, at least five of which deal almost exclusively with the subject of memory, including a college textbook called *Human Memory*. I have received seven honorary doctorates for my research on

memory. I was elected to the National Academy of Sciences, in recognition of my long-standing research program on human memory. I have held tenured academic positions at major universities and in that capacity I have taught courses in human cognition and memory at the university level for more than 40 years. As a result of my research and work in this area, I have been asked to consult with and present to law enforcement, including the FBI and CIA. The attached *curriculum vitae* provides a summary of my experience and qualifications in psychology more generally, and human memory in particular.

Brief Overview of Human Memory Research

4. The experimental study of human memory dates back more than a century to the groundbreaking work of Hermann Ebbinghaus (1913), who showed how memory fades and weakens over time. This fading has been called one of the “seven sins of memory” by Harvard psychologist Daniel Schacter (2001). Over the last century there have been thousands of studies of human memory published in peer reviewed journals and summarized in many books (including the comprehensive summary by Brainerd and Reyna (2005)).

5. The scientists have shown that memory does not work like a video recording device. We do not simply record events and play them back later. The process is much more complex. In fact, retrieving a memory involves a constructive or reconstructive process. That is, retrieving memory is accomplished by combing traces from an original experience with other bits and pieces of information that are acquired from other sources, after that original experience is over (See Loftus, 2005).

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memory is accomplished by combing traces from an original experience with other bits and pieces of information that are acquired from other sources, after that original experience is over (See Loftus, 2005).

7. It is virtually impossible to tell the difference between a true memory and false one without independent corroboration. Moreover even people who have extraordinarily good memories are susceptible to memory distortion from suggestion (Patihis et al., 2015). This is not a matter of deliberate lying on the part of the reporting person; but is what can occur when people have been led to truly believe that something occurred to them that is false. The experimental work is supplemented by many real-life cases in which false memories have been planted in the minds of ordinary people through the process of suggestion (e.g. Loftus & Ketcham, 1994; Pendergrast, 1999). False memories have led to extraordinary trauma for many innocent people. For example, Cardinal Bernadin was falsely accused of abuse, and when he wrote his memoir before he died, he said that his cancer and the false accusation were the worst things that had happened to him in life.

Analysis

8. There are a number of relevant facts in the current case that make this information particularly pertinent. It is my understanding that Plaintiff claimed in approximately 2016 that he was sexually abused by two teachers at Sacred Heart Catholic School decades earlier when he was approximately age 12-14. He claimed many instances of abuse, including oral and anal sex. He claims these memories were repressed for more than four decades. The concept of repression is deeply controversial (as I explain below). So a question arises as to whether the memory reports that emerged decades later were a product of some other process than actual memory recovery, such as suggestive influences in the life of the plaintiff.

9. Plaintiff appears to be claiming that he repressed his memories of abuse before approximately 2016, and stated so explicitly in his numerous places, including his amended complaint. He told a therapist (Whalen) that the memories were repressed until he experienced depression after heart bypass surgery. Given the evidence that he is claiming he has recovered repressed memories, it is important to understand more fully what is known about that subject of repressed memory. Briefly, the idea that one can repress horrible brutalization into the unconscious and reliably recover the experiences later has received virtually no credible scientific support. The notion is best described as folklore that continues to be advanced by some mental health professionals who uncritically accept abuse reports, no matter how dubious, and claims of repression, no matter the lack of scientific support.

10. Although "repressed" and "recovered" memories are frequently depicted in popular novels, television series, and Hollywood movies, there is no general acceptance in the scientific community that this phenomenon can actually happen. Twenty five years ago, Dr. David Holmes, Professor at the University of Kansas, reviewed sixty years of efforts to find support for repression and concluded that there was no credible scientific support (Holmes, 1990).

11. The picture has not changed in the ensuing years. Richard McNally, previously mentioned, is a Harvard University clinical psychologist and tenured faculty member. He put it this way in his meticulously researched and widely cited book "Remembering Trauma," published by Harvard University Press (2003, p. 2):

i. Until the mid-1990's debates about trauma and memory were hampered by vitriolic accusations issuing from both sides and by the scarcity of clinically relevant scientific data. During the last few years, matters have improved

dramatically. An outpouring of research has clarified many of the most contentious issues...

ii. The evidence points to three conclusions. First, people remember horrific experiences all too well. Victims are seldom incapable of remembering their trauma. Second, people sometimes do not think about disturbing events for long periods of time, only to be reminded of them later. However, events that are experienced as overwhelmingly traumatic at the time of their occurrence rarely slip from awareness. Third, there is no reason to postulate a special mechanism of repression or dissociation to explain why people may not think about disturbing events for long periods. A failure to think about something does not entail an inability to remember it (amnesia.)

12. Some mental health professionals claim that there is a good deal of evidence for this kind of amnesia. They cite highly controversial and questionable references for their beliefs. Yet many psychiatrists, psychologists, and memory researchers vehemently disagree that these studies prove that repression exists. These studies have been analyzed carefully and the conclusion has been reached, by me and others, that it is misleading to use them as proof of amnesia.

13. Dr. McNally points out common flaws inherent in those studies which are frequently used to support the concept of repressed memory, such as:

- asking subjects whether there was ever a time – duration often unspecified – when they were *unable* to remember their traumatic experience;
- misinterpreting not thinking about a trauma for a long time as being unable to remember it;

- failing to appreciate that most people have gaps in their memory for childhood and that efforts to remember result in the illusion of heightened amnesia for childhood;
- failing to realize that some molested children do not understand their experience as sexual abuse when it occurs, but later reconceptualize it as such;
- failing to verify that the trauma actually happened or merely relying on subjects' claims that corroboration is available;
- failing to distinguish between failure to report traumatic experiences and inability to remember them;
- failing to conduct follow-up interviews to determine why subjects did not mention traumatic experiences known to have occurred;

(McNally, Remembering Trauma, p. 227).

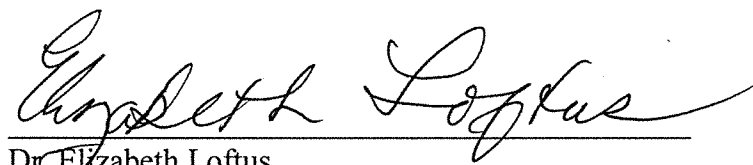
14. Most compellingly, McNally concludes: "The notion that the mind protects itself by repressing or dissociating memories of trauma, rendering them inaccessible to awareness, is a piece of psychiatric folklore devoid of convincing empirical support." (McNally, 2003, p. 275). The evidence points to the opposite conclusion - most people who have suffered horrible traumas have the problem that they cannot forget and the memories keep intruding. Given the minimal evidence for this kind of repression of memory, and the ample evidence for the power of suggestion to create false memories, the latter explanation for this dispute deserves serious consideration.

15. I am prepared to testify at trial about the workings of human memory, the effects of suggestion on memory, the mechanism of creation of false memories, and the characteristics of false memories. Moreover, I would identify some of the suggestive activities that may have occurred in the current case. These suggestive activities can explain how it is that a person might go from having no memory, or very minimal memory of sexual abuse, and even denying memory of abuse, to later having elaborate memories for sexual abuse, if the memories are false.

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17. Each of my opinions is stated to a reasonable degree of scientific certainty. I reserve the right to supplement this opinion if and when further discovery becomes available.

FURTHER AFFIANT SAYETH NOT.


 Dr. Elizabeth Loftus

Sworn to and subscribed before me this
 the _____ day of November, 2019.

 Notary Public for State of California

My commission expires: _____

_____, 2019

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

On October 30, 2019 before me, Isaiah Lopez, Notary Public
 Date Here Insert Name and Title of the Officer

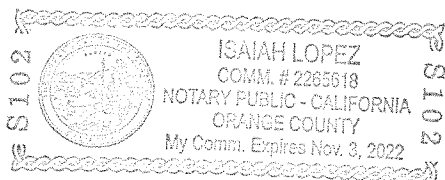
personally appeared Dr. Elizabeth L. Cofus
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public



Place Notary Seal Above

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☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing:

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 DR. JANINE SHELBY

Personally appeared before me, Dr. Janine Shelby, who swears and deposes as follows:

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

Professional Qualifications

1. I am a trauma psychologist, with expertise derived from a career dedicated to the study, assessment, and treatment of trauma survivors. I am an Associate Clinical Professor in the School of Medicine at UCLA and a part-time faculty member at California State University, Long Beach. Recently, I was honored to serve as the 2017-2018 Drake Guest Professor and Distinguished Fellow at Kobe College in Hyogo, Japan. In addition to my trauma-focused academic, supervisorial, and clinical employment, I work as a forensic consultant and expert witness, primarily in areas related to psychological trauma. In former professional roles, I served as the Clinical Director of the Santa Monica-UCLA Rape Treatment Center, the Director of Training and Lead Forensic Interviewer in the child advocacy service at Harbor-UCLA

Medical Center, and the Founder/Director of Harbor-UCLA's Child Trauma Clinic.

At Harbor-UCLA, I taught and supervised psychology and psychiatry trainees to diagnose, use psychological assessment instruments, and treat traumatized individuals. I also directed the child and adolescent psychological assessment program there for several years.

2. I completed my undergraduate degree in Psychology at Samford University in Birmingham, Alabama and earned an M.S. in Community Counseling at the University of South Alabama, in Mobile, Alabama. Following my doctorate from the University of Miami in Coral Gables, Florida, I completed a post-doctoral fellowship in Child and Adolescent Psychology through the Division of Child and Adolescent Psychiatry at Harbor-UCLA Medical Center. I have been licensed in the state of California since 1997, and I am trained as a child abuse forensic interviewer, a Registered Play Therapist-Supervisor, certified in the practice/supervision of several evidence-based treatments for trauma survivors, and experienced in the administration of a wide array of psychological assessment instruments.

Documents Reviewed in Developing Opinions

Legal

1. Affidavit of John Doe (7/11/19)
2. Amended Complaint (8/29/18)
3. Plaintiff's Responses to Defendant (6/7/19)
4. Deposition of John Doe 888 (9/12/19)
5. Deposition of Mrs. Doe 888 (9/12/19)
6. Plaintiff's Responses to Defendant's First Interrogatories to Plaintiff

Expert Report

7. Report of Sally M Duffy, Ph.D. (11/26/19); Notes of Sally M. Duffy, Ph.D. (11/15/19)

Medical/Mental Health

8. Deposition of Jason Flassing, Psychiatric Physician's Assistant (9/19/19); Medical Records from Shane Sherbondy, MD's practice (4/3/17-7/23/19)
9. Deposition of Dorothy Whalen, LISW-CP (9/19/19); Notes of Greenville Therapy Center/Dorothy Whalen, LISW-CP (beginning 6/16/16)
10. US Department of Veterans Affairs records of Dr. Rick Thode, Ph.D. (1/23/16, with prior evaluations on 7/15 and 7/29 of 2014; 8/7 and 8/20 of 2015)

Other Sources

11. Diagnostic and Statistical Manual, Fifth Edition (DSM-5)
12. International Society for Traumatic Stress Studies (ISTSS)
13. National Center for PTSD
14. Specialty Guidelines for Forensic Psychologists

Parameters of Use

This report was generated pursuant to Mr. Doe's case against the Diocese of Charleston et al. This report does not constitute an independent mental examination (IME). I did not conduct an evaluation of the Plaintiff and am therefore, unable to render diagnostic impressions of him. This report focuses solely on issues related to the Plaintiff's medical, social, and psychological history and diagnoses as well as his reported history of psychological and sexual abuse and its subsequent effects on him over time. This report also addresses characteristics of trauma-related disorders, trauma-related diagnoses, evidence-based therapy methods for mental disorders, and the possible

ramifications of using various therapeutic methods to treat trauma-related disorders and/or to provide treatment in forensic contexts. The opinions and conclusions contained within this report are based on data available to me at this time. I reserve the right to supplement and/or alter the information, conclusions, or findings of this report if additional information surfaces.

In assessing claims of psychological injury, the examiner must consider evidence that both supports and refutes a claim. My comments are intended to analyze the relevant issues in this case, but do not negate Mr. Doe's courage in surviving the many traumatic events he has reportedly endured. Per the records, it appears that Mr. Doe has faced many challenges and hardships, which I respectfully acknowledge.

Allegation

In his affidavit, Mr. John Doe reported that he recently came to learn that while he was a child (i.e., other records indicated that his age was 11- or 13-years of age) and attending church and school at Sacred Heart, he was sexually molested by two teachers, Hal Brooks and Chris Hartnett. His statement further indicated that he was molested repeatedly, over a period of years and at various locations. During his deposition, Mr. Doe reported that Mr. Hartnett performed fellatio on him three times, and then took him on a trip to Columbia where a "party" involving oral and anal sex occurred between Mr. Hartnett, Mr. Brooks, and Mr. Doe. Mr. Doe said the incident involved cannabis and alcohol. Mr. Doe further said that they went to a bar, where he was kissed by a third man who "excused himself" when he realized that the Plaintiff was male. Mr. Doe said Mr. Hartnett and Mr. Brooks left him at the bar, and he had to find his own way back to Charleston. During his deposition, Mr. Doe could not answer questions about whether

additional incidents occurred or whether he had any awareness of these events during the next several years.

Opinions to a Reasonable Degree of Certainty

1. ***Brief history of Plaintiff's adverse event exposure.*** According to multiple records, testimony, and Dr. Duffy's report, the Plaintiff has an extensive history of multiple adverse events. During his deposition, Mr. Doe acknowledged that he and his father had "some rough times" between the time he was five- until he was 12-years old. When asked, Mr. Doe clarified that he "was in trouble pretty much all the time," primarily related to academic difficulties. He also identified that part of the issue in his relationship with his father was that his father "drank," and was, per other records, a "mean drunk." During her deposition, Ms. Whalen indicated that the Plaintiff's father had been both physically and emotionally abusive toward him, and was "an alcoholic, enraged and beat him. [sic] Had a difficult relationship with his father." During his deposition, Mr. Doe also reported that a teenage baby-sitter fondled him and forced him to engage in fellatio (i.e., other records indicate he was five- or six-years of age at the time). As yet another adverse event, Mr. Flassing reported that someone had provided the Plaintiff with LSD when he was 12-years old, and that he was subsequently treated in a hospital. As an adult, Mr. Doe joined the USMC, but spent a year in substance abuse recovery before being honorably discharged. As a profound traumatic stressor, multiple records describe a fire that killed Mr. Doe's wife and children. Ms. Whalen identified this as one of the major causes of Mr. Doe's subsequent depression symptoms. Additional adverse events befell Mr. Doe in his adulthood. Per Ms. Whalen , Mr. Doe reported that his grandchildren had been

molested. Also, one of Mr. Doe's children/stepchildren had cancer, he has a number of chronic and past acute medical conditions, he was terminated from his employment, and he has faced significant financial stressors involving his mortgage. Each of these stressors must be considered in terms of their influence on Mr. Doe's overall psychological status. **Any current symptoms he has must be carefully evaluated to determine whether and to what extent they may be proximal to one, several, or the combination of the adverse events he has endured.**

2. *Medical conditions and medication side effects.* Records indicate Mr. Doe suffers from or has suffered from a range of medical conditions, several of which have known impact on mental status (e.g., myocardial infarction and altered mental status, diabetes and fatigue). The Plaintiff's medical history is positive for several medical conditions, including chronic pain in his cervical spine, left knee pain, left elbow pain, two myocardial infarctions, type II diabetes, partial knee replacement surgery, kidney stones, S/P cholecystectomy, and irritable bowel syndrome, obstructive sleep apnea. Furthermore, several prescription medications used by Mr. Doe have side effects that mimic depression symptoms, sleep disturbance, and other psychological difficulties. In addition, the Plaintiff was reported to consume several cups of coffee per day. Dr. Duffy described the Plaintiff's medication regimen as including alprazolam .5 mg qd, lisinopril 2.5 mg. qd, fluoxetine 20 mg qd, carvedilol 3.125 mg. bid, clopidogrel 75 mg qd, metformin 500 mg qd, eszopiclone 3 mg qhs, and Jardiance 25 mg qd. Dr. Duffy's report does not discuss the side effects of these medications, combinations of medication, and potential impact of high daily caffeine consumption on the Plaintiff's symptoms. **Any current psychological symptoms Mr. Doe has must be carefully**

evaluated to determine whether and to what extent they may be proximal to his medical conditions and/or past or current medications for these medical conditions, and caffeine side effects.

3. **Symptoms and Diagnoses.** Mr. Doe has a long history of psychiatric/psychological issues and treatment, beginning when he was a child. Mr. Doe reported receiving mental health services as a child, but he did not recall the content of his childhood sessions. As an adult, he sought mental health treatment from the VA. Mr. Doe has received a variety of diagnoses and rule out diagnoses, with consistent themes emerging around PTSD, a depressive disorder, and anxiety symptoms or an anxiety disorder. Mental health records indicate that Mr. Doe has strong genetic predisposition for depression and Obsessive-Compulsive Disorder (OCD). Per Dr. Thode's mental health records (7/15/14), his early diagnostic impressions were listed as a V code, with rule out diagnoses for Major Depressive Disorder with Anxious Distress, PTSD, and Unspecified Neurocognitive Disorder. In Dr. Thode's subsequent (1/23/16) records, Mr. Doe was described as seeking treatment to reduce depression, anxiety and survivor's guilt. He was then diagnosed with Unspecified Depressive Disorder with Anxious Distress, Generalized Anxiety Disorder, and Other Specified Trauma- and Stress-Related Disorder, with rule out disorders of Persistent Complex Bereavement and Obsessive-Compulsive Disorder. Dr. Thode's records further reflect that Mr. Doe had sub-optimal sleep duration (e.g., 4- to 6-hours per night), no childhood memories between of 6- and 10- years of age, and a history of drug abuse and successful rehabilitation. During his later treatment with Ms. Whalen, Mr. Doe reported that he had sleep initiation problems (i.e., "can't sleep because of flashbacks"), though he had

reported sleep maintenance problems earlier with Dr. Thode. During his deposition, Mr. Flassing indicated that the Plaintiff had PTSD as well as Major Depressive Disorder. However, Mr. Flassing showed difficulty differentiating PTSD from the symptoms of depression and reported that it is sometimes hard to distinguish PTSD from depression. PTSD is characterized by intrusive re-experiencing and avoidance symptoms, whereas depression does not contain these elements. It is unclear why Mr. Flassing found it difficult to distinguish the two disorders. Further, Mr. Flassing was asked to describe Mr. Doe's PTSD symptoms, Mr. Flassing responded with "significant depressive symptoms and severe anxiety," as well as "significant nightmares, and racing thoughts. Although nightmares are part of PTSD criteria, racing thoughts are not PTSD symptoms, significant depressive symptoms suggest a depressive disorder and significant anxiety symptoms are more typically associated with an anxiety disorder. (PTSD is a trauma-related disorder.) Later, Mr. Flassing was asked whether Mr. Doe had flashbacks (i.e., trauma symptoms) related to his wife and children dying in a fire. He responded, "I do believe that would be probably some of the symptoms of his depression. . .he would describe symptoms of seeing their bodies." Seeing unwanted images of dead bodies is consistent with PTSD and not characteristic of depression. **In sum, some of Mr. Doe's symptoms are consistent with likely outcomes of individuals with childhood sexual abuse histories similar to the events described by Mr. Doe and many are consistent with other disorders, conditions, or other types of trauma.**

4. **Psychopharmacological treatment.** Mr. Flassing reported that there were "not as many medications as we would like to be able to treat PTSD. . . but we do treat his

major depressive disorder.” According to the National Center for PTSD, there are two FDA-approved medications for PTSD: Sertraline (Zoloft) and paroxetine (Paxil). Mr. Flassing did not address this during his discussion of his treatment rationale. Further, Mr. Flassing said that he opted to prescribe Ativan based on his assumption that Mr. Doe did not have a history of substance abuse. When asked, he said that he based his assumption on a question that pertained only to alcohol use. As described earlier, Mr. Doe has a significant history of problematic substance use. Further, Ativan is not an FDA approved pharmacological intervention for PTSD and is widely known to have sedating effects that likely contribute to depression symptoms. Mr. Doe has had a large number of medication trials, combinations of medications, and problematic side effects. Mr. Flassing reported Mr. Doe’s side effects, including sleep disturbance, amotivation, and increased dream activity (i.e., from Trintellix). During his deposition, Mr. Doe also described Trintellix as leading to nightmares, during which he said he hit his wife. **Mr. Doe’s medications/ combinations should be carefully evaluated to determine whether they were producing or exacerbating his symptoms, as some of these medications/combinations are known to elevate risks of unwanted consequences, negatively alter behavior, and/or have mood-lowering effects.**

5. *Etiology of any claimed damages.* In her report, Dr. Duffy reported Mr. Doe’s symptoms in a manner that appeared to attribute most of his symptoms, which could have been derived from a number of his prior adverse events, to the incidents reported in this claim. In contrast, Ms. Whalen made clear during her deposition that the Plaintiff’s symptoms were related to three traumatic experiences (i.e., initial sexual abuse at six-years of age, later sexual abuse at 11-years of age, and

the deaths of his family members). However, during her deposition Ms. Whalen endorsed the idea that Mr. Doe's view of the world is based on a lifetime of experiences, only one part of which is related to the teachers. Although Dr. Duffy identified several significantly adverse events in the Plaintiff's history, she did not describe the relative contribution of any of these events to the symptoms and/or mental disorders ascribed to him. For example, Dr. Duffy's report recited Mr. Doe's history of childhood sexual abuse at the age of six years, "an abusive rejecting father," estrangement from his wife, and the death of his wife and two sons related to a house fire. She further indicated that this resulted in Mr. Doe's depression and two suicide attempts, and that he was diagnosed with PTSD "from this event" in 2015. Dr. Duffy argued that the sexual abuse that occurred by the baby-sitter was "apparently not as traumatizing as the later abuse by the teachers," but she did not appear to have explicitly assessed this issue, and offered no justification for this claim (apart from her speculation that she had more of a relationship with the teachers than with the "older boy" [teenage babysitter]. It is difficult to understand the rationale for minimizing an individual's first sexually abusive experience, and even more difficult to comprehend the minimization of this/these incident(s), given the vulnerable age during which the abusive incident(s) was/were reported to have occurred. Dr Duffy's rationale that the later abuse by teachers was more proximal and/or damaging because it occurred in a context of significant trust, in a setting wherein children are deemed to be safe, and by someone who held power over him may also apply to the abuse reportedly perpetrated by the baby-sitter.

6. *Issues Related to the Diagnosis of PTSD.* Dr. Duffy seemed to conflate Mr. Doe's possible past and current symptoms (e.g., using the fact that he dropped out of school as evidence of current PTSD avoidance [of school]). Thus, it was not clear which symptoms she regarded as current and which were regarded as historical or as conjectured historical symptoms. Mental health diagnoses are based upon strict criteria involving set time frames. An individual meets criteria for Posttraumatic Stress Disorder (PTSD) only if he or she manifests current symptoms. Dr. Duffy's inclusive list of symptoms included a) "non-volitionally repressed memories" involving not remembering that he was in the 7th grade; flashbacks, nightmares, suspiciousness, exaggerated startle response, hypervigilance, depersonalization, derealization, avoidance (from his middle school drop-out), and sense of foreshortened future. It is noted that the latter is no longer listed as a PTSD criterion based on the most recent DSM 5, which was published in 2013. Per the DSM 5, symptoms must not be attributable to the effects of substance. Dr. Duffy did not determine how she concluded that the Plaintiff's reported substance use during the same time frame was unrelated to his memory difficulties in the seventh grade. This is particularly noteworthy, given that LSD can alter memory structures and cannabis is known to impair memory functions. **These issues fall in contrast to DSM 5 diagnostic guidelines.**
7. *Misattributions or possible misattributions.* As the DSM 5 notes, "Not all psychopathology that occurs in individuals exposed to an extreme stressor should necessarily be attributed to PTSD. The diagnosis requires that trauma exposure preceded the onset or exacerbation of pertinent symptoms." (p. 279). Dr. Duffy

attributed the Plaintiff's history of running away (i.e., he "ran away 8 times") as a "way to avoid a school setting where the abuse occurred," but this is not supported by evidence. Dr. Thode's records indicated that Mr. Doe said he "ran away to get away from his dad a lot." Mr. Doe's own statement during his deposition fell short of Dr. Duffy's assumption (i.e., Mr. Doe said that that he ran away multiple times across time but did not know why he did so). Moreover, it is far more likely that a youth would run away from home because of incidents occurring at home, than because he/she seeks to avoid their school. This, more likely scenario, was not addressed in Dr. Duffy's report. Dr. Duffy also seemed to override the Plaintiff's attribution that he dropped out of school because he was "a failure academically." Instead, she concluded the primary reason for his departure from school was "the abuse he sustained from the teachers at his elementary school." Further, Dr. Duffy reported that the Plaintiff's cannabis use was "probably related to the [sexual] abuse," though research suggests that the best predictor of adolescent cannabis use is the absence of parental monitoring. As yet another example, Dr. Duffy described Mrs. Doe's report of Mr. Doe's physical abuse toward her (i.e., other records described severe nightmares) "when the repressed memories began to resurface," in which Mr. Doe has physically attacked his wife in his sleep. Dr. Duffy concluded in her report that this is "consistent with worsening PTSD," which "can be associated with recovered traumatic memories." It is not clear what the basis is for this claim, but more likely explanations for suddenly beginning to behave aggressively toward one's wife of several years are medication side effects (as described by both Mr. Doe and Mr. Flassing) or a medical condition. If the aggression is more pervasive than implied in the records, other known

correlates to intimate partner violence include witnessing intimate partner violence during childhood, childhood physical abuse, holding an ideology that promotes physical violence in intimate relationships, belonging to a culture or subcultural group that supports male dominance and physical aggression in intimate relationships, psychopathology (particularly sociopathy, narcissism, and borderline personality disorder) and other disinhibiting factors, such as substance use. **In sum, Dr. Duffy's report contains several attributions for the cause of Mr. Doe's behaviors and difficulties based on insignificant or unclear evidence to support such claims.**

8. ***Highly unusual symptoms.*** Dr. Duffy reported symptoms that are unlikely to be directly related to the sexual abuse reported in this claim. Specifically, the Plaintiff was said to avoid crowds, will not go into a mall, and have compulsive behaviors. Some of these symptoms are more consistent with an anxiety disorder, such as agoraphobia, than PTSD. During her deposition, Mrs. Doe reported that her husband has had manic episodes since 2012. She further stated that "He's been taking that medicine and he hits me. And the last time he beat me up it was really bad. And he can't help it. Even if I stop him he doesn't know that I -- that it's me. And he doesn't know he did it. And he done it many times." As described earlier, physically attacking his wife in her sleep because of nightmares about the events described in this claim approximately 50 years earlier would be an extremely rare manifestation of intrusive re-experiencing, and is much more likely to be attributable to other medical or psychological causes.
9. ***The Plaintiff's report of recovered memories.*** The Plaintiff reported to Dr. Duffy that "pieces of memory" started to return while seeing Dr. Thode at the VA and that one

day it was “like a bomb went off” with emotionality he could not control. In her discussion and conjecture, Dr. Duffy said that the reality of suppressed and repressed memories will “eventually be proven” but she provided an unclear basis for this assertion. She acknowledged that there “continues to be considerable contention in the profession regarding suppressed memories, repressed memories, and recovered memories.” She seemed to provide support for the presence of suppressed and repressed memories by claiming that “empirical and laboratory experiments simply cannot duplicate clinical and field environments.” The basis of this statement is problematic for two reasons. First, the term “empirical” refers to a wide range of research methodologies and is not limited to laboratory experiments. Second, field-based studies occur commonly and guide scientific understanding alongside laboratory-based research.

A central issue of this case is the degree to which Mr. John Doe is able to accurately report on abuse he claimed to recall abuse after a delay of several decades. Such memories are implicitly subject to distortion and bias. There are many factors that shape memory. Mr. Doe’s LSD and other substance use around the same time as the abuse described in this claim may have influenced his perception of events. In describing the Plaintiff’s mental health history, Dr. Duffy indicated that he was diagnosed with Obsessive Compulsive Disorder (OCD) at the VA. She further notes a family history among close biological relatives of OCD or OCD-like tendencies. Some individuals with OCD experience terrifying images of a horrendous or graphic nature as part of their OCD symptoms. As another issue, there is some evidence of Mr. Doe’s positive response bias. For example, Dr. Duffy noted in her report that the

Plaintiff's claim of having a "damn good life until he remembered that crap [abuse by teacher(s)]" is untrue. As another example, Dr. Duffy's report pointed out that the Plaintiff indicated he had a "fairly close" relationship with his three sisters, but his wife refuted this assertion. As a third example, records report Mr. Doe's sense that his employment was wrongfully terminated or terminated due to nefarious reasons. However, during his deposition, his wife indicated that Mr. Doe was "let go" from Publix over a conflict involving him eating something that store personnel said he did not have permission to eat. There is less indication of intentional, negative response bias from the records made available to me, though I did not examine Mr. Doe. It is beyond the scope of my role to draw conclusions about whether or not the sexual abused described in this claim took place. It is within my scope, however, to convey that recovered "memories" are subject to inaccuracies and biases, and that suggestible individuals are particularly at risk for believing in the accuracy of events that may have occurred differently or may not have occurred at all. This is not to say that the abuse Mr. Doe claimed did *not* occur, but is intended to point out **some of the reasons that a reduced level of confidence in such recovered "memories" is necessary.**

10. In her report, Dr. Duffy concluded, it "appears that the memories regarding the abuse started to be recovered during this treatment or possibly immediately prior to seeking such treatment." It is curious why, rather than merely positing a connection between treatment-seeking and the events described in this claim, she did not simply interview the Plaintiff carefully about the timeline of his "recovered" recollections.
11. ***Memory-related issues.*** In her report, Dr. Duffy's seemed to initially refute the possibility that the Plaintiff may suffer from possible memory impairment. As support

for this notion, she argued that his “recovered” memories “suggest a lack of actual dementia and organic memory loss and impairment.” This line of reasoning is circular in nature. Later in her report, Dr. Duffy acknowledged Mr. Doe’s report of impaired memory, concentration, decision-making ability, cognitive discontinuity, and word-retrieval problems.

12. *Absence of Psychological Assessment Measures in the Examination:* No standardized, normed psychological assessment measures were reported in Dr. Duffy’s report. The use of the multi-source, multi-method approach in forensic evaluations is part of best practice standards for forensic evaluations. It is important to supplement clinical impressions with standardized normed, forensically sound psychological assessment data in order to obtain objective data alongside the more subjective data derived from interviews.
13. *Dr. Duffy’s Discussion of Treatment-related Issues.* In her report, Dr. Duffy differentiated inadvisable treatment methods from research-supported treatment methods. Consistent with a wealth of evidence, Dr. Duffy named CBT (i.e., cognitive behavior therapy) as a recommended treatment modality, but then listed “music” among several other “recommended” modalities (music was used by Ms. Whalen as a therapeutic technique). Dr. Duffy summarized, “all of which are considered to be appropriate treatment approaches in these kinds of cases.” **To my knowledge, music is not listed as an evidence-based practice by any body, organization or agency tasked with listing evidence-based treatments for trauma-related disorders.** Similarly, neither “music” nor music therapy is listed as a recommended treatment in

the treatment guidelines issues by the International Society for Traumatic Stress Studies.

14. **Treatment.** Although CBT has the most research support and shows generally high response rates for the treatment of both PTSD and depressive disorders (particularly when combined with evidence-based pharmacological approaches), **Ms. Whalen does not appear to be providing CBT.** In her notes, Ms. Whalen sometimes described her treatment methodology as CBT and other times as “supportive therapy,” or some other approach. Similarly, during her deposition Ms. Whalen described her therapeutic approach as “client-centered” and she described methodology consistent with that approach (i.e., unconditional positive regard). Both during her deposition and in her notes, Ms. Whalen referred to the use of some CBT techniques during her work, but her descriptions lacked the systematic approach that characterizes CBT. Ms. Whalen’s approach, though likely accepting and warm, seems to have omitted many requisite CBT components and techniques known to be helpful (i.e., use of standardized assessment instruments, clarification of onset/frequency/severity of symptoms, use of weekly homework assignments, and emphasis on systematically targeting and processing traumatic experiences/altering cognitions). Thus, it appears that several forms of therapy may have been provided at once.

It was not clear that best practices for exposure-based treatments were followed. In her notes, Ms. Whalen indicated that in her intervention with the Plaintiff, she “reviewed childhood memories from PTSD,” but description of this technique was provided, nor was there evidence that Mr. Doe’s distress level (i.e., collection of SUDS) was monitored to ensure Mr. Doe remained within the window of therapeutic

arousal. As Dr. Duffy referenced, CBT has a strong research base. CBT is the gold standard for the treatment of PTSD according to the ISTSS guidelines, National Center for PTSD, and several other agencies and organizations formed to identify best practice standards and evidence-based treatments. It is unclear what, if any effect, the absence of a known, effective treatment had on Mr. Doe.

As a separate area of concern, Ms. Whalen indicated in her deposition that she intended to use the Kubler-Ross model to focus on grief and loss as Mr. Doe's primary treatment focus, although Mr. Doe's posttraumatic symptoms, at least according to Dr. Duffy, persist. First, the Kubler-Ross phasic model has been soundly discredited, and it is well established that individuals do not move through five distinct stages of grief/loss. Second, it is not clear why the clinical focus would be shifted to grief and loss given that the processing of the traumatic events does not appear to have taken place and PTSD symptoms are reported at high levels. The prevailing wisdom and practice regarding posttraumatic grief is to process traumatic experiences prior to focusing on grief. Posttraumatic symptoms interfere with grief-related processes (i.e., when individuals have not processed the traumatic events, their attempts to grieve usually turn to recalling the traumatic incident, which interferes with grief-related processes).

Basis for My Opinions

I have provided specific bases for my opinions in each section, as described previously. The more general bases for my opinions involve research evidence, thirty years of experience treating and assessing traumatized individuals, my specialty training in trauma-related disorders, and knowledge of the ways in which trauma typically manifests, evidence-based treatments for

trauma and trauma-related assessment methods. In developing my opinions, I relied on the Diagnostic and Statistical Manual, Fifth Edition (DSM 5; APA, 2013), the practice guidelines from the International Society for Traumatic Stress Studies (ISTSS), practice guidelines from the National Center for PTSD, and the specialty guidelines for forensic psychologists.

Conclusions

Mr. Doe has a significant history of extremely adverse experiences. He has been reported to have both genetic loading for and a history of depressive episodes and OCD symptoms. During at least one prior depressive episode, he reportedly attempted suicide shortly after the death of his estranged wife and children. A second suicide attempt was also noted shortly thereafter. Another depressive episode reportedly began on or about 2011, per Mrs. Doe, though Mr. Doe described at depressive episodes immediately following the death of his family and in 1992. The onset of Mr. Doe's symptoms is not clearly aligned with the events described in this claim, given that he began to receive psychological services prior to the events reported in this claim. Thus, at least some proportion of his past psychological distress is related to other factors. If he experienced the sexual abuse he reported, Mr. Doe would have likely suffered from trauma-related symptoms contemporaneously. There is no direct evidence of this, though his parents are not available to interview. Though most individuals experience recovery over time, some individuals continue to suffer from PTSD symptoms. It appears that Mr. Doe has not been receiving CBT, the treatment with the strongest evidentiary base. The odds of recovery are increased for most people who obtain mental health treatments scientifically demonstrated to work. It is an unusual trajectory to have symptoms increase—rather than decrease—over time. Because Mr. Doe reports experiencing multiple traumatic events, the relative contribution of each, specific traumatic event must be weighed and proportioned. With a reasonable degree of psychological certainty and

based on the records available to me, I can opine that Mr. Doe reports many symptoms, some sound consistent with experiences common among other childhood sexual assault survivors, and some of which are not generally characteristic of childhood sexual abuse sequelae. It is also extremely likely that his early childhood familial experiences have left a lasting impression and are reflected in a significant proportion of his mental health concerns.

As a final note, the Plaintiff's Responses to Defendant First Interrogatories to Plaintiff reads as follows: "Abuser Hartnett was very feminine in his appearance, movements, actions. He was a lifelong bachelor, was never in the presence of females, always males..." These statements perpetrate troubling and inaccurate stereotypes about child abusers, the majority of whom are heterosexual men with available sexual partners. Having feminine behavioral characteristics, being single, and/or being gay is not a predictor of child sexual abuse and is both irrelevant in this case and misleading.

FURTHER AFFIANT SAYETH NOT.

Dr. Janine Shelby

Sworn to and subscribed before me this
the _____ day of November, 2019.

Notary Public for State of California

My commission expires: _____

_____, 2019

perpetrate troubling and inaccurate stereotypes about child abusers, the majority of whom are heterosexual men with available sexual partners. Having feminine behavioral characteristics, being single, and/or being gay is not a predictor of child sexual abuse and is both irrelevant in this case and misleading.

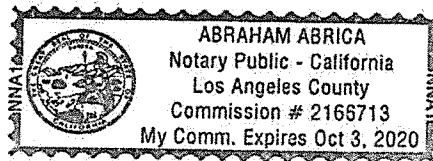
FURTHER AFFIANT SAYETH NOT.

Jan Shelby P.D.
Dr. Janine Shelby

Sworn to and subscribed before me this
the 10 day of ~~November~~ December, 2019.

[Signature]
Notary Public for State of California

My commission expires: 10/3/2020



December 10., 2019

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 DR. MONICA
APPLEWHITE

Personally appeared before me, Dr. Monica Applewhite, who swears and deposes as follows:

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

Professional Qualifications

2. My name is Monica Applewhite and I have a Ph.D. in social work and am an expert in the field of social work and child sexual abuse, including but not limited to the historical evolution of policies and laws in the United States to protect children from sexual abuse, the education, screening, monitoring, development of risk management policies for the protection of children from abuse, the organizational response to allegations of child sexual abuse, the behaviors and tactics of child molesters and the standards of care for child protection from the early 1930's to today. I have spent the past 27 years utilizing research in the area of child sexual abuse in organizations in order to assist organizations in developing best practices.
3. I have worked with more than 300 organizations that serve children and youth to investigate allegations of misconduct, assess the risk of programs and implement programs to prevent and respond properly to incidents and allegations of abuse. I am currently the director of Confianza LLC, which is a consulting firm specializing in standards of care and the dynamics of abuse in educational, social service and religious environments. A list of my specific clients and my current curriculum vitae are attached (Appendix A).

Documents Reviewed in Developing Opinions

4. The case materials I have reviewed in this case are as follows:
 - Complaint filed August 2, 2018
 - Answer filed March 19, 2019
 - Amended Complaint filed August 29, 2018
 - Plaintiff's Responses to First Interrogatories
 - Plaintiff's Response to First Requests for Production
 - John Doe Medical Records
 - Chris Harnett Personnel File
 - Affidavit of Harold Brooks
 - Deposition of John Doe
 - Deposition of Mrs. John Doe
 - Deposition of Dorothy Whalen
 - Deposition of Jason Flassing
5. In addition to the case materials, I have relied upon other documents in formulating my opinions. A list of these materials is attached (Appendix B).

Opinions to a Reasonable Degree of Certainty

6. The bases for the following opinions are my educational background, professional experience, review of the relevant literature, and the materials in this case. Additional information regarding the bases for these opinions is contained in the section that follows.
7. In my review of the materials, I have not seen evidence or testimony to suggest that Christopher Hartnett or Harold Brooks was known to have a "predilection toward sexually assaulting young boys," "sexual interest in children," or to have acted "inappropriately on the interest." John Doe stated that he did not tell anyone that he was abused and that he did not recall the abuse until many, many years later. Similarly, the case materials do not contain information to suggest others made reports of abuse either before or after 1970 and 1971.
8. The knowledge base regarding sexual abuse of minors and the associated skills and protocols designed to prevent, detect, investigate and respond have developed on an incremental basis from the 1930's until today. Any examination of reasonable levels of care must be considered within a historical framework that acknowledges the recent growth in understanding and awareness of dynamics, warning signs, and many other dimensions of sexual abuse prevention, detection and

response. The events under consideration in this case are alleged to have occurred approximately 50 years ago, in 1970 and 1971.

9. In 1970 and 1971, little was known by professionals about the dynamics of acquaintance-type sexual abuse. There were no books, journals, educational programs or research focusing on this type of sexual abuse. Most experts in the field did not believe that sexual contact between an adult and a child was harmful to the child. Therefore, while it may have been believed that this form of sexual contact was “wrong,” the extent of distress that could be caused by sexual abuse was not known by professionals or the public. It was not until after 1979 that professionals first began to recognize the short and long-term effects that could be caused by what was later called “acquaintance abuse.”
10. During the period of time prior to and including the early 1970’s, organizations that served children had no established methods for screening and selection of personnel to work with children. Criminal records and sexual offender registries could not be accessed by youth organizations, warning signs of sexual offenders had not yet been identified by professionals, and there were no published resources for screening adults to work with children. As such, there were no recognized screening and selection standards to uphold during the timeframe under consideration.
11. The prevention and detection of child sexual abuse involves a specialized and complicated set of activities specifically designed for this purpose. Routine methods of screening, training, supervision, and monitoring that are designed to address other areas of human service often do not detect the subtle distinctions of behavior that are unique to the relational acquaintance abuse. In 1970 and 1971, sexual abuse was still a taboo topic, the prevalence, effects and dynamics of sexual abuse had not been studied, and virtually no professional literature existed. Guidelines and best practices for prevention, detection and response in schools and religious organizations did not exist and had not yet been conceptualized.
12. In 1970 and 1971, the criminal justice system in the United States had not yet established procedures for the investigation of acquaintance sexual abuse in organizations. CAPTA was passed in 1974, giving the first substantial funding to the development of Child Protective Services to states around the country and eventually leading to established offices of investigation, which still focused on abuse that occurred within families. Therefore, there were no

standards or guidelines for investigations for school or church officials to follow even if an incident or allegation of abuse was known during this timeframe.

13. During 1970 and 1971, public and private schools, religious organizations and other organizations that served children had no established protocols for preventing or addressing sexual abuse or exploitation of children. The Federal Government of the United States had not yet established or even considered regulatory practices for organizations that serve children or youth such as exist today.
14. In 1970 and 1971, schools, churches and other organizations that serve children had not yet developed protocols or standards for supervision and monitoring of adults who work with children. There were no federal or state resources to assist with these efforts, no professional literature to guide supervision, and no examples were available such as would be on the internet today.
15. In 1970 and 1971, the concept of “warning” which is also called “community notification” or sharing of information about sexual offenders was not yet contemplated by law enforcement or private citizens. It was not until 1990 that the criminal justice system in the United States began to consider informing citizens that convicted sexual offenders were moving into their neighborhoods, and then only for violent, convicted offenders.
16. In 1970 and 1971, as offensive as it may be to modern sensibilities, most professionals did not recognize that sexual contact with a familiar adult was likely to be traumatic for a child. In fact, sexual contact between adults and children was commonly treated as a “childhood behavioral problem.” With this as the prevailing paradigm of the time, there were no established protocols to assist with the traumatic effects of sexual abuse or to facilitate the healing process. In other words, therapists were not trained to address the trauma of sexual abuse and defined therapy for healing after sexual abuse did not yet exist in the early 1970’s.

Bases for My Opinions

17. The events that are the subject of this litigation are alleged to have occurred approximately 50 years ago. In the area of sexual abuse, the intervening 50 years have been a time of exponential growth in awareness, resources, and law. Therefore, when formulating opinions as to whether actions were reasonable, it is essential to begin by establishing the relevant standards of care for the time period in which decisions and actions were taken.

18. The basis for determining whether or not an individual behaved in a responsible manner is normally to compare the actions of the individual in question with what would be expected of a reasonable person at the time. The difficulty with actions that relate to sexual abuse is that the development of information that is available regarding the problem has increased so dramatically in the past 20 years that most people are unaware of how the problem was viewed 20, 30 or 50 years ago. This lack of information leads them to believe that what is considered reasonable by today's standards should be applied to the decisions and actions of the past. The inaccuracy can be corrected by carefully defining the standards of care according to the knowledge and guidance that were available to decision-makers during the timeframe in question.

19. Standards of care with respect to sexual abuse may be defined through comparison with the following benchmarks:

- *Federal and State laws that address sexual crimes, sexual abuse of children, sexual offenders, reporting laws, and access to criminal records.*
- *Federal and State regulations and guidelines for organizations that serve children and youths. For example, federal guidelines for public schools and state child care licensing standards.*
- *State of professional knowledge regarding the specific form of abuse, such as stranger assault, incest, acquaintance abuse, child to child abuse, and other forms of abuse. Knowledge areas include but are not limited to prevalence, damage to victims, and treatment of offenders.*
- *State of public knowledge and general awareness regarding the specific form of abuse.*
- *Resources available to assist organizations in the prevention and response to the specific form of abuse, such as professional journal articles, books, guidelines and sample policies offered by foundations or associations.*
- *Practices and standards maintained by similar organizations and programs.*

The principle to follow is that decision-makers in organizations can only utilize knowledge that was known and guidelines that were established (See Appendix B).

20. As early as the 1930's, "sexual psychopathy" laws were passed to provide for the psychiatric treatment and, at times, civil commitment of convicted sexual offenders. These laws reflected the pervasive thinking of the times: forcible rape of children was against the law. State statutes and investigations focused on violent offenders, stranger rape and sexually motivated murder.

Language used in state statutes and other writings did not reflect a contemplation of incest abuse

or other, more subtle forms of sexual abuse (Sutherland, 1950), stating that “practically all sex crimes were committed by ‘degenerates,’ ‘sex fiends,’ ‘sexual psychopaths,’ and ‘sex killers.’” This left little room for an allegation of sexual abuse by an employed, non-criminal, other-wise “upstanding citizen.” Treatment-based sentencing for sexual offenders (even violent offenders), whereby sexual offenders were placed into residential treatment programs instead of prisons, was common from the 1950’s through the 1980’s.

21. Beginning in 1944, a number of states began to enact “sexual offender registration” statutes to track and maintain a database of names and identifying information regarding known sexual offenders. California was the first to develop a sexual offender registry and the trend spread through the US until 1967. It is important to note that these sexual offender registries were not accessible to child-serving organizations for use in background checking and were not available to the public at large to assure their own safety. Information contained in the registries was considered confidential. Law enforcement officers were not permitted to share the information with citizens, but were instructed to use the registries strictly as an aid in pursuing criminal investigations and convictions. (Matson & Lieb, 1996). In fact, in most states, the release of information about sexual offenders was actually a crime until after the 1990’s.

Timeline of Legislation Regarding Sexual Abuse

1984: President Ronald Reagan opened the National Center for Missing and Exploited Children.

1990: Washington State Community Protection Act became the first state law that allowed ordinary citizens to have *access* to information about violent sexual offenders in their neighborhoods. This opened the door for community notification laws in the United States.

1993: National Child Protection Act permitted individual states to pass legislation that would allow entities within their own states to access national criminal records. Prior to this, no state in the country could permit organizations to access national criminal background checks.

1994: First law requiring states to create Sexual Offender Registries.

1994: New Jersey’s Megan’s Law was the first law allowing law enforcement to notify neighbors when a convicted, paroled violent sexual offender would be moving into their neighborhood.

1998: Volunteers for Children Act was the first national law allowing private organizations in all states to access the FBI database of criminal records for the purpose of screening volunteers.

2006: First national law requiring states to allow online access to Sexual Offender registries.

2006: First national law requiring Adoptive and Foster Parents to have criminal background checks.

22. As of 1990, not a single state in the United States had a provision to notify communities when a dangerous, sexually violent predator was being paroled and had plans to move into the neighborhood. Today, all 50 states have laws that address public access to information when dangerous, convicted sex offenders move into their neighborhoods. While acquaintance offenders in organizations rarely qualify as “sexual predators” according to the law, community notification of sexual offenders is an important benchmark in understanding the developing standard of care because it demonstrates a fundamental shift in thinking from protecting the right of privacy for the offender to releasing information for sake of protecting the public. Below is a description of the development of this practice in the criminal justice system nationally.
23. Colorado was the first state to enact a mandatory child abuse reporting law in 1963. By 1969, all states in the United States had some form of abuse reporting law. Prior to this, it was not only legal for professionals working with children to fail to report obvious abuse, most police departments did not have programs in place specifically to respond to reports of crimes against children. Child welfare departments were still tied to the Humane Society and the Society for the Prevention of Cruelty to Animals until the 1970’s when police departments began to establish their own procedures for processing and responding to reports of child abuse.
24. Prior to 1975, there were at least three pervasive beliefs about sexual offending against children: 1. Sexual abuse is rare. 2. Children “collude” with adults in having sexual contact, and 3. That sexual abuse is unlikely to cause harm. Each of these pre-1975 beliefs will be examined in more detail in the discussion that follows.

Belief that sexual abuse was rare. One of the facts which took an inexplicably long time to gain acceptance, was the alarming frequency with which sexual abuse occurs in mainstream society. When Sigmund Freud first proposed to his colleagues at the Vienna Society for Psychiatry and Neurology that his patients had been sexually involved with adults, he was summarily dismissed and told by Richard von Krafft-Ebing that his theory “sounds like a scientific fairy tale” (Hunt, 1993, p.181). Freud eventually abandoned the proposal that the activities actually occurred and replaced it with a theory that suggested that children were merely “fantasizing” about sexual contact with adults (Laws & Marshall, 2003). Even with reasonably accurate studies of the prevalence of child sexual abuse first published in 1929 (Hamilton, 1929; Terman, 1938), the professional literature did not acknowledge the prevalence of sexual abuse until many years later. A noted sociologist summed up the prevailing notion by stating, “The problem of incest is peculiar in several respects. Statistically its occurrence is negligible. Because of this

infrequency, the extent of its disruptive effect on human group life is minor,” (Blumer, 1969). Thus, prior to 1975, the prevailing belief among professionals and the general public was that child sexual abuse was an extremely rare phenomenon.

Belief that children “collude” with abuse. Prior to 1975, children who were sexually abused who did not run or scream or otherwise prevent their own abuse were essentially blamed or considered responsible for the sexual activity between themselves and an adult (Virkkunen, 1975). In 1937, Bender and Blau described working with 5 to 12 year-old incest victims, “The history of the relationship in our cases usually suggested at least some cooperation of the child in the activity, and in some cases the child assumed an active role in initiating the relationship...It is true that the child often rationalized with excuses of fear of physical harm or the enticement of gifts, but these were obviously secondary reasons.”

In 1953, Kinsey wrote that “in many instances, incestuous experiences were repeated because the children had become interested in the sexual activity and more or less actively sought repetitions of their experience.” In 1975, Henderson stated in a psychiatry textbook that “the daughters collude in the incestuous liaison and play an active and even initiating role in establishing the pattern” (p.1536). The 1972 edition of the Comprehensive Textbook of Psychiatry stated the following: While police records of parents’ complaints that their child has been molested do provide some clue as to the prevalence of this sexual deviation, other factors must be taken into consideration. For example, the adolescent “Victim” in such a complaint may, in fact, have concealed his or her age, and behaved in a deliberately seductive manner. Furthermore, children lend themselves to fondling and to lap sitting, which may be accompanied by friction with adult genitalia. As Anna Salter discussed in 1988, it is essential to understand that the notion of “collusion” was embedded in the mainstream mentality, and not an idea solely held by a “fringe element” of mental health professionals.

Belief that when sexual abuse does occur, it is unlikely to cause harm. A third pervasive concept in the pre-1975 professional literature was the belief that there were few, if any, negative consequences for children who were involved in sexual contact with adults (Mohr, Turner, & Jerry, 1964). Sloane and Karpinski (1942) stated that “the view that sexual relations with adults (including incest) among children are not basically destructive is confirmed by the observations of Ramussen and Bender and Blau.”

25. In 1951, in a follow-up to Bender's earlier examination of the effects of childhood sexual contact with adults, Bender and Grugett reported, "In contrast to the harsh social taboos surrounding such relationships, there exists no scientific proof that there are any resulting deleterious effects (p. 827). Alfred Kinsey (1953) one of the first researchers to establish how widespread sexual abuse was, concurred. He promoted the idea that sexual abuse is not inherently harmful, but that it is the reactions of our society that cause any harm that may result. He wrote: It is difficult to understand why a child, except for its cultural conditioning, should be disturbed at having its genitalia touched, or disturbed at seeing the genitalia of other persons, or disturbed at even more specific sexual contacts....Some of the more experienced students of juvenile problems have come to believe that the emotional reactions of parents, police officers, and other adults who discover that a child has had such contact, may disturb the child more seriously than the sexual contacts themselves. (p.121) The perception that sexual abuse was either not harmful or probably not harmful was widely held until later studies called into question the beliefs regarding "no harm."
26. In 1975, a leading authority (Walters, 1975) wrote, "virtually no literature exists on sexual abuse of children." Henry Kempe's first edition of *The Battered Child* in 1968, made no mention of child sexual abuse. Later, in a 1977 address to the American Academy of Pediatrics, he described child sexual abuse as a "hidden pediatric problem and a neglected area." Sexual abuse of boys, grooming-type acquaintance abuse, and warning signs of sexual offenders were not well-researched until well after 1985.
27. During the early 1980's, although therapists, social scientists and child protective services agencies were developing an understanding of the dynamics of incest offending and other forms of child abuse within families during the late 1970's and early 1980's, virtually none of the research or discussion focused on acquaintance abuse or "extra-familial sexual abuse" or the sexual abuse of boys.
28. In 1982, the first National Symposium on Child Sexual Abuse was held in Denver, Colorado. The organizers and participants did not address acquaintance abuse at all and specifically outlined the forum as focusing solely on sexual abuse that occurred within families. In a review of empirical research findings regarding sexual abuse victims, Browne and Finkelhor (1982) elected not to address sexual abuse of boys because, "Few clinical, and even fewer empirical, studies have been done on boys and it seems premature to draw conclusions at this point." So dim was

the recognition that boys could also be sexually abused, that Russell's ground-breaking community-based research study did not even attempt to study males (Russell, 1983).

29. In addition to a paucity of empirical research, virtually no federal or state funding was committed to furthering the understanding or prevention of abuse within organizations, despite the prevalence of abuse in state-funded out of home care and public school systems. There had yet to be a large-scale research survey to describe or guide the sexual abuse prevention practices of organizations that serve children or to assist in the identification of "best practices" for prevention and response.
30. During the 1980's, researchers began to discover that it is possible for sexual abuse to cause serious and long-term effects. Initial effects were found to include fear, sleep disturbance, ambivalent hostility, active defiance, disruptive behavior in the family, aggression and antisocial behavior with peers, inappropriate sexual behavior, shame and feelings of guilt. In addition to these initial effects, studies of adult survivors of sexual abuse also identified long-term effects that may include depression, suicide attempt and other self-harm behaviors, anxiety, eating disorders, dissociative disorders, compromised self-esteem, hostility and fear in interpersonal relationships, and problems in sexual functioning and substance abuse (Browne & Finkelhor, 1986; Alter-Reid, Gibbs, Lachenmeyer, Sigal, & Massoth, 1986).
31. Although some of the individual research findings were obtained prior to the 1980's, the gathering and synthesis of the findings led professionals to recognize the gravity of outcomes for children who had experiences of abuse. This was a key element for raising public awareness for the need to prevent sexual abuse, rather than just responding properly.
32. In 1986, the National Center for Missing and Exploited Children published the first authoritative manual on the investigation of child sexual exploitation. The manual was one of the first such works to focus attention on "Acquaintance Offenders" and was intended for use by law enforcement officers and other criminal justice professionals who might encounter this type of offender (Lanning, 1986; 1992). Child Molesters: A behavioral analysis was the first clear articulation of standards for investigating sexual abuse by acquaintances, particularly those who gain access to children through child-serving organizations.

Key Resources Regarding Sexual Abuse

- 1974, CAPTA: The Child Abuse Prevention and Treatment Act provided federal funds to states in support of prevention, assessment, investigation, prosecution, and treatment activities. CAPTA also established the Child Welfare Information Gateway.
- 1997: National Collaboration for Youth published *Screening Volunteers to Prevent Child Sexual Abuse: A Three-Step Action Guide*.
- April, 1998: The United States Department of Justice published *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*.
- 2002: The Points of Light Foundation and the Volunteer Center National Network published *Volunteer Screening: Part of an Integrated Risk Management Program*.
- 2007: The Centers for Disease Control published *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures*.

33. During the early 1970's, the majority of youth-serving organizations in the United States did not have screening procedures designed to prevent a sexual offender from becoming involved with the organization and gaining access to children. These organizations did not yet have access to the criminal records of applicants, sexual offender registries were not available to the public, and child welfare records were kept for state use only. Major developments in screening and selection did not occur until many years later, beginning in the late 1990's, a number of organizations banded together to form the National Collaboration for Youth. One of the primary purposes of the Collaboration was to develop resource materials to assist in the prevention of sexual abuse; it was made up of organizations like the YMCA and Big Brothers that had experienced many episodes of sexual abuse by employees and volunteers. Most of their efforts focused on screening and selection of volunteers.

34. In order to "recognize warning signs" an individual or representative of an organization must a) recognize certain behaviors as boundary violations, and b) know that boundary violations are signs of sexual abuse. In this area, we have the most recent developments in the field of sexual abuse by acquaintance offenders, that is, the subtle distinctions between a dedicated professional who cares about youth and the signs of an adult who is initiating a sexual relationship with a minor. It is only within the post 2002 era, that these differences or "warning signs" have become part of the arsenal for prevention of abuse and indeed, this is an area in which more research and education is still needed. Below is a discussion of the development of this knowledge and practice in organizations.

35. When acquaintance abuse first emerged, inappropriate behavior with minors was not addressed as part of a larger pattern of sexual abuse. The concept of “grooming” or using a slow process of preparing a child to be abused was not understood to be evidence of the possibility of sexual contact with children. Today, we understand that acquaintance sexual offenders take steps to ensure that children feel comfortable with them physically and emotionally before the contact ever becomes sexual. Grooming most often consists of gaining the trust of children and their parents through friendship, kindness and consistency in the relationship. Over time, the acquaintance offender increases focus on the child or children who are targeted for abuse – taking them “under his wing,” helping the child and family in ways that are genuinely needed, spending time, energy and money on the child or children. They slowly increase physical contact and affection, making physical contact the norm, rather than the exception. “Accidental” touching of private body parts are often part of the boundary testing. Acquaintance offenders also test the child’s ability to keep secrets by involving the child in using alcohol or cigarettes and then asking the child not to tell. Pornography is commonly used for grooming as well.
36. Until recently, grooming behaviors were most often viewed in isolation instead of as part of a pattern: they were not understood as the part of sexual abuse we can see. As a result, most investigations of sexual abuse, either criminal investigations or organizational investigations focused on determining whether or not an individual event of sexual abuse did or did not occur, rather than including additional information about the overall pattern of interacting with children that was characteristic of the individual. Early descriptions of this pattern could be found in the professional literature by 1988 (Lang & Frenzel, 1988) but the knowledge did not become readily available to the public until after 2002.
37. **Educational programs for prevention.** Prior to 1985, the majority of youth organizations had not yet developed educational programs for children or parents to help prevent sexual abuse. It was approximately 1997 - 1998 when most youth organizations in the United States began implementing abuse prevention programs which included abuse prevention training for volunteers and employees. The training varied from location to location, but generally included segments on the definitions of physical, emotional and sexual abuse, as well as strategies for prevention. The strategies most often included recognizing signs and symptoms of children who may be sexually abused and how to respond if a child discloses abuse. Many programs also included “characteristics” of pedophiles that listed “over-involvement with children, single, male, relates easily with children, and under 35” as characteristics to watch for in staff and volunteers. Both

signs of abuse in children and characteristics of offenders presented some problems with respect to prevention. The trouble with recognizing signs of abuse in children was that the signs, such as “moodiness” or “withdrawal” could be signs of many different problems in childhood and adolescence, not just sexual abuse; and the difficulty with using characteristics of adults was that the characteristics did not actually differentiate adults who were not safe with children from those who were.

38. **Policies for prevention.** I am not aware of any professionals who were studying sexual offenders who targeted children through organizations or who were assisting organizations to develop policies and procedures for prevention in the early 1970’s. The first governmental resources and guidelines addressing incest sexual abuse were published in the late 1970’s. There were no professional journals or trade publications to guide youth-organizations in the prevention of sexual abuse within organizations.
39. The first published works that were of practical use to organizations were published for law enforcement in 1986 and human service professionals in 1988. In 1988, *Sexual Abuse: A Journal of Research and Treatment* published a piece that was among the first research-based articles with direct usefulness to youth organizations. The article was entitled “How Sex Offenders Lure Children” (Lang & Frenzel, 1988). This study was limited only to perpetrators against girls and interestingly uses the term “stranger-perpetrated sexual assault” to differentiate extra-familial offenders from incest offenders. This nuance of language demonstrates the foreignness of the concept of acquaintance sexual offending even as late as 1988.
40. **Centers for Disease Control.** In 2007, the Centers for Disease Control published a resource for child and youth serving organizations. This document, entitled, *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures* is described on the CDC website as a resource “to assist youth-serving organizations as they begin to adopt prevention strategies for child sexual abuse.” The document identifies six key components of child sexual abuse prevention for organizations:
 - Screening and selecting employees and volunteers
 - Guidelines on interactions between individuals
 - Monitoring behavior
 - Ensuring safe environments

- Responding to inappropriate behavior, breaches in policy, and allegations and suspicions of child sexual abuse
- Training in child sexual abuse prevention

This 2007 federally-funded resource demonstrated the on-going needs of organizations and continuing evolution of the standards of care.

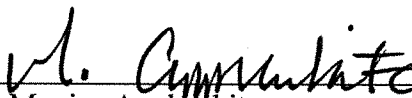
41. The practice of remediating, insofar as is possible, the effects of sexual abuse is today, one of the strongly held practices for when sexual abuse is known to have occurred. The development of this practice necessitated information in the following areas: a) that sexual contact between adults and children or adolescents is always sexual abuse, not just when there is violence, physical coercion, or physical injury, b) that sexual abuse may cause emotional or psychological harm, c) that harm may be remediated through treatment, and d) the particular forms of treatment that may be utilized to address sexual abuse trauma. Prior to 1975, the professional literature was not supportive of either of the first two necessary components for this standard to develop. By the late 1970's, professionals were beginning to shift their thinking from the psychoanalytic model of understanding incest abuse and moving more towards family systems therapy. The family treatment model focused on preventing further incidents by addressing the family-system dynamics that contributed to their occurrence. Most significant in this movement was the creation of treatment programs both for child victims and adults who were molested as children.
42. **Development of a model program to address incest sexual abuse.** California became the first state to develop significant programs for victims of sexual abuse, with a model program called the Santa Clara County Child Sexual Abuse Treatment Program which began informally in 1971 with a pilot program, treated 32 families in 1973 and secured regular funding by the state in 1976. The program focused on incest offending and its objectives were to provide immediate counseling and practical assistance to families, but especially to victims of sexual abuse. Proponents of this program believed that child victims and adults who were victimized as children need therapeutic help for successful adjustment and positive self-concept (Davis, 2005).
43. **Development of treatment protocols.** In 1982, Suzanne Sgroi edited the Handbook of Clinical Intervention in Child Sexual Abuse. In this volume, Dr. Sgroi reported that there were only a "handful" of treatment providers for sexual abuse intervention in the United States and that ...the field is too new and the body of accumulated knowledge and skills is too small and inadequately tested for anyone to claim that he or she has the answers. We are many years away from evolving

an intervention methodology that has stood the test of time (Sgroi, 1982, p.6). The book goes on to provide a practical guide to clinicians regarding the areas that should be addressed to treat child sexual abuse as well as specific recommendations for individual, group and family therapy. While extra-familial abuse and sexual abuse of boys are acknowledged in the text, clinical interventions in cases of incest offending clearly have the more prominent role and receive the practical advice within the content. Sgroi's guidebook, while not the only resource from this era, was a useful compilation of knowledge and strategies about what could be done to address harm to victims and 1982 marked the beginning of providing therapy as a practice standard for addressing child sexual abuse.

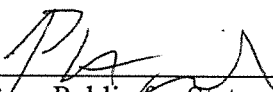
Conclusions

44. At no time during 1970 and 1971 could Sacred Heart School or the Diocese of Charleston have been in violation of community standards for prevention or detection of sexual abuse by a teacher or teachers because those standards had not yet been established during the timeframe (See Appendix C). As there is no evidence or suggestion that a contemporaneous report was made, there is no basis upon which to evaluate the response of these entities against prevailing community standards.
45. If I am asked to provide additional opinions, I will review the relevant materials and provide any modifications or additions to my opinions as soon as possible.

FURTHER AFFIANT SAYETH NOT.

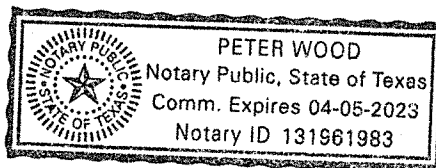

Dr. Monica Applewhite

Sworn to and subscribed before me this
the 6 day of November, 2019.


Notary Public for State of Texas

My commission expires: 4/5/2023

6 November, 2019



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.

CERTIFICATE OF SERVICE

I hereby certify that this _____ day of April, 2019, a copy of _____

_____ has been served upon other
counsel of record by placing same in the United States Mail, postage prepaid, to:

Lawrence E. Richter, Jr.
Jennifer S. Ivey
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorneys for Plaintiff

April D. Hager

Appendix A. Applewhite CV and List of Clients

MONICA APPLEWHITE, PH.D.

CURRICULUM VITAE

EDUCATIONAL BACKGROUND AND WORK EXPERIENCE

EDUCATION

The University of Texas at Arlington

Arlington, Texas

Ph.D. in Social Work – Clinical Track (1995).

Dissertation: "A Logistical Regression Model of the Decision Making Process of Women in Abusive Relationships."

Advisor: Dr. Charles Mindel

The University of Texas at Arlington

Arlington, Texas

Master's of Science in Social Work (1992).

Texas Christian University

Fort Worth, Texas

Bachelor's of Science in Social Work (1990).

WORK EXPERIENCE

Confianza, LLC - Independent consultant

September 2007 to the present

Austin, Texas

- *September 2007 to the Present – Programs for Religious Organizations, Schools and Social Service Agencies*
 - *Developed and delivered educational programs for faith-based organizations, religious and independent schools, social welfare and university systems in various locations throughout the United States, Ireland, Italy, South Pacific Island Region, South America, New Zealand, and Australia.*
 - *Conducted comprehensive risk assessment and supported implementation of risk reduction strategies for Milton Hershey School in Hershey, Pennsylvania.*
 - *Provided educational programs and policy develop for multiple independent schools in the United States.*
 - *Facilitated the review of Accreditation Standards for Men's Religious Institutes in the United States. Reviewed standards for pastoral care of victims, incident investigation and supervision of those who have sexually abused minors.*
 - *Conducted workshops for supervisors of sexual offenders. Addressed current monitoring procedures, the use of static and dynamic variables in risk assessment, internal investigations and the use of community support for secondary prevention.*

- *Delivered educational programs for Jesuit Superiors, Congregation for the Mission, Eastern and Mid-West Provinces, and numerous other programs for Religious Men.*
- *Conducted educational program for the Bishops of English-speaking countries entitled, "Monitoring the Accused and Safety Planning: Toward a Holistic Approach."*
- *Conducted educational programs for the USCCB regarding supervision of priests who have sexually offended against minors.*
- *Developed individualized programs of support and accountability for priests and religious who have sexually offended against minors and/or adults in ministry environments.*
- *Presentations for the National Safe Environments and Victim Assistance Leadership Conferences in 2009, 2010 and 2017.*
- *Conducted educational programs and institutional risk assessment for educational and residential care facilities.*
- *On-site consultation and education for University Systems and campus ministries.*
- *Provided outreach and support to victims of sexual abuse on behalf of organizations in which the abuse had occurred.*
- *Investigated historical reports of abuse and allegations of misconduct that fall short of criminal behavior.*
- *September 2007 to the Present – Research on Historical and Current Standards of Care*
 - *Reviewed and documented the professional literature regarding the development of standards of care in schools and educational institutions in the United States and internationally.*
 - *Reviewed and documented the professional literature regarding standards of care for children, youths and vulnerable adults in out of home care, including residential treatment facilities, emergency shelters, juvenile detention centers, foster care, day care centers, group homes and respite care.*
 - *Reviewed and documented technical literature regarding the knowledge base surrounding sexual abuse of minors, the treatment of sexual offenders, known prevention methods and institutional response systems from the early 1900's to the present.*
 - *Researched and documented the development of criminal statutes, sexual offender registries, punishments and parole requirements for sexual offenders throughout the history of the United States.*
 - *Reviewed and summarized the professional literature regarding the historic understandings of victims of sexual abuse, the short-term and long-term effects of abuse on children and youth, and the evolution of treatment for victims of abuse.*

Park Dietz & Associates
Expert Consultant
2008 to the present

Praesidium, Inc.
Partner, President of Religious Services (1998 – 2007)
Arlington, Texas

- *1998 to 2007 Work with Organizations that Serve Children, Youths and Vulnerable Adults*

- Conducted numerous on-site risk assessments of organizations that serve minors and vulnerable adults.
- Activities included policy review, face to face interviews with staff and participants, review of records and incidents, and observations of programs.
- Conducted investigations of boundary violations, policy violations and other non-criminal behaviors with children, youth and vulnerable adults.
- Organizations included resident camps; water parks; dry parks; municipal pools; youth development organizations; public, private and charter schools; child care facilities, foster care organizations, Autism treatment facilities, residential treatment facilities, emergency shelters, juvenile corrections facilities and programs to address the needs of vulnerable adults.
- Developed individualized strategies to address risks identified in assessments.
- Developed policies and procedures to prevent and respond to physical, sexual and emotional abuse.
- Conducted several hundred educational workshops and seminars to address screening and selection, internal feedback systems, policy development, monitoring and supervision, consumer awareness and incident investigation.
- 2002 to 2007 Programs for the Conference of Major Superiors of Men
 - Addressed the major superiors of Catholic Religious Institutes in the United States. Program was entitled, "From Compliance to Commitment: Large Scale Organizational Change to Protect Children and Young People".
 - Conducted 12-part Educational Program for Major Superiors entitled, "Instruments of Hope and Healing: Prevention and Response to Sexual Abuse of Minors." Educational program included sessions regarding internal investigations, responding to those who have experienced abuse,
 - Worked with a committee of priests, monks and brothers to develop "Accreditation for Religious Institutes," a program of accountability. The Accreditation Standards consisted of 28 requirements for prevention and response to sexual abuse, including standards for the supervision of priests and brothers who have sexually offended children and youths.
 - Conducted site visits of more than 400 individual religious communities to ensure adherence to accreditation standards.
 - Conducted numerous educational programs (60+) with individual Religious Institutes, combining research findings, investigation experiences and current industry expectations to increase the knowledge and skills for prevention among priests and brothers.
- 2003 to 2004 Programs for the Episcopal Church and the Salvation Army
 - Addressed the Episcopal House of Bishops in a program entitled, "Policies and Standards for the Protection of Children" which outlined a five-step process for prevention and response to sexual abuse in religious organizations. The five-step process was accepted by the bishops and formalized in a resolution of the 74th General Convention of the Episcopal Church. The resolution adopted the standards for prevention and response to sexual abuse for all Episcopal Churches in the United States.
 - Developed National Model Policies for the Episcopal Church in the United States,
 - Developed and trained national program of prevention and response for the Episcopal Church in the United States and the Salvation Army Western Territory.

- 1998 to 2007 *Work with Religious Organizations*
 - Conducted risk assessments of faith-based organizations, including churches, religious schools, religious camps and youth ministry programs. Developed policies, supporting forms for documentation and procedures for managing risks of abuse that are unique to these environments.
 - Conducted investigations of sexual misconduct in religious organizations. Investigations of misconduct included Roman Catholic and Episcopal Priests, Religious brothers and monks, Jewish rabbis, Baptist Ministers, non-denominational protestant ministers, youth ministers, camp counselors, swimming instructors and school teachers of multiple religious traditions.
 - Developed individualized supervision protocols for members of the clergy and others in positions of trust who have sexually abused minors, violated boundaries with adults and failed to adhere to organizational policies with respect to boundaries and the ethics of ministry.
- 1998 to 2003 *Programs for the United States Catholic Dioceses*
 - Developed *A Time to Protect God's Children* and *A Plan to Protect God's Children*, video-based training designed to teach warning signs of child molestation and strategies for preventing and responding to abuse. Piloted program, trained trainers in 11 states and presented workshop to more than 30,000 Catholic laypeople, religious men and women, and members of the clergy.
 - Developed the *Control Access Toolkit*, a set of protocols and instruments for use in screening and selecting adults to work and volunteer in positions of trust with minors. The toolkit included interview questions, reference forms and follow-up questions, protocols for criminal background checks and a checklist for decision-making.
 - Reviewed 21 Roman Catholic Diocesan Policies and developed model Diocesan Policies for prevention and response to sexual abuse.
 - Developed a *Self-Audit Toolkit* for institutions to review their own policies and procedures to determine whether addition protocols may aid in the prevention and response to warning signs and incidents of abuse.

Praesidium, Inc.

Partner, Vice-President of Risk Management Technology (1994 – 1998)

Arlington, Texas

- 1994 to 1998 *Programs for YMCA's and Youth Development Organizations*
 - Conducted risk assessment of YMCA programs, including child care, sports, Indian Guides & Princesses, resident camps, day-camps, afterschool programs and swim instruction.
 - Developed screening protocols for staff and volunteers, screening and selection tools, parent information materials, and incident response protocols.
 - Conducted numerous educational programs for YMCA's and Youth Development programs throughout the United States, including Seattle, Detroit, San Francisco and Dallas.
- 1994 to 1998 *Programs for Residential Treatment Facilities and Emergency Shelters*
 - Conducted risk assessments for residential treatment facilities for children and youth with behavioral and emotional disturbances, including specialized programs for children and

youth with chemical dependency, histories of sexual offending, oppositional-defiant disorders, conduct disorders, physical and sexual abuse histories and developmental delays.

- Conducted root cause analysis of cases of adult to child abuse, child to child abuse, and incidents of sexual conduct among program participants.
- Developed policies and educational programs for the Association of Licensed Care Facilities in Texas.
- Developed protocols and implementation strategies for managing juvenile sexual offenders in residential treatment facilities.
- 1994 to 1998 Programs for Foster Care
 - Conducted risk assessment foster care organizations and foster homes.
 - Developed screening and selection system for foster families, including protocols for home visits, a self-assessment for potential foster parents, behavioral interviews, reference check questions and protocols for decision-making.
 - Developed case management protocols for ongoing supervision and monitoring of foster homes. Included standard interviews with children and youth and procedures for direct observations of interactions.
 - Conducted training for foster parents, case managers, supervisors and administrators regarding abuse prevention and response in foster care environments.

Child Safe Environments, Inc. (later became Praesidium, Inc.)

Consulting Firm for Organizations, specializing in prevention and response to sexual abuse.

Co-Founder (1992-1994)

Arlington, Texas

- In preparation for consulting with organizations serving children and vulnerable adults, the following activities were completed:
 - Conducted complete literature review of sexual abuse, with focus on organizational abuse, disclosure, characteristics of targeted victims, prevention methods and standards for response upon disclosure.
 - Reviewed all empirical research that was available regarding physical and sexual abuse in organizations. Reviewed and analyzed cases of "institutional physical and sexual abuse."
 - Utilized a "root cause analysis" methodology to identify root causes of abuse in organizations that serve children and youth.
 - Reviewed legal definitions and child abuse reporting laws to develop educational materials for organizations that serve children.
 - Reviewed prosecuted cases and all other publically available cases to identify patterns of abuse, disclosure and investigation in organizational abuse.
 - Reviewed current research on sexual offenders and patterns of "extra-familial" abuse.

PUBLICATIONS

Putting Abuse in Context, America Magazine, September 25, 2006

Understanding Infatuation and Devotion, Human Development Magazine, Winter, 2005

PROFESSIONAL AFFILIATIONS

National Association of Social Workers (NASW)

Association for the Treatment of Sexual Abusers (ATSA)

National Organization for the Treatment of Sexual Abusers (NOTA)

DEPOSITIONS AND COURT TESTIMONY

Ames v. The Latter-day Saints. State of New Jersey. No. 06-3441 (2008)

Roe v. The John Swett Unified School District. State of California. No. C 08-00422 (2009)

John Doe v. The Latter-day Saints State of California. No. BC417684 (2011)

Tim Doe v. Saint Francis Hospital. State of Connecticut. No. CV - 08-5008551 – S (2011)

Dorman v Does 1-4. State of California. No. 37-2010-000092450-CU-PO-CTL (2012)

Jane Doe v. Watchtower. State of California. No. HG11558324 (2012)

Carter v. Lewis. United States District Court. District of New Jersey. No. 08-1301 (2012)

Juan Doe 1 v. Lutheran Church Missouri Synod. State of California. No. BC450976 (2013)

Torres v. USA. United States District Court. District of New Mexico No.1:12-cv-00018 MV-RHS (2013)

Boys 2 and 3 v. Boy Scouts of America. United States District Court. Western District of Washington at Seattle No. C10-1912 RSM (2013)

Lopez v. Watchtower. Superior Court of the State of California for the County of San Diego, Central Division. No. 37-2012-00099849. CU-PO-CTL (2013)

Baker v. Watchtower. High Court of London. Trial Testimony. (2015)

Hamrick v. DSHS. State of Washington. Trial testimony. (2015)

John Doe CN v AYSO. Superior Court of the State of California. No. BC 546 652 (2017)

Does 1-4 v AYSO. Superior Court of the State of California. No. BC574025 (2018)

Pegasus v Agave Health et al. State of New Mexico. No. D-101-CV-2016-02760 (2019)

Specific Client Organizations

Camps

- Camp Carter, Fort Worth
- Camp Colman, Washington State
- Camp Grady Spruce, Dallas
- Camp Jones Gulch, San Francisco
- Camp Nissokone, Michigan
- Camp Olympia, Texas
- Camp Orkila, San Juan Islands
- Pine Cove Christian Camps
- Woodmen of the World

Child care and Social Service Organizations

- All Church Home for Children (adoption, emergency shelter, foster care, residential)
- Autistic Treatment Centers, Dallas and San Antonio
- Bair Foundation (adoption, foster care, kinship care, family services)
- Baltimore Catholic Charities (adoption, foster care, residential treatment)
- Bridge Emergency Shelter for Children and Youths
- Buckner Children's and Family Services (adoption, foster care, family services)
- Cal Farley's Boy's Ranch (residential and transitional programs for children & youth)
- Casey Family Programs (adoption, foster care, family services)
- CentaCare Social Services, Queensland, Australia
- Clinicare Corporation (Residential Treatment Centers)
- Covenant Kids, Inc. (adoption, foster care, family services)
- DePelchin Children's Center (foster care, adoption, mental health)
- D&S Residential (care for individuals with intellectual and developmental disabilities)
- Eckerd Youth Alternatives (services for children and youth w/complex mental, emotional and behavioral needs)
- Fort Worth Catholic Charities (children, refugee and family services and foster care)
- La Petite Academy (educational and child care)
- Lee and Beluah Moor's Children's Home (adoption, foster care and residential care)
- Lena Pope Home (counseling, family services and intensive treatment programs)
- Lutheran Social Services of the South (adoption, foster care, kinship care and residential)
- Marywood Child and Family Services (services for pregnant and parenting teens)
- Masonic Homes (counseling and family services)
- Methodist Children's Home (foster care, residential treatment, family services)
- Mentor Clinical Care (therapeutic & medically complex foster care, adults, adoption)
- New Horizon Academy Child care (educational and child care)
- New Jersey Department of Children and Families
- New York Foundling Hospital (adoption, foster care, adults, family services)
- North American Family Institute (juvenile justice, behavioral health, adult services)

- Presbyterian Children's Home (adoption, foster care, residential, family services)
- Rancho Valmora Treatment Center (residential treatment for adolescents)
- Safe Havens of Kornerstone (adoption, foster care, family services)
- Seguin Services, Inc. (adoption, foster care, adult services)
- Social Services of Auckland, New Zealand (foster care, kinship care, family services)
- St. Dominic's Home (family foster care, therapeutic pre-school, mental health services)
- Texas Association of Children's and Family Services (TACFS)
- Texas Department of Protective and Regulatory Services
- Texas Baptist Children's Home (residential treatment, family services)
- Wisconsin Association of Family and Children
- Wisconsin Bureau of Regulation and Licensing
- Wyoming Department of Family Services

Parks and Recreation

- Ellis and Associates
- Illinois Parks and Recreation
- Six Flags Hurricane Harbor
- World Waterpark Association

Religious Organizations

- Abbey of Gethsemani
- American Cassinese Congregation
- Anglophone Conference of Bishops
- Australian Office of Professional Standards
- Benedictine College
- Broadway Baptist Church
- Brothers of the Sacred Heart
- Capuchin Friars
- Catholic Charities of Baltimore
- Catholic Charities of Fort Worth
- Christ Chapel Bible Church
- Christian Life Movement – Ecuador, Colombia, & Peru
- Church of Jesus Christ of Latter-Day Saints
- Church of the Hills
- Conference of Major Superiors of Men
- Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
- Congregation of Alexian Brothers
- Congregation of Christian Brothers
- Congregation of the Holy Spirit
- Congregation of the Passion
- Consolata Missionaries

- Conventual Franciscan Friars
- CRU – Campus Crusade for Christ
- Divine Word Missionaries
- Dominican Friars – Eastern Province
- Dominican Friars – Western Province
- Episcopal Diocese of Atlanta
- Episcopal Diocese of Indianapolis
- Episcopal Diocese of Texas
- Episcopal House of Bishops
- Episcopal Theological Seminary of the Southwest
- Glenmary Home Missioners
- Holy Cross Brothers and Fathers – Worldwide policy and education
- Hospitaller Brother of St. John of God
- International Church of the Foursquare Gospel
- Irish Catholic Bishops Conference
- Irish Missionary Union
- Josephite Fathers
- Knights of Columbus
- Legionaries of Christ
- LifeTeen International
- Maryknoll Fathers and Brothers
- Marian Sisters of Reconciliation – Peru, Ecuador, Chile, Australia, US and UK
- Marist Brothers and Fathers of New Zealand
- Marist Brothers of the Schools
- McKinney Memorial Bible Church
- Mepkin Abbey
- Mission Personnel – Episcopal Church
- Missionaries of the Sacred Heart – Prevention and response in 23 countries
- Missionaries of the Precious Blood
- Missionary Society of St. Columban
- Monastery of Christ in the Desert
- Montclair Cooperative School
- Montfort Missionaries – Global prevention and response initiative
- Mount Angel Abbey and Seminary
- National Conference of Synagogue Youth
- National Religious Vocation Directors Conference
- National Safe as Church Conference, Australia
- New Melleray Abbey
- Norbertines, St. Norbert Abbey
- Oblates of Mary Immaculate
- Office of Professional Standards for New Zealand
- Order of St. Augustine - Villanova
- Order of Friars Minor

- Order of the Most Holy Trinity
- New Jersey Catholic Conference
- Park Cities Baptist Church
- Polish Catholic Bishop's Conference
- Presbyterian Church of the USA
- Rabbinical Council of America
- Roman Catholic Archdiocese of Atlanta
- Roman Catholic Archdiocese of Baltimore
- Roman Catholic Archdiocese of Brisbane
- Roman Catholic Archdiocese of Chicago
- Roman Catholic Archdiocese of Denver
- Roman Catholic Archdiocese of Los Angeles
- Roman Catholic Archdiocese of Newark
- Roman Catholic Archdiocese of New Orleans
- Roman Catholic Archdiocese of New York
- Roman Catholic Archdiocese of Philadelphia
- Roman Catholic Archdiocese of Seattle
- Roman Catholic Diocese of Adelaide
- Roman Catholic Diocese of Anchorage
- Roman Catholic Diocese of Austin
- Roman Catholic Diocese of Brownsville
- Roman Catholic Diocese of Cairns, Queensland Australia
- Roman Catholic Diocese of Charlotte
- Roman Catholic Diocese of Dallas
- Roman Catholic Diocese of Fairbanks
- Roman Catholic Diocese of Fort Worth
- Roman Catholic Diocese of Lubbock
- Roman Catholic Diocese of Manchester, NH
- Roman Catholic Diocese of Norwich, CT
- Roman Catholic Diocese of Phoenix
- Roman Catholic Diocese of Portland, ME
- Roman Catholic Diocese of Portland, OR
- Roman Catholic Diocese of San Angelo
- Roman Catholic Diocese of Springfield
- Safe Environment Conference of the United States
- Society of Jesus, California Province
- Society of Jesus, Chicago Province
- Society of Jesus, Missouri Province
- Society of Jesus, New York Province
- Society of Jesus, Oregon Province
- Sodalitium Christianae Vitae – Worldwide
- St. Joseph's Abbey
- Sulpicians

- Texas Catholic Conference
- The Salvation Army, United Kingdom with the Republic of Ireland
- The Salvation Army USA Western Territory (Denver to Guam)
- United States Conference of Catholic Bishops
- United States Jesuit Conference
- Vincentians – Eastern Province
- Vincentians – Midwest Province
- Windsor Village United Methodist Church
- Xaverian Brothers
- Young Life
- Youth for Christ

Residential Care Facilities for Clergy and Other Ministers

- Recon, Inc.
- Shalom Center, Inc.
- St. Luke Institute
- St. Michael's Community
- The Southdown Institute, Toronto Canada
- Vianney Renewal Center

Universities, Schools, and Educators

- Ambassador Programs
- Archer School for Girls
- Arrupe Jesuit High School
- Beggs Independent School District
- Board of Education, City of Chicago
- Brother Rice High School
- Buckingham, Browne and Nichols School
- Catholic Education Office - Sydney, New South Wales
- Catholic Education Office - Toowoomba, Queensland
- Concord Academy
- DeMatha Catholic High School
- Edison Schools (Nationwide)
- Fordham Preparatory School
- Hackley School
- Gonzaga University
- Little Red Schoolhouse and Elisabeth Irwin High School
- Madill School District
- Marist School, Atlanta Georgia
- Marlborough School for Girls
- Milton Hershey School

- Montessori Schools
- National Deaf Academy
- Newton Learning Home Field Adventure
- Nightingale-Bamford School
- Regis High School, New York
- San Juan Diego High School
- Schools Excess Liability Fund
- St. Augustine Catholic School
- St. Ignatius College Preparatory School, Chicago
- St. John's College, Belize City
- St. John's University, Collegeville, MN
- St. John's University, New York City
- St. Joseph's Preparatory School, Philadelphia
- St. Mark's School, Southborough, MA
- The Fessenden School
- The Imani School
- The Winsor School
- Ventura County Schools Self- Funding Authority
- Wyoming School Board
- Wyoming Seminary Academy

Youth Development Organizations

- Baden-Powell Scout's Association
- Heritage YMCA Group
- H.O.P.E. Farm
- Junior Achievement, Inc.
- Old Colony YMCA
- Pacific Science Center
- Sierra Club
- YMCA of Fort Worth
- YMCA of Greater Kansas City
- YMCA of Greater New York
- YMCA of Greater Seattle
- YMCA of Greater St. Paul
- YMCA of Metropolitan Dallas
- YMCA of Metropolitan Detroit
- YMCA of Metropolitan Minneapolis
- YMCA of Newport County
- YMCA of Pittsburgh
- YMCA of San Diego County
- YMCA of San Francisco
- YMCA of the Treasure Coast
- YMCA of the USA

Appendix B. Other Materials Relied Upon

- Abel, G. G., Becker, J.V., Cunningham-Rathner, J., Mittelman, M.S. , Rouleau, J. L. & Murphy, W.D. (1987). Self-reported sex crimes of nonincarcerated paraphiliacs. *Journal of Interpersonal Violence*, 2, 3-25.
- Abel, G. G., Becker, J.V., Cunningham-Rathner, J., Mittelman, M.S. , & Rouleau, J. L. (1988). Multiple paraphilic diagnoses among sex offenders. *Bulletin of the American Academy of Psychiatry and the Law*, 16, 153-168.
- Alter-Reid, K., Gibbs, M.S., Lachenmeyer, J.R., Sigal, J., & Massoth, N. A. (1986). Sexual abuse of children: A review of the empirical findings. *Clinical Psychology Review*, 6, 249-266.
- Bender, L., & Blau, A. (1937). The reaction of children to sexual relations with adults. *American Journal of Orthopsychiatry*, 7, 500-518.
- Bender, L. & Grugeff, A. A. (1951). A follow-up report on children who had atypical sexual experiences. *American Journal of Orthopsychiatry*, 22, 825-837.
- Blumer, Herbert (1969). *Symbolic Interactionism: Perspective and Method*. Berkeley: University of California Press.
- Boerner, D. (1992). Confronting Violence: In the Act and in the Word. *University of Puget Sound Law Review*, 15(5), 25-77.
- Boyle, P. (1994) *Scout's Honor – Sexual Abuse in America's Most Trusted Institution*. Rocklin, CA: Prima Publishing.
- Browne, A., & Finkelhor, D. (1982). Initial and Long-Term Effects: A review of the research. In D. Finkelhor's *A Sourcebook on Child Sexual Abuse*. Newbury Park, California: Sage Publications.
- Browne, A., & Finkelhor, D. (1986). Impact of child sexual abuse: A review of the research. *Psychological Bulletin*, 99 (1), 66-77.
- Bruck, M. and Ceci, S. (1993). Amicus brief for the case of *State of New Jersey v. Michaels* presented by committee of concerned social scientists, *Psychology, Public Policy, and Law*, 1(2), 272-322.
- Caffey, J. (1946). Multiple fractures in the long bones of infants suffering from chronic subdural hematoma. *American Journal of Roentgenology*, 56, 163–173. Cohen, N. E. (1958). *Social work in the American tradition*. New York: Dryden Press.
- Ceci, S., & Bruck, M. (1995). *Jeopardy in the Courtroom: A scientific analysis of children's testimony*, Washington, DC: American Psychological Association.
- De Francis, V. (1956). *Child protective services in the United States: Reporting a nationwide survey*. Denver: American Humane Association.
- De Francis, V. (1967). *Child protective services: A national survey*. Denver: American Humane Association.
- De Francis, V. (1969). *Protecting the child victim of sex crimes committed by adults*. Denver: American Humane Association.

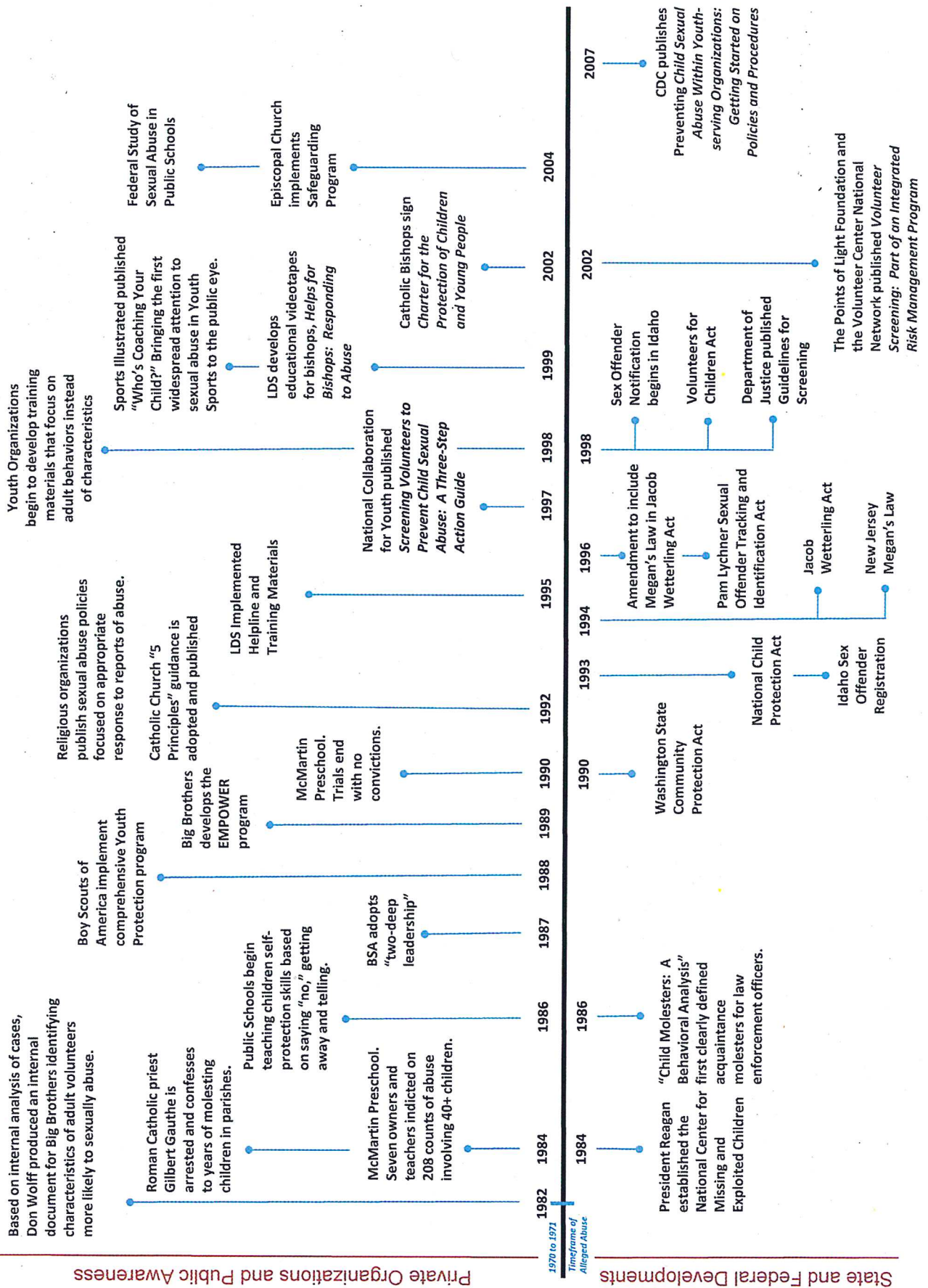
- Doris, J. (editor) (1991). *The suggestibility of children's recollections: Implications for Eyewitness Testimony*, Washington, DC: American Psychological Association.
- Elmer, E. (1963). Identification of abused children. *Children*, 10, 180–184.
- Falconer, D. P. (1935). Child and youth protection. In F. S. Hall (Ed.), *Social work yearbook* (Vol. 3, pp. 63–66). New York: Russell Sage Foundation.
- Federal Register. (1975, December). *Protection of identity: Research subjects* (Vol. 40, No. 234). Washington, DC: U.S. Government Printing Office.
- Finkelhor, D. (1986). *A Sourcebook on Child Sexual Abuse*. Newbury Park, California: Sage Publications.
- Finkelhor, D. (1984). *Child Sexual Abuse*. New York: Free Press.
- Finkelhor, D. & Jones, L.M. (2004). Explanations for the Decline in Child Sexual Abuse Cases. *Juvenile Justice Bulletin*. Washington, DC: U.S. Department of Justice.
- Finkelhor, D. (1979). *Sexually victimized children*. New York: Free Press. Finkelman, P. (Ed.). (1988). Slavery, race, and the American legal system: 1700–1872.
- Freedman, A.M., Kaplan, H.I., & Sadock, B.J. (1975). *Comprehensive Textbook of Psychiatry*. Baltimore: Williams and Wilkins.
- Furby, L., Weinrott, M. R., & Blackshaw, L. (1989). Sex offenders recidivism: A review. *Psychological Bulletin*, 105, 3-30.
- Gelles, R. J. (1996). *The book of David: How preserving families can cost children's lives*. New York: Basic Books.
- Gentry, C. (1978). Personal communication concerning the Project Against Sex Abuse of Appalachian Children, Knoxville, TN.
- Glaberson, W. (1996). "At Center of 'Megan's Law' Case, a Man the System Couldn't Reach." *New York Times* (May 6), p. C10.
- Glover, E. E., & Reid, J. H. (1964). Unmet and future needs. In Alan Keith-Lucas (Special Ed. of this Volume), Thorsten Sellin (Ed.), Marvin E. Wolfgang (Acting Associate Ed.), *The Annals of the American Academy of Political and Social Science*, 355, 9–19.
- Hamilton, G.V. (1929). *A research in marriage*. New York: Albert & Charles Boni.
- Hawai'i Missionary Handbook (1969).
- Hawkins-Leon, C. G., & Bradley, C. (2002). Race and transracial adoptions: The answer is neither simply black or white nor right or wrong. *Catholic University Law Review*, 51, 1227–1286.
- Henderson, D. J. (1975). "Incest." In A.M. Freedman, H.I. Kaplan, and B.J. Sadock, *Comprehensive Textbook of Psychiatry*. Baltimore: Williams and Wilkins, 1530-1539.
- Hunt, M. (1993). *The Story of Psychology*. New York: Doubleday.

- James, J., Womack, W., & Strauss, F. (1978). Physician reporting of sexual abuse and children. *Journal of the American Medical Association*, 240, 1145-1146.
- Karpman, B. (1954). *The Sex Offender and His Offenses*. New York: The Julian Press.
- Kelly, R. J. (1982). Behavioral re-orientation of pedophiliacs: Can it be done? *Clinical Psychology Review*, 2, 387-408.
- Kempe, H.C. (1978). Sexual abuse, another hidden pediatric problem. *Pediatrics*, 62, 382-389.
- Kempe, C. H., Silverman, F. N., Steele, B. F., Droegemueller, W., & Silver, H. K. (1962). The battered-child syndrome. *Journal of the American Medical Association*, 181, 17-24.
- Kinsey, A.C., Pomeroy, W.B., Martin, C.E., & Gebhard, P.H. (1948). *Sexual behavior in the human male*. Philadelphia: Saunders.
- Kinsey, A.C., Pomeroy, W.B., Martin, C.E., & Gebhard, P.H. (1953). *Sexual behavior in the human female*. Philadelphia: Saunders.
- Levine, M., & Levine, A. (1992). *Helping children: A social history*. New York: Oxford University Press.
- Lanning, K.V. (1986). *Child molesters: A behavioral analysis*. Alexandria, VA: National Center for Missing & Exploited Children.
- Lanning, K.V. (1992). *Child molesters: A behavioral analysis*. Alexandria, VA: National Center for Missing & Exploited Children.
- Lanning, K.V. (2001). *Child molesters: A behavioral analysis*. Alexandria, VA: National Center for Missing & Exploited Children.
- Laws, D. R. & Marshall, W.L. (2003). A Brief History of Behavioral and Cognitive Behavioral Approaches to Sexual Offender Treatment: Part 1. Early Developments. *Sexual Abuse: A Journal of Research and Treatment*, 15(2), 75-92.
- Marshall, W.L., Barbaree, H.E., & Christophe, D. (1986). Sexual offenders against female children: Sexual preferences for age of victims and type of behaviour. *Canadian Journal of Behavioural Science*, 18, 424-439.
- Marshall, W.L. & Laws, D. R. (2003). A Brief History of Behavioral and Cognitive Behavioral Approaches to Sexual Offender Treatment: Part 2. The Modern Era. *Sexual Abuse: A Journal of Research and Treatment*, 15(2), 93-120.
- Matson, S. & Lieb, R. (1997). *Megan's Law: A Review of State and Federal Legislation*. Olympia, WA: Washington State Institute for Public Policy.
- Matson, S. & Lieb, R. (1997). *Sex Offender Community Notification: A Review of Laws in 45 States*. Olympia, WA: Washington State Institute for Public Policy.
- Matson, S. & Lieb, R. (1996). *Sex Offender Registration: A Review of State Laws*. Olympia, WA: Washington State Institute for Public Policy.

- MacVicar, K. (1979). Psychotherapeutic issues in the treatment of sexually abused girls. *Journal of the American Academy of Child Psychiatry*, 18, 342-353.
- Mission President Handbook (1969).
- Mohr, J. W. (1981). Age structures in pedophilia. In M. Cook & K. Howell's (Eds.), *Adult sexual interest in children* (pp. 121-134). New York: Academic Press.
- Mohr, J. W., Turner, R.W. & Jerry, M.B. (1964). *Pedophilia and exhibitionism*. Toronto: University of Toronto Press.
- Mondale, W. F. (1974, March 15). Letter of transmittal from Walter F. Mondale to Harrison A. Williams. Located at Child Abuse Prevention and Treatment Act, 1974. Public Law 93-247 (S. 1191). 93rd Congress, 2nd Session. April 1974.
- Myers, J. E. B. (2004). *A history of child protection in America*. Bloomington, IN: Xlibris.
- Myers, J. E. B. (2006). *Child protection in America: Past, present and future*. New York: Oxford University Press.
- Myers, J. E. B. (2010). *The history of child protection in America*. Sacramento, CA: University of the Pacific.
- Myers, J.E.B. (1998). *Legal Issues in Child Abuse and Neglect Practice*, 2nd ed. Thousand Oaks: Sage.
- Myers, J.E.B, Diedrich, D.L, Lee, D., Fincher, K, & Stern, R. M. (2002). Prosecution of Child Sexual Abuse in the United States. In J.R Conte's *Critical Issues in Child Sexual Abuse*. Thousand Oaks, California: Sage Publications.
- National Center for Child Abuse and Neglect (NCCAN). (1981). Study findings: National study of incidence and severity of child abuse and neglect. Washington, D. C.: DHEW.
- National Center for Missing and Exploited Children. (1997). *The Legal Validity and Policy Concerns Associated with Community Notification of Sex Offenders*. Arlington, VA.
- Pumphrey, R. E., & Pumphrey, M. W. (1961). *The heritage of American social work*. New York: Columbia University Press.
- Quincy, V.L., Rice, M.E., & Harris, G. T. (1995). Actuarial prediction of sexual recidivism. *Journal of Interpersonal Violence*, 10, 85-105.
- Randall, G. (1971) Safe in the Streets. *PTA Magazine*, 65: 5-7.
- Report of the National Task Force on Privacy, Technology, and Criminal Justice Information* (2001). Bureau of Justice Statistics. Washington, DC: U. S. Department of Justice.
- Rogers, C. (1979). Findings from a hospital-based sexual abuse treatment program. *Paper presented at Children's Hospital Medical Center Conference on Sexual Victimization of Children*, Washington, D.C.

- Russell, D. (1983). Incidence and prevalence of intra-familial and extra-familial sexual abuse of female children. *Child Abuse and Neglect*, 7, 133-146.
- Reinders, R. C. (1982). Toynbee Hall and the American settlement movement. *Social Service Review*, 56, 39-54.
- Salter, A. C. (1988). *Treating children sex offenders and victims: A practical guide*. Newbury Park CA: Sage.
- Schetky, D. H., & Green, A. H. (1988). *Child Sexual Abuse: A Handbook for Health Care and Legal Professionals*. New York: Brunner/Mazel.
- Sgroi, S. M. (1975, May-June). Molestation of children: The last frontier in child abuse. *Children Today*, 4, 18-21.
- Sloane, P., and E. Karpinski (1942). Effects of incest on the participants. *American Journal of Orthopsychiatry*, 12: 666-673.
- South Carolina statutes or sections of statutes related to child abuse, sexual assault, and criminal background checks.
- Story, J. (1886). *Commentaries on equity jurisprudence as administered in England and America* (13th ed.). Boston: Little, Brown.
- Sutherland, E.H. (1950). The Sexual Psychopath Laws. *Journal of Criminal Law and Criminology*, 40 (5), January-February.
- Swift, C. (1979). Prevention of sexual child abuse: Focus on the perpetrator. *Journal of Clinical Child Psychology*, 8(2), 133-136.
- Terman, L. (1938). *Psychological factors in marital happiness*. New York: McGraw-Hill.
- Travis, J. (1997). *Sex Offender Community Notification*. Washington, DC: United States Department of Justice; National Institute of Justice.
- Virkkunen, M. (1975). Victim-precipitated pedophilia offenses. *British Journal of Criminology*, 15(2), 175-180.
- Virkkunen, M. (1981). The child as participating victim. In M. Cook & K. Howell's (Eds.), *Adult sexual interest in children* (pp. 121-134). New York: Academic Press.
- Walters, D. (1975). *Physical and sexual abuse of children*. Bloomington, IN: Indiana University Press.
- Wolffe, D. L. (1982). *Child Sexual Abuse*. Program documents of Donald L. Wolff, National Vice President, Big Brothers/Big Sisters of America, pp. 9-13.

Appendix C. Timeline of Major Events Relating to Sexual Abuse in Organizations



Washington State Community Protection Act – 1990

In 1990, Washington State passed the “Community Protection Act” which created the term “sexually violent predator” to distinguish sexual offenders who were eligible for civil commitment. The definition of the sexually violent predator is a person who has committed a crime of sexual violence, suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of violence and who is a stranger to the victim or cultivated the relationship for the primary purpose of victimization.

In addition to the provision for civil commitment, The Community Protection Act contained additional strategies for community safety, including longer sentences, mandatory registration of sexual offenders who are convicted, and most ground-breakingly, community notification. The Washington law became the model for similar legislation which was passed in Kansas, Arizona, California, Wisconsin, Illinois, and North Dakota (Matson & Lieb, 1997). The community notification dimension of Washington’s law represented the first effort to use sexual offender registries to inform the public of a potential threat by a sexual offender. Prior uses of the registries were limited to law enforcement and the information was considered private and confidential. The Community Protection Act authorized the release of information to the public about offenders who were judged to be “high-risk” to re-offend.

National Child Protection Act – 1993

The National Child Protection Act was also called the “Oprah Winfrey Act.” This legislation allowed individual states with the opportunity to pass legislation that would allow entities within their own states to access national criminal records through the FBI finger-print based repository. States were not required to pass their own laws in this regard, but the opportunity was available to them. However, most states did not quickly pass their own statutes and in the absence of the state law, organizations still did not have access to the FBI criminal records.

New Jersey Megan’s Law - 1994

In 1994, a seven year old girl named Megan Kanka was raped and murdered by a twice-convicted sexual offender who had moved down the street from her family. Lawmakers honored her memory by naming the New Jersey Community Notification statute, “Megan’s Law.” (Glaberson, 1996). Within the year, community notification and sexual offender registry laws throughout the country were called Megan’s Law.

Jacob Wetterling Act – 1994

In 1994, Congress passed the *Jacob Wetterling Act* (42 U.S.C. 14071) requiring all states to create registration for violent sexual offenders and offenders who are convicted of sexual crimes against children. The Act also required more rigorous tracking of all sexual offenders, but particularly “sexually violent predators.” All states were given until September of 1997 to comply with these new Federal requirements (U.S. Department of Justice, 1997).

Amendment to include Megan’s Law - May of 1996

From 1994 to 1996, it was left to the discretion of individual states to determine whether relevant information from the sexual offender registries would be made available to the public. In May of 1996, Congress amended the Act to include “Megan’s Law” and required all states to “release relevant information that is necessary to protect the public concerning a specific person required to register.”

Pam Lychner Sexual Offender Tracking and Identification Act - October of 1996

In October of 1996, the *Pam Lychner Sexual Offender Tracking and Identification Act* was passed, directing the FBI to establish a national database of sexual offenders to assist law enforcement in tracking sexual offenders who move from state to state.

Volunteers for Children Act – October of 1998

When President Clinton signed this bill into law it amended the National Child Protection Act of 1993 (42 U.S.C. Sec. 5119). In so doing, for the first time, this allowed any “Qualified Entity:” public or private; for-profit or non-profit to access the FBI database of criminal records. Qualified Entities are those which provide care, treatment, education, training, instruction, supervision or recreation to children, the elderly or individuals with disabilities to request fingerprint-based national criminal history background checks the FBI for the purpose of screening and selecting volunteers or employees.

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 DR. JAMES HUDSON

Personally appeared before me, Dr. James Hudson, who swears and deposes as follows:

1. The undersigned is over the age of 21, and has personal knowledge regarding the matters herein.
2. Attached to this affidavit is a prepared report and exhibit, *Exhibit A*.
3. If I were to testify from the witness stand regarding my qualifications as an expert witness, my opinions in this case, and the bases for those opinions, that testimony would be substantially the same as *Exhibit A*.
4. I incorporate by reference *Exhibit A* as if restated fully in this affidavit.

SIGNATURE ON FOLLOWING PAGE

FURTHER AFFIANT SAYETH NOT.

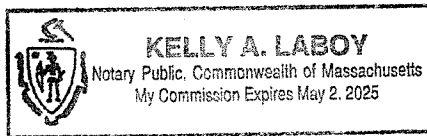
James Hudson
Dr. James Hudson

Sworn to and subscribed before me this
the 29 day of November, 2019.

Kelly Laboy
Notary Public for State of Massachusetts

My commission expires: May 02, 2025

November 29, 2019



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Defendants.

CERTIFICATE OF SERVICE

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

Lawrence E. Richter, Jr.
Jennifer S. Ivey
The Richter Firm, LLC
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