

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

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S.C. SUPREME COURT

The Protestant Episcopal Church in the Diocese of South Carolina, *et al.*, Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina, Appellants.

RECORD ON APPEAL – Volume IX

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**INDEX**  
**VOLUME I**

**Orders, Judgments, and Decisions**

**Circuit Court**

|                                                                                                |     |
|------------------------------------------------------------------------------------------------|-----|
| Order (granting clarification and other relief)<br>filed June 19, 2020 .....                   | 1   |
| Order (denying Motion to Reconsider)<br>filed July 13, 2020 .....                              | 48  |
| Form 4 Order (assigning case to the Honorable Edgar Dickson)<br>filed January 10, 2018.....    | 51  |
| Final Order (following bench trial)<br>filed February 3, 2015.....                             | 59  |
| Form 4 Order (denying Motions to Reconsider)<br>filed December 31, 2013 .....                  | 113 |
| Order Denying Motion to Join Additional Counterclaim Defendants<br>filed October 1, 2013 ..... | 115 |
| Consent Temporary Injunction<br>filed January 31, 2013 .....                                   | 121 |

**South Carolina Supreme Court**

|                                                                                |     |
|--------------------------------------------------------------------------------|-----|
| Order (denying Petition for Writ of Prohibition)<br>dated March 31, 2020 ..... | 135 |
| Order (denying Petition for Writ of Mandamus)<br>dated June 28, 2019 .....     | 139 |
| Order (denying Petitions for Rehearing)<br>dated November 17, 2017 .....       | 143 |
| Order (denying Motion to Recuse)<br>dated November 17, 2017 .....              | 147 |
| Remittitur<br>dated November 17, 2017.....                                     | 153 |

|                                                                                                      |     |
|------------------------------------------------------------------------------------------------------|-----|
| Opinion No. 27731 (slip opinion)<br>filed August 2, 2017 .....                                       | 156 |
| Order (granting Motion to Argue Against Precedent)<br>dated September 9, 2015 .....                  | 233 |
| Order (requiring reduction of Record on Appeal)<br>dated July 30, 2015 .....                         | 237 |
| Order (granting Motion to Certify, etc.)<br>dated April 15, 2015 .....                               | 241 |
| <b>United States Supreme Court</b>                                                                   |     |
| Denial of Petition for a Writ of Certiorari<br>dated June 11, 2018 .....                             | 245 |
| <b>United States District Court for the District of South Carolina</b>                               |     |
| Order and Opinion in <i>vonRosenberg v. Lawrence</i> , ECF No. 667<br>filed September 19, 2019 ..... | 246 |
| Order and Opinion in <i>vonRosenberg v. Lawrence</i> , ECF No. 140,<br>filed April 16, 2018 .....    | 319 |
| Order (granting Motion to Remand)<br>filed June 10, 2013 .....                                       | 331 |
| <b>Fourth Circuit Court of Appeals</b>                                                               |     |
| Order in <i>vonRosenberg v. Lawrence</i> , No. 19-2112<br>filed October 27, 2020 .....               | 351 |
| <b><u>Pleadings and Motions</u></b>                                                                  |     |
| <b>Circuit Court Filings</b>                                                                         |     |
| Second Amended Complaint<br>filed March 5, 2013 .....                                                | 354 |
| Answer and Counterclaims of Defendant TEC<br>filed March 28, 2013 .....                              | 455 |

## **VOLUME II**

|                                                                                                                                                                                                                                         |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Answer and Counterclaims of Defendant TEC (continued) .....                                                                                                                                                                             | 479 |
| Answer and Counterclaims of Defendant TECSC<br>filed March 28, 2013.....                                                                                                                                                                | 554 |
| Reply to Defendant TECSC’s Counterclaims by Plaintiffs The Protestant Episcopal<br>Church in the Diocese of South Carolina and The Trustees of The Protestant<br>Episcopal Church in South Carolina<br>filed April 18, 2013 .....       | 638 |
| Reply to Defendant TEC’s Counterclaims by Plaintiffs The Protestant Episcopal<br>Church in the Diocese of South Carolina and The Trustees of The Protestant<br>Episcopal Church in South Carolina<br>filed April 18, 2013 .....         | 645 |
| Plaintiffs’ Motion for Clarification of Jurisdiction and For Other Relief<br>filed March 23, 2018 .....                                                                                                                                 | 659 |
| Defendants’ Petition for Execution and Further Relief on Declaratory Judgments<br>of the South Carolina Supreme Court and for the Appointment of a Special Master<br>filed May 8, 2018.....                                             | 670 |
| Defendants’ Amended Petition for Execution and Further Relief on Declaratory<br>Judgments of the South Carolina Supreme Court and for the Appointment of a<br>Special Master<br>filed May 16, 2018.....                                 | 783 |
| Defendants’ Petition for an Accounting<br>filed July 11, 2018.....                                                                                                                                                                      | 795 |
| Defendants’ Memorandum in Support of Petition for an Accounting<br>filed September 24, 2018 .....                                                                                                                                       | 800 |
| Plaintiffs’ Supplement to Motion for Clarification of Jurisdiction and For Other Relief<br>filed September 24, 2018 .....                                                                                                               | 806 |
| Plaintiffs’ Memorandum in Support of Motion for Clarification and For Other Relief<br>filed September 24, 2018 .....                                                                                                                    | 816 |
| Defendants’ Memorandum in Support of Amended Petition for Execution and<br>Further Relief on Declaratory Judgments of the South Carolina Supreme Court<br>and for the Appointment of a Special Master<br>filed September 24, 2018 ..... | 839 |



|                                                                                                                                           |     |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Plaintiffs’ Supplement to Motion for Clarification of Jurisdiction and For Other Relief<br>(electronically) filed September 24, 2018..... | 860 |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----|

|                                                                                                                                      |     |
|--------------------------------------------------------------------------------------------------------------------------------------|-----|
| Plaintiffs’ Memorandum in Support of Motion for Clarification and For Other Relief<br>(electronically) filed September 24, 2018..... | 870 |
|--------------------------------------------------------------------------------------------------------------------------------------|-----|

### **VOLUME III**

|                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| Plaintiffs’ Memorandum in Support of Motion for Clarification (continued) ..... | 957 |
|---------------------------------------------------------------------------------|-----|

|                                                                                                                                     |     |
|-------------------------------------------------------------------------------------------------------------------------------------|-----|
| Plaintiffs’ Response in Opposition to Defendants’ Memorandum in Support of<br>Petition for Execution<br>filed October 5, 2018 ..... | 963 |
|-------------------------------------------------------------------------------------------------------------------------------------|-----|

|                                                                                                                                         |      |
|-----------------------------------------------------------------------------------------------------------------------------------------|------|
| Plaintiffs’ Response in Opposition to Defendants’ Memorandum in Support of<br>Petition for an Accounting<br>filed October 5, 2018 ..... | 1049 |
|-----------------------------------------------------------------------------------------------------------------------------------------|------|

|                                                                                                                           |      |
|---------------------------------------------------------------------------------------------------------------------------|------|
| Defendants’ Brief in Opposition to Plaintiffs’ Motion for Clarification and Further Relief<br>filed October 8, 2018 ..... | 1060 |
|---------------------------------------------------------------------------------------------------------------------------|------|

|                                                                                                                                                    |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Plaintiffs’ Reply to Defendants’ Brief in Opposition to Plaintiffs’ Motion for<br>Clarification and Further Relief<br>filed October 12, 2018 ..... | 1079 |
|----------------------------------------------------------------------------------------------------------------------------------------------------|------|

|                                                                                                                                                                                                                     |      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Defendants’ Omnibus Reply Brief to Plaintiffs’ Opposition Briefs to Defendants’<br>Petition for Enforcement, Petition for an Accounting, and Motion to Dismiss<br>Betterment Action<br>filed October 15, 2018 ..... | 1095 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

|                                                                                           |      |
|-------------------------------------------------------------------------------------------|------|
| Defendants’ Motion for Reconsideration and to Alter or Amend<br>filed June 29, 2020 ..... | 1104 |
|-------------------------------------------------------------------------------------------|------|

|                                                                                                                                    |      |
|------------------------------------------------------------------------------------------------------------------------------------|------|
| Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Reconsideration<br>and to Alter or Amend<br>filed July 9, 2020..... | 1124 |
|------------------------------------------------------------------------------------------------------------------------------------|------|

### **South Carolina Supreme Court**

|                                                |      |
|------------------------------------------------|------|
| Notice of Appeal<br>filed March 24, 2015 ..... | 1135 |
|------------------------------------------------|------|

|                                                   |      |
|---------------------------------------------------|------|
| Brief of Appellants<br>dated August 6, 2015 ..... | 1144 |
|---------------------------------------------------|------|

|                                                                                             |      |
|---------------------------------------------------------------------------------------------|------|
| Brief of Respondents<br>dated August 10, 2015 .....                                         | 1203 |
| Appellants' Reply Brief<br>dated August 6, 2015 .....                                       | 1277 |
| Motion to Argue Against Precedent<br>filed September 8, 2015 .....                          | 1309 |
| Petition for Rehearing<br>filed September 1, 2017 .....                                     | 1311 |
| Motion to Recuse the Honorable Justice Kaye G. Hearn, etc.<br>filed September 1, 2017 ..... | 1350 |

#### **VOLUME IV**

|                                                                                                                       |      |
|-----------------------------------------------------------------------------------------------------------------------|------|
| Motion to Recuse the Honorable Justice Kaye G. Hearn, etc. (continued) .....                                          | 1435 |
| Petition for Rehearing and Reconsideration of Respondent Church of the Good Shepherd<br>filed September 6, 2017 ..... | 1691 |
| Return<br>filed September 18, 2017 .....                                                                              | 1710 |
| Reply in Support of Motion to Recuse, etc.<br>filed September 25, 2017 .....                                          | 1735 |
| Reply in Support of Petition for Rehearing<br>filed September 25, 2017 .....                                          | 1750 |
| Church of the Good Shepherd's Reply to Return of the National Church<br>filed September 25, 2017 .....                | 1768 |
| Petition for Writ of Mandamus<br>filed March 20, 2019 .....                                                           | 1773 |
| Return to Petition for Writ of Mandamus<br>filed April 11, 2019 .....                                                 | 1793 |
| Petition for a Writ of Prohibition<br>filed February 21, 2020 .....                                                   | 1832 |

#### **VOLUME V**

|                                                     |      |
|-----------------------------------------------------|------|
| Petition for a Writ of Prohibition (continued)..... | 1913 |
|-----------------------------------------------------|------|

## **Supreme Court of the United States**

|                                                                 |      |
|-----------------------------------------------------------------|------|
| Petition for Writ of Certiorari<br>filed February 9, 2018 ..... | 2020 |
|-----------------------------------------------------------------|------|

|                                                               |      |
|---------------------------------------------------------------|------|
| Brief of Respondents in Opposition<br>filed May 7, 2018 ..... | 2070 |
|---------------------------------------------------------------|------|

|                                                                                                   |      |
|---------------------------------------------------------------------------------------------------|------|
| Reply Brief for Petitioners regarding Petition for Writ of Certiorari<br>filed May 15, 2018 ..... | 2111 |
|---------------------------------------------------------------------------------------------------|------|

## **United States District Court – District of South Carolina**

|                                                                                                                                                                              |      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Bishops vonRosenberg’s and Adams’ Motion to Amend Their Complaint to Join<br>Parties and Claims, <i>von Rosenberg v. Lawrence</i> , ECF No. 124<br>filed March 1, 2018 ..... | 2128 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

|                                                                                                                                                                    |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| TEC’s Motion to Amend Amended Complaint-In-Intervention to Join Parties<br>and Claims, <i>von Rosenberg v. Lawrence</i> , ECF No. 125<br>filed March 1, 2018 ..... | 2186 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

## **Fourth Circuit Court of Appeals**

|                                                                                                     |      |
|-----------------------------------------------------------------------------------------------------|------|
| Motion to Stay Case, <i>von Rosenberg v. Lawrence</i> , No. 19-2112<br>filed October 16, 2020 ..... | 2222 |
|-----------------------------------------------------------------------------------------------------|------|

## **Transcripts**

|                                                                   |      |
|-------------------------------------------------------------------|------|
| Transcript of Trial before Judge Goodstein, July 8-25, 2014 ..... | 2286 |
| Wade H. Logan, III                                                |      |
| Direct .....                                                      | 2304 |
| Cross .....                                                       | 2369 |

## **VOLUME VI**

|                                      |      |
|--------------------------------------|------|
| Wade H. Logan, III (continued) ..... | 2391 |
| Direct .....                         | 2411 |
| Redirect .....                       | 2414 |
| Recross .....                        | 2415 |
| James Barton Lewis, Jr.              |      |
| Direct .....                         | 2419 |
| Cross .....                          | 2505 |

|                          |      |
|--------------------------|------|
| Redirect .....           | 2543 |
| Recross .....            | 2550 |
| Robert M. Kunes          |      |
| Direct .....             | 2553 |
| Cross .....              | 2560 |
| Iris Langston Hodge      |      |
| Direct .....             | 2573 |
| Cross .....              | 2597 |
| Redirect .....           | 2599 |
| Recross .....            | 2600 |
| Craig Norton Borrett     |      |
| Direct.....              | 2601 |
| Cross .....              | 2621 |
| Direct.....              | 2639 |
| Richard Patten Bruce, II |      |
| Direct .....             | 2640 |
| Cross .....              | 2660 |
| Lewis B. Middleton, Jr.  |      |
| Direct .....             | 2664 |
| Cross .....              | 2682 |
| Thomas J. Hendrickson    |      |
| Direct .....             | 2690 |
| Cross .....              | 2710 |
| Redirect .....           | 2716 |
| Beverly Carlson Conner   |      |
| Direct .....             | 2732 |
| Cross .....              | 2738 |
| Redirect.....            | 2749 |
| Recross .....            | 2750 |
| Alonso Mendieta Galvan   |      |
| Direct .....             | 2766 |
| Cross .....              | 2785 |
| Redirect .....           | 2800 |
| John Acken               |      |
| Direct .....             | 2802 |
| Cross .....              | 2843 |

|                      |      |
|----------------------|------|
| Judy Casper McMeekin |      |
| Direct .....         | 2867 |

## VOLUME VII

|                                        |      |
|----------------------------------------|------|
| Judy Casper McMeekin (continued) ..... | 2869 |
| Cross .....                            | 2896 |

|                         |      |
|-------------------------|------|
| Julius P. Thompson, III |      |
| Direct.....             | 2909 |
| Cross .....             | 2928 |
| Redirect .....          | 2939 |

|                        |      |
|------------------------|------|
| Allie Patterson Walker |      |
| Direct .....           | 2940 |
| Cross .....            | 2958 |

|                      |      |
|----------------------|------|
| Laverne Fenters, Jr. |      |
| Direct .....         | 2976 |
| Cross .....          | 2984 |
| Redirect .....       | 2993 |
| Recross .....        | 2994 |

|                         |      |
|-------------------------|------|
| Richard Lane Brown, III |      |
| Direct .....            | 2995 |
| Cross .....             | 3008 |

|                        |      |
|------------------------|------|
| Suzanne Warren Schwank |      |
| Direct.....            | 3022 |
| Cross .....            | 3043 |

|                     |      |
|---------------------|------|
| Steven Joseph Rumpf |      |
| Direct.....         | 3046 |
| Cross .....         | 3059 |

|                         |      |
|-------------------------|------|
| Frank Keenan Sloan, Jr. |      |
| Direct .....            | 3085 |
| Cross .....             | 3104 |

|                          |      |
|--------------------------|------|
| William Cowan Ervin, Jr. |      |
| Direct .....             | 3131 |
| Cross .....              | 3147 |

|                     |      |
|---------------------|------|
| Arthur Mack Jenkins |      |
| Direct .....        | 3149 |

|                                 |      |
|---------------------------------|------|
| Arthur Mack Jenkins (continued) |      |
| Cross .....                     | 3158 |
| Recross .....                   | 3174 |
| John Lewis Jackson, Jr.         |      |
| Direct .....                    | 3206 |
| Cross .....                     | 3211 |
| Michael Sundy Winburn           |      |
| Direct .....                    | 3216 |
| Cross .....                     | 3223 |
| Marianne Leal Holmes            |      |
| Direct .....                    | 3233 |
| Cross .....                     | 3237 |
| Samuel Gaillard                 |      |
| Direct .....                    | 3243 |
| Cross .....                     | 3246 |
| Michael Clarkson                |      |
| Direct .....                    | 3257 |
| Cross .....                     | 3260 |
| Redirect .....                  | 3266 |
| William Derieux Clarkson        |      |
| Direct .....                    | 3268 |
| Cross .....                     | 3274 |
| Ann Hester Willis               |      |
| Direct .....                    | 3277 |
| Cross .....                     | 3283 |
| David Tackaberry Thurlow        |      |
| Direct .....                    | 3302 |
| Cross .....                     | 3308 |
| William David Starnes           |      |
| Direct .....                    | 3315 |
| Cross .....                     | 3322 |
| Redirect .....                  | 3335 |
| Robert Lawrence Armstrong       |      |
| Direct .....                    | 3338 |

## VOLUME VIII

|                                       |      |
|---------------------------------------|------|
| Robert Lawrence Armstrong (continued) | 3347 |
| Cross                                 | 3349 |
| Julian Jeffords, III                  |      |
| Direct                                | 3359 |
| Cross                                 | 3361 |
| Redirect                              | 3380 |
| Charles Edward Owens, III             |      |
| Direct                                | 3381 |
| Cross                                 | 3386 |
| Kenneth Nixon Wilson                  |      |
| Direct                                | 3398 |
| Cross                                 | 3416 |
| Boyd Leggett Baker                    |      |
| Direct                                | 3427 |
| Cross                                 | 3432 |
| Martin Ray Scarbrough                 |      |
| Direct                                | 3462 |
| Cross                                 | 3467 |
| Steward Huey, Jr.                     |      |
| Direct                                | 3474 |
| Cross                                 | 3477 |
| Myron Harrington, Jr.                 |      |
| Direct                                | 3485 |
| John Zimmerman, Jr.                   |      |
| Direct                                | 3508 |
| Cross                                 | 3512 |
| Armand Georges Derfner                |      |
| Direct                                | 3526 |
| Cross                                 | 3552 |
| Warren Wilder Mersereau               |      |
| Direct                                | 3555 |
| Marshall Dow Sanderson                |      |
| Direct                                | 3580 |

|                                    |      |
|------------------------------------|------|
| Marshall Dow Sanderson (continued) |      |
| Cross .....                        | 3602 |
| Redirect .....                     | 3613 |
| Martin C. McWilliams, Jr.          |      |
| Direct .....                       | 3623 |
| Cross .....                        | 3713 |
| Redirect .....                     | 3766 |
| Rebecca Lovelace                   |      |
| Direct .....                       | 3775 |
| Cross .....                        | 3787 |
| Leslie Jean Lott                   |      |
| Direct .....                       | 3823 |

## VOLUME IX

|                              |      |
|------------------------------|------|
| Leslie Jean Lott (continued) | 3825 |
| Cross .....                  | 3855 |
| Redirect .....               | 3907 |
| Eleanor Brownlee Koets       |      |
| Direct .....                 | 3920 |
| Cross .....                  | 3944 |
| Francis Lucille Elmore       |      |
| Direct .....                 | 3948 |
| Cross .....                  | 3953 |
| Clifton Daniel, III          |      |
| Direct .....                 | 3990 |
| Cross .....                  | 4004 |
| Redirect .....               | 4016 |
| Recross .....                | 4022 |
| Patricia Garner Neumann      |      |
| Direct .....                 | 4025 |
| Cross .....                  | 4037 |
| Walter Edgar                 |      |
| Direct .....                 | 4045 |
| Cross .....                  | 4163 |
| Redirect .....               | 4193 |
| Recross .....                | 4195 |



|              |      |
|--------------|------|
| Mark Duffy   |      |
| Direct ..... | 4206 |

## VOLUME X

|                              |      |
|------------------------------|------|
| Mark Duffy (continued) ..... | 4302 |
| Cross .....                  | 4238 |
| Redirect .....               | 4321 |
| Recross .....                | 4322 |

|                     |      |
|---------------------|------|
| Thomas Rickenbacker |      |
| Direct .....        | 4327 |
| Cross .....         | 4349 |

|                      |      |
|----------------------|------|
| Charles vonRosenberg |      |
| Direct .....         | 4433 |
| Cross .....          | 4466 |
| Redirect .....       | 4484 |

|                  |      |
|------------------|------|
| Gregory J. Kronz |      |
| Direct .....     | 4573 |
| Cross .....      | 4578 |
| Redirect .....   | 4583 |

|                   |      |
|-------------------|------|
| Allen Carl Guelzo |      |
| Direct .....      | 4615 |
| Cross .....       | 4650 |

|                          |      |
|--------------------------|------|
| Robert Stratton Lawrence |      |
| Direct .....             | 4684 |
| Cross .....              | 4686 |

|                    |      |
|--------------------|------|
| Wade H. Logan, III |      |
| Direct .....       | 4690 |
| Cross .....        | 4705 |

|                 |      |
|-----------------|------|
| Nancy Armstrong |      |
| Direct .....    | 4709 |
| Cross .....     | 4717 |
| Redirect .....  | 4720 |

|                      |      |
|----------------------|------|
| Mark Joseph Lawrence |      |
| Direct .....         | 4730 |
| Cross .....          | 4766 |

## **VOLUME XI**

|                                                                               |      |
|-------------------------------------------------------------------------------|------|
| Transcript of Trial before Judge Goodstein, July 8-25, 2014 (continued) ..... | 4780 |
| Transcript of Motions Hearing, November 19, 2018 (excerpts) .....             | 4809 |
| Transcript of Motion to Dismiss Hearing, July 23, 2019 (excerpts) .....       | 4854 |
| Transcript of Motions Hearing, November 26, 2019 (excerpts) .....             | 4873 |
| Transcript of Motions Hearing, February 27, 2020 (excerpts) .....             | 4962 |

### **Exhibits (July 8-25, 2014 trial)**

Court Exhibit 1, individual Respondent Parish designations:

|                                                                              |      |
|------------------------------------------------------------------------------|------|
| Church Of The Cross, Inc. and Church Of The Cross Declaration of Trust ..... | 4984 |
| The Church Of Our Saviour Of The Diocese Of South Carolina .....             | 5059 |
| St. David's Church .....                                                     | 5141 |
| The Church of The Epiphany .....                                             | 5249 |

## **VOLUME XII**

|                                                                                                                                      |      |
|--------------------------------------------------------------------------------------------------------------------------------------|------|
| The Church of The Epiphany (continued) .....                                                                                         | 5258 |
| The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of<br>St. Helena and The Parish Church Of St. Helena Trust ..... | 5374 |
| The Vestry and Church Wardens of St. Jude's Church of Walterboro .....                                                               | 5674 |

## **VOLUME XIII**

|                                                                                                                                                                  |      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| The Vestry and Church Wardens of St. Jude's Church of Walterboro (continued) .....                                                                               | 5736 |
| Trinity Episcopal Church, Edisto Island .....                                                                                                                    | 5765 |
| Vestry and Church Wardens Of The Episcopal Church Of The Parish Of<br>St. John's, Charleston County .....                                                        | 5861 |
| The Protestant Episcopal Church, The Parish Of St. Michael, In Charleston,<br>In The State of South Carolina and St. Michael's Church Declaration Of Trust ..... | 5945 |

|                                                                                                                            |      |
|----------------------------------------------------------------------------------------------------------------------------|------|
| The Vestries and Churchwardens of the Parish of St. Andrew (hereinafter<br>“Old St. Andrews Parish Church” or “OSA”) ..... | 6141 |
|----------------------------------------------------------------------------------------------------------------------------|------|

#### **VOLUME XIV**

|                                                                              |      |
|------------------------------------------------------------------------------|------|
| The Vestries and Churchwardens of the Parish of St. Andrew (continued) ..... | 6214 |
| All Saints Protestant Episcopal Church, Inc. ....                            | 6261 |
| St. Bartholomew’s Episcopal Church .....                                     | 6323 |
| The Church of the Holy Cross-Stateburg .....                                 | 6405 |
| Christ St. Paul’s Episcopal Church .....                                     | 6468 |
| Church Of The Holy Comforter .....                                           | 6568 |

#### **VOLUME XV**

|                                                         |      |
|---------------------------------------------------------|------|
| Church Of The Holy Comforter (continued) .....          | 6692 |
| Church Of The Redeemer .....                            | 6749 |
| Holy Trinity Episcopal Church .....                     | 6949 |
| The Church Of The Good Shepherd, Charleston, SC .....   | 7055 |
| St. Paul’s Episcopal Church of Bennettsville, Inc. .... | 7147 |

#### **VOLUME XVI**

|                                                                                                                      |      |
|----------------------------------------------------------------------------------------------------------------------|------|
| St. Paul’s Episcopal Church of Bennettsville, Inc. (continued).....                                                  | 7170 |
| St. James’ Church, James Island, S.C. ....                                                                           | 7241 |
| The Church of St. Luke and St. Paul, Radcliffeboro .....                                                             | 7325 |
| The Church Of The Resurrection, Surfside .....                                                                       | 7421 |
| The Protestant Episcopal Church, Of The Parish Of St. Philip, In Charleston,<br>In The State of South Carolina ..... | 7522 |

#### **VOLUME XVII**

|                                                                                |      |
|--------------------------------------------------------------------------------|------|
| The Protestant Episcopal Church, Of The Parish Of St. Philip (continued) ..... | 7648 |
|--------------------------------------------------------------------------------|------|

|                                                                                             |      |
|---------------------------------------------------------------------------------------------|------|
| The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of<br>St. Matthew ..... | 7802 |
| The Vestry and Wardens Of St. Paul’s Church, Summerville .....                              | 7890 |
| Trinity Church of Myrtle Beach .....                                                        | 8035 |

### **VOLUME XVIII**

|                                                                                           |      |
|-------------------------------------------------------------------------------------------|------|
| Trinity Church of Myrtle Beach (continued) .....                                          | 8126 |
| Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of<br>Christ Church ..... | 8190 |
| Trinity Episcopal Church, Pinopolis .....                                                 | 8393 |
| St. Luke’s Church, Hilton Head Island .....                                               | 8463 |
| DSC Exhibit 30. D-24 Exhibit 6, 2006 Constitution and Canons .....                        | 8550 |

### **VOLUME XIX**

|                                                                |      |
|----------------------------------------------------------------|------|
| D-24 Exhibit 6, 2006 Constitution and Canons (continued) ..... | 8604 |
|----------------------------------------------------------------|------|

### **Other Materials**

|                                                                                                                                                                                  |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Email from Judge Dickson’s law clerk to counsel (requesting compilation of opinions)<br>dated January 8, 2019 .....                                                              | 8828 |
| Email from Judge Dickson’s law clerk to counsel (requesting votes on Dennis Canon)<br>dated January 14, 2019 .....                                                               | 8829 |
| Plaintiffs’ Analysis of Collective Opinions<br>dated January 16, 2019 .....                                                                                                      | 8830 |
| Plaintiffs’ Response to Court ‘s Inquiry Concerning the Dennis Canon (with Exhibit 1,<br>TEC Response to Parishes’ First Request for Admissions)<br>dated January 18, 2019 ..... | 8855 |
| Defendants’ Submission in Response to Court’s Request (Justice’s Opinion review)<br>dated January 22, 2019 .....                                                                 | 8873 |
| Letter from Thomas Tisdale to Judge Dickson<br>dated November 25, 2019 .....                                                                                                     | 8901 |

|                                                                                                                              |      |
|------------------------------------------------------------------------------------------------------------------------------|------|
| Email from Judge Dickson’s law clerk to counsel (requesting citations to trial record, etc.)<br>dated February 6, 2020 ..... | 8909 |
| Defendants’ Response to Court’s Request (per February 6, 2020 email)<br>dated February 21, 2020 .....                        | 8910 |
| Letter from Alan Runyan to Judge Dickson<br>dated May 25, 2020.....                                                          | 8976 |
| Letter from Thomas Tisdale to Judge Dickson<br>dated June 1, 2020 .....                                                      | 8977 |
| Proposed Order submitted by Plaintiffs .....                                                                                 | 8978 |
| Proposed Order submitted by Defendants .....                                                                                 | 9003 |
| <b>Certificate of Counsel</b> .....                                                                                          | 9016 |

1 and trademark offices, disputes about trademarks, some  
2 litigation, a fair amount of licensing, counseling clients on  
3 clearance and selection of marks, business counseling, what  
4 marks are available for use, why, what factual matters you  
5 look at to determine whether a mark is available, what  
6 factors are involved in licensing trademarks or brands, what  
7 makes a valid license, what marks -- the use of the mark of  
8 another, basically, in terms of licensing.

9 Q. I know this is a difficult question, but can you  
10 estimate about how many trademarks you may have been involved  
11 in registering in your career?

12 A. Oh, my gosh. I have been doing this for 40 years. No,  
13 I really can't. It really is a tremendous number, a great  
14 number.

15 Q. Okay. So I believe in your spectrum of your career, we  
16 left off you were back in New York with Pennie, the Pennie  
17 law firm.

18 A. Pennie & Edmonds in 1980. And at the end of 1980, I  
19 moved to Miami and took a job with a litigation firm, general  
20 litigation firm in Miami. And then in 1983, I opened my own  
21 practice, which is exclusively an intellectual property  
22 practice and ultimately evolved to the same practice I have  
23 today.

24 Q. Okay. Can you talk about your involvement in  
25 trademark-related organizations over the years?

1 A. Oh, yes. The International Trademark Association is, as  
2 the name implies, it's a global organization of, I believe,  
3 something like 5,000 regular members who are the major brand  
4 owners worldwide, major corporations and major brand owners.  
5 Outside attorneys like myself can also join the organization  
6 but only as associate members. It's primarily directed to  
7 brand owners.

8 So the International Trademark Association I've been  
9 very actively involved with since the 70s. The American Bar  
10 Association, the American Intellectual Property Law  
11 Association, the Florida Bar Intellectual Property Law  
12 Committee, a number of different organizations on the  
13 international, national and local level.

14 Q. What about involvement in committees or organizations  
15 related to the United States Patent and Trademark Office?

16 A. I've served on a number of committees and served as  
17 chair of several committees over the years. I've been a  
18 member of the board of directors at two different times, and  
19 I chaired a committee on NAFTA, a committee on international  
20 counterfeiting, I believe, and have spoken a great deal at a  
21 great number of their meetings and special seminars on  
22 different topics.

23 Q. Have you received any honors or awards over the years in  
24 trademark-related areas?

25 A. I have. I believe my firm and I personally have

1 consistently been named in the best lawyers organizations,  
 2 best IP lawyers. This year, meaning 2015, actually, for next  
 3 year, I've been named the top intellectual property litigator  
 4 in the Miami area. We've obviously -- Martindale-Hubbell,  
 5 we've had the highest rating in Martindale-Hubbell since the  
 6 80s and the international organizations as well who recognize  
 7 international trademark practitioners.

8 Q. Okay. Can you speak to publications and speeches you  
 9 may have given?

10 A. I have regularly been asked to write and to speak on  
 11 trademark issues over the years. I've spoken for the ABA  
 12 programs. There's an organization in New York, PLI, the  
 13 Practicing Law Institute, the Florida Bar, the Colorado Bar,  
 14 the Michigan Bar Association. I've spoken overseas in  
 15 Geneva. I've got an upcoming presentation on fashion law  
 16 issues in Barcelona in the fall. The American Intellectual  
 17 Property Law Association I've spoken for on several  
 18 occasions.

19 So it's just sort of -- oh, the Florida Bar recently --  
 20 or within the last few years, enacted certification for  
 21 intellectual property law attorneys, and I gave the  
 22 presentation for lawyers who are seeking to become certified  
 23 in intellectual property law. I was responsible for the  
 24 preexam education in trademark law, so a great deal over the  
 25 years.



1 Q. Can you estimate approximately how many trademark and  
2 licensing-related articles that you've published over the  
3 years?

4 A. I'm terrible at estimating numbers.

5 Q. Okay.

6 A. 50 to 100, maybe.

7 Q. Thank you.

8 A. A lot.

9 Q. Again, estimate if you can about how many times you've  
10 spoken and have been invited to speak at conferences and  
11 committees on trademark and licensing issues?

12 A. Over the past almost 30 years, I've spoken probably two  
13 to four times a year at least; so whatever -- however the  
14 math comes out. It's been consistent.

15 Q. Is there anything else in your background that I've left  
16 out that would be helpful to the Court?

17 A. Well, just in terms of my ongoing day-to-day practice,  
18 the areas that I've focused most closely on have been  
19 counseling many different kinds of businesses in connection  
20 with clearance of trademarks, likelihood of confusion,  
21 licensing and the business ramifications of those sorts of  
22 actions.

23 Q. Okay. Can you tell me, can you describe what, if any,  
24 affiliation, membership you've had in churches over the  
25 years?

1 A. I was raised in the Presbyterian church. I was baptized  
2 in the Presbyterian church. I've attended a number of  
3 different church services for different reasons. And for a  
4 period of time in Miami I regularly attended an Episcopal  
5 Church, St. Stephen's Episcopal Church in Coconut Grove.

6 Q. When was that?

7 A. That was in -- I was drawn to that church because my  
8 sons went to the school there, the elementary school. So  
9 that was in -- would have been in the -- let me think --  
10 probably for a period of close to ten years, up to five years  
11 ago; so about five years ago.

12 Q. Okay.

13 A. So -- and actually I even served on the vestry in that  
14 church, although I was never a member of the church. I  
15 served on the board of the school, which is the -- is not --  
16 it's kind of an amalgam, part school and part church, but I  
17 served on the board for the school and then was asked to  
18 serve for a term on the vestry of the church.

19 Q. Okay. And that was approximately five years ago when  
20 you stopped going there?

21 A. No. Service on the vestry would have been longer ago  
22 than that.

23 Q. Okay.

24 A. But I have not regularly attended that church for, more  
25 or less, five years.

1           MR. SMITH: Okay. Thank you. I'd like to move to  
2     qualify Ms. Lott as an expert in trademark practice and  
3     procedure, trademark licensing and quality control of  
4     trademarks and likelihood of confusion factors and analysis.

5           MR. RUNYAN: And I believe all of those are irrelevant.  
6     The only claims made in this case related to trademarks,  
7     other than a defense, are claims against individuals. The  
8     defense doesn't raise the issues that he's just -- in my  
9     opinion, he's just mentioned.

10          MR. SMITH: Your Honor, I would agree with Mr. Runyan  
11     that our defenses touch upon this, and I can read -- there  
12     are five of them that do. And with your permission, I'll  
13     just read them into the record.

14          THE COURT: Okay.

15          MR. SMITH: The 11th defense, "Nonownership of  
16     trademarks: Plaintiffs are not the true and lawful owners of  
17     the mark -- names, marks and trademarks in which they claim  
18     ownership, and they, therefore, are entitled to no relief."

19          The 12th defense, "Fair use: Any use by any of the  
20     defendants of the names and marks in which plaintiffs allege  
21     they have rights constitutes fair use that is permitted to  
22     defendants and for which plaintiffs are entitled to no  
23     relief."

24          13th defense, "Authorization: Any such use by any of  
25     the defendants of the said names and marks is and has been

1 lawful and authorized use for which plaintiffs are entitled  
2 to no relief."

3 The 14th defense, "Invalidity: The rights and interests  
4 claimed by plaintiffs in the names and marks that are the  
5 subject of the complaint are and were derived by plaintiffs  
6 wholly from and through defendants and the rights and  
7 interests therein claimed by plaintiffs against defendants,  
8 therefore, are invalid and do not constitute a basis for the  
9 relief sought."

10 The 18th defense, "Consent: Any use by defendants of  
11 any of the names and marks that are the subject of this  
12 action has been with the consent of plaintiffs who  
13 accordingly are barred from seeking any relief therefor."

14 THE COURT: Anything further from the plaintiffs?

15 MR. RUNYAN: A, the marks in question are the marks of  
16 the plaintiff parishes and the plaintiff diocese. They are  
17 not marks in question of the Episcopal Church at issue. And,  
18 no, I think that's it.

19 THE COURT: Okay. Very well. Overruled. With regards  
20 to -- I think she is an expert; however, I'm not going to  
21 limit the plaintiffs from making objections based upon the  
22 question that is asked, and I'm not prepared to give a carte  
23 blanche finding of expertise with regards to each and every  
24 one of the areas that you just mentioned, particularly with  
25 regards to the issue of confusion. And I think you know why.

1 MR. HOLMES: Yes, Your Honor.

2 THE COURT: Okay? Counsel, do you understand?

3 MR. RUNYAN: Yes, Your Honor.

4 THE COURT: In other words, I think she's an expert in  
5 some of those areas, but you need to be prepared to make  
6 objections if you believe that she lacks the expertise with  
7 regards to the particular question.

8 You may proceed.

9 MR. SMITH: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. SMITH:

11 Q. Ms. Lott, can you tell the Court what you were asked to  
12 opine on in this case?

13 A. Yes. When I was contacted, I was basically explained  
14 the underlying facts. I was not -- at my specific request, I  
15 was not told which side of the question was contacting me,  
16 whose side I was talking to. I just got kind of an objective  
17 laying out of the facts, and the question was, essentially,  
18 if there's a group that is leaving the organization, in this  
19 case, the Episcopal Church, if a group is leaving the church,  
20 does that group have the right to continue to use the name  
21 Episcopal Church. And I said, "No, it doesn't."

22 So that's basically what I was asked to evaluate. I  
23 subsequently, you know, got more facts. And that was sort of  
24 the off-the-cuff opinion, and then we got more facts and went  
25 from there.

1 Q. Can you explain what those more facts were? What  
2 materials did you review in this case in rendering your  
3 opinion?

4 A. Well, I looked, went through the pleadings, some of the  
5 pleadings, some certain selected pleadings. I didn't try to  
6 absorb everything, but certain pleadings, certain records  
7 from the Patent and Trademark Office, and importantly, from  
8 the pleadings, sort of the history and background of the  
9 Episcopal Church, the organization of the Episcopal Church,  
10 the controls, the supervision, you know, what it means to be  
11 part of the Episcopal Church.

12 Q. Okay. And did you review any of the registration  
13 certificates?

14 A. Just briefly, yes, I did.

15 Q. Ms. Lott, what was your ultimate opinion?

16 THE COURT: Stop. That's insufficient background for  
17 me.

18 MR. SMITH: Okay.

19 THE COURT: I want to know what she looked at. I want  
20 to know what marks she looked at. I want to know what  
21 registrations she looked at. I want to know what history she  
22 reviewed. Do you understand?

23 MR. SMITH: Understood.

24 THE COURT: I want a full articulation of the materials  
25 reviewed by this witness, okay?

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: With the exclusion of the expert Mr. Klein.  
3 That's insufficient to say, "Oh, I looked at a few  
4 registrations." That's not sufficient, Mr. Smith.

5 MR. SMITH: Okay.

6 THE COURT: I would like specificity.

7 MR. SMITH: Very good.

8 THE COURT: As you know, there are many marks at issue  
9 here.

10 MR. SMITH: Your Honor, may I give the witness a copy of  
11 her expert report just to refresh her memory.

12 THE COURT: Absolutely.

13 THE WITNESS: Thank you.

14 THE COURT: Anything else that you need to help you  
15 testify, I want you to feel free to ask for that  
16 documentation. I need the specificity.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Indeed.

19 Q. Let's start by identifying the specific marks that you  
20 looked at. Can you do that? Can you identify which marks of  
21 the Episcopal Church that you looked at?

22 A. Specific registrations?

23 Q. That's right.

24 A. Yeah. They're identified. There were four federal  
25 registration certificates that I looked at. One was a

1 registration for the Protestant Episcopal Church in the  
2 United States of America. Another was for the Episcopal  
3 Church. That was registration No. 3195455. Actually, there  
4 are three for the Episcopal Church: 3195454 and 3379870.

5 Q. Okay. Are those the only trademarks owned by the  
6 Episcopal Church?

7 A. I don't know.

8 Q. In your --

9 A. Sorry.

10 Q. How did you find these marks?

11 A. I do not remember whether I went on the website for the  
12 United States Patent and Trademark Office myself or whether  
13 they were provided to me. I probably would have looked at  
14 them myself anyway on the patent and trademark. These are  
15 all publicly available records.

16 Q. Okay. In your report, you say, "the Episcopal Church is  
17 the owner of a number of trademark registrations, including,"  
18 and then you -- the same marks that you've just identified.

19 A. Yes.

20 Q. Are there any others that you may have seen on the USPTO  
21 website?

22 A. I do not recall off the top of my head.

23 Q. Okay.

24 A. There may very well be.

25 Q. Have you reviewed, I believe it's four, state trademark



1 registrations filed in 2010 and '11 by the plaintiff diocese?

2 A. I believe I saw them in connection with my deposition.

3 Q. Right. So you already mentioned pleadings. Any other  
4 documents that you reviewed?

5 THE COURT: So I want to just stop you because her only  
6 contact with the state registration of marks is that she saw  
7 them at a deposition?

8 MR. SMITH: Your Honor, I believe they were in materials  
9 we provided her initially, but --

10 THE COURT: Well, that's not what she testified to.

11 MR. SMITH: I understand that.

12 THE WITNESS: I'll look and see.

13 THE COURT: Okay. All right. Very well, you may  
14 proceed, Mr. Smith. Ask her a question.

15 Q. Yes. So where did you find the facts on which you base  
16 your opinions?

17 A. Largely from the pleadings. There was a recitation of  
18 the factual background of the Episcopal Church, the history  
19 of the Episcopal Church, the governance of the Episcopal  
20 Church. And to form the opinion, you look first at the  
21 strength of the mark, how strong is the -- you know, what is  
22 the mark? What are we talking about here?

23 And it's essentially, in my view, in my understanding,  
24 it's the Episcopal Church. So when you're looking at the  
25 term "Episcopal," how strong is that mark? How widely known

1 is it? How widely recognized is it?

2 For that, partly, that conclusion was based on the  
3 background and history that was provided to me, the long,  
4 long term of use of the mark in the United States, the wide  
5 geographic extent of use of the mark in the United States  
6 and, frankly, backed up just by my own observation.

7 I mean, certainly, from the time I was a child, there  
8 were several major Protestant churches. The Episcopal Church  
9 was one of them. So, again, to the public, to members of the  
10 public, there's a strong identification, a strong designation  
11 of what the Episcopal Church is. And I view it, and for  
12 purposes of this opinion, viewed it as a strong mark.

13 You then have to look at how close are the two marks,  
14 how similar are the two. And in this case, the word  
15 "Episcopal," as used by the mother church, for want of a  
16 better term, the mother church --

17 MS. GOLDING: Your Honor, I'm going to make an objection  
18 to use of the word "mother church." I believe that the Court  
19 early on asked that we utilize the word the defendant, the  
20 national church. I think that's appropriate. I do not  
21 believe there's any evidence that's appropriate that this  
22 witness could identify the defendant national church as a  
23 mother church.

24 MR. SMITH: Your Honor, that's fine.

25 Q. Could you please use national church instead of mother

1 church?

2 A. The national church? Certainly, yes.

3 Q. Can you tell me about what goods and services did you  
4 consider? How did you define that scope?

5 A. Well, the services, my understanding is and the opinion  
6 is based on the services offered by the national church and  
7 the group that is now the group or groups that are now  
8 splintering off of the national church. And I don't know if  
9 there's a particular way I need to identify that.

10 MS. GOLDING: Your Honor, I'm going to object to that  
11 also, groups that are splintering off from the national  
12 church.

13 THE COURT: I don't know what that means. I'll sustain  
14 the objection because we just --

15 THE WITNESS: Okay. I don't know to -- how should I  
16 refer to the --

17 MS. GOLDING: How about the plaintiffs?

18 THE WITNESS: Okay. Okay. So the services offered by  
19 the national church and the plaintiffs are identical  
20 services, as far as I'm aware. They both offer church  
21 worship services and services related to that. So the  
22 services would be, for purposes of my analysis, essentially  
23 identical.

24 You look at the similarity of the facilities. Are there  
25 significant differences in the facilities? No. The

1 underlying facts assumed, for purposes of my opinion, were  
2 that the facilities are identical. They're churches.  
3 They're church buildings.

4 Q. Can you tell me about advertising? Did you look at  
5 that?

6 A. Advertising is online advertising, and I assume the  
7 standard, the general -- generally accepted advertising, the  
8 notices in the newspaper of church services and where  
9 different churches and what time, what time and where  
10 different churches have their services.

11 Q. Did you look at, consider whether a church would use a  
12 sign or a website?

13 A. I did consider the website and signage for sure, because  
14 there would be signage that would give the name of the church  
15 out front. And, of course, with the Episcopal Church,  
16 there's the, "the Episcopal Church welcomes you," sign that  
17 you see when you drive into towns or on church property; so,  
18 yes, that also is a form of advertising, absolutely.

19 Q. Did you consider the message conveyed by the use of  
20 these marks by churches on both sides of this dispute?

21 A. Yes. And, in fact, that's the central question, what  
22 message is conveyed to the public in the use of the  
23 trademarks, and the message that's conveyed to the public is  
24 the Episcopal Church.

25 MR. RUNYAN: Your Honor, I'm sorry. I would object on

1 relevance grounds because the issue is the derivation of our  
2 marks from theirs, and I just -- I don't think this is  
3 probative of that issue.

4 MR. SMITH: Your Honor, could I ask the witness that  
5 question?

6 THE COURT: Okay.

7 Q. Could you speak to how what -- did you say, derivation  
8 of your marks from ours?

9 MR. RUNYAN: Ask the question.

10 MR. SMITH: I'm asking you what you just said.

11 MR. RUNYAN: You don't get to ask me questions. Ask  
12 her.

13 MR. SMITH: Okay.

14 Q. Can you speak to the relation between the name the  
15 Episcopal Church and the name the Episcopal Diocese in  
16 South -- the Episcopal Church in the Diocese of South  
17 Carolina?

18 A. Yes. My understanding, and I believe the generally  
19 accepted, generally understood meaning of diocese is a  
20 subdivision of a larger organization. So when you look at  
21 the Episcopal Church, and you look at any name that has  
22 "Episcopal" and "diocese" in it, it is communicating that  
23 that is a subdivision of the greater organization.

24 Q. Can you speak to actual confusion?

25 MS. GOLDING: Your Honor, I'll make an objection.

1 MR. SMITH: Instances of actual confusion.

2 MS. GOLDING: I believe the Court's already ruled on  
3 that matter, and there is absolutely no foundation that this  
4 witness can speak to that issue.

5 THE COURT: There isn't. I agree. Sustained.

6 MR. SMITH: Your Honor, I would say that we are not  
7 venturing into the areas that --

8 THE COURT: You can try to lay foundation, if you wish.  
9 Maybe she's a sociologist. Lay a foundation, if you can.

10 Q. Okay. Going back to the materials you've reviewed in  
11 this case, did you review the temporary restraining order?

12 A. I saw it, yes.

13 Q. Did you review the defendant's memo in support of its  
14 motion to vacate the temporary injunction and its motion for  
15 a preliminary injunction?

16 A. Yes, I believe so.

17 Q. Did you review the answer and counterclaims of the  
18 Episcopal Church?

19 A. I have. Forgive me. Can you just direct me --

20 Q. I would refer you just to Page -- just to refresh your  
21 memory, Page 13 of your expert report.

22 A. Thank you.

23 Could I ask you to repeat the question?

24 Q. Did you review the answer and counterclaims of the  
25 Episcopal Church?

1 A. Yes, I did.

2 Q. Okay. Did you review the answer, defenses and  
3 counterclaim of the Episcopal Church in South Carolina?

4 A. Yes, I did.

5 Q. Did you review the Episcopal Church in South Carolina's  
6 notice and motion to join additional parties?

7 A. Yes.

8 Q. And then what else did you generally review besides  
9 these materials, if anything?

10 A. Fairly extensive statutes and case law. One of the most  
11 important things was Professor McCarthy's treatise on  
12 trademarks and unfair competition. Professor McCarthy is the  
13 leading -- without question, the leading expert in principles  
14 of branding and trademarks and trademark law.

15 And, in addition, Patent and Trademark Office records.  
16 The records of the Patent and Trademark Office, as I  
17 mentioned, are public record and are available for anyone to  
18 examine.

19 Q. Did you review a request for abandonment of a mark by  
20 the Serial No. 85774980?

21 A. Yes, I did.

22 Q. Did you review office actions issued by the USPTO?

23 A. I do not recall looking at specific office actions, but  
24 I did look at a number of Patent and Trademark Office  
25 records.

1 Q. Right. Did you review websites for the Episcopal  
2 Church?

3 A. Yes, I did.

4 Q. In your analysis, tell me where an entity's  
5 incorporation or nonincorporation comes into play, if it  
6 does, as to their use of marks and who owns marks.

7 A. For the most part, it doesn't. It doesn't really matter  
8 whether an entity's incorporated or not incorporated or how  
9 it's incorporated. The essence of trademark ownership,  
10 ownership and validity is quality control, who controls the  
11 nature and quality and characteristics of.

12 Q. What would you look at for that, to figure that out?

13 A. Well, specifically, specifically directed to the facts  
14 in this case, you would look to the governance of the  
15 national church, the organization, the governance, the  
16 measure of control exercised.

17 And in forming my opinion, it's -- the facts assumed as  
18 the bases for the opinion are that the national church is  
19 highly organized. It has a constitution, it has canons, it  
20 has an elected assembly of some name, it has regular  
21 meetings, there's a Book of Common Prayer that governs  
22 services, there is a strict hierarchy of clergy and specific  
23 training requirements for clergy. There are requirements  
24 that govern over the operation of sort of the business  
25 aspects of the church, the financial aspects of the church,



1 requirements for regular audits and so forth.

2       So all of the indicia are present to indicate that there  
3 is a -- an organization that oversees and controls the nature  
4 and the quality and the character of the services offered  
5 under this name, under this brand.

6 Q.   And would that be an indicia of the existence of a  
7 license?

8 A.   If others were permitted to use the brand under those --  
9 under those constraints, yes, that would be a license.

10 Q.   Can you speak to how the public's perception of the  
11 marks fits into your analysis?

12       MS. GOLDING: Your Honor, I'm going to make an  
13 objection.

14       THE COURT: Sustained.

15 Q.   So what opinions have you been asked to provide?

16 A.   The basic opinion is whether it would -- whether it  
17 would be permissible for a group that is leaving the national  
18 church to continue to use the name of the national church,  
19 and if not, why not, and the --

20 Q.   And what was your opinion on that issue?

21 A.   That it would not be permissible because there would be  
22 an overwhelming likelihood of --

23       MS. GOLDING: Your Honor, I'm going to make an  
24 objection.

25       MR. RUNYAN: It's going right to the issue that we don't

1 believe is relevant, Your Honor.

2 MR. SMITH: Your Honor --

3 MS. GOLDING: Further objection, there's no foundation  
4 for that opinion.

5 MR. SMITH: Your Honor, I'm not sure how likelihood of  
6 confusion could be irrelevant in a trademark case.

7 MR. RUNYAN: For starters, it's not a trademark case.  
8 And secondly, if it's not a trademark case, confusion doesn't  
9 matter. It's not relevant to your defenses.

10 MR. SMITH: It's not a trademark case?

11 MS. GOLDING: Further, there's no foundation as to this  
12 witness --

13 MR. RUNYAN: Unless it's confusion through the misuse of  
14 our marks.

15 MR. SMITH: Your Honor, I believe the second cause of  
16 action in the plaintiffs' complaint is for service mark  
17 infringement.

18 THE COURT: Yes, for theirs.

19 MR. SMITH: Right.

20 THE COURT: Not for yours.

21 MR. SMITH: Right. But as I read --

22 THE COURT: Do you want theirs?

23 MS. GOLDING: No, Your Honor.

24 THE COURT: I didn't think you did. Do you want to use  
25 theirs? Are you okay with them keeping theirs?

1 MS. GOLDING: Yes, Your Honor.

2 THE COURT: That's what I thought. You just want yours.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: And you'd like to use yours; am I right?

5 What am I missing? What am I missing?

6 MR. SMITH: Your Honor, your presumption that the marks  
7 are theirs is the starting point.

8 THE COURT: They've got some registered marks and you've  
9 got some registered marks, right?

10 MR. SMITH: Your Honor, I would argue that their  
11 registered marks are, one, invalid; and, two, common law  
12 trumps any type of state registration. And under common  
13 law --

14 THE COURT: Stop. Didn't they have theirs before you  
15 had yours?

16 MR. SMITH: No, Your Honor.

17 THE COURT: Didn't you have yours before they had  
18 theirs?

19 MR. RUNYAN: According to the --

20 THE COURT: Stop.

21 MR. RUNYAN: -- dates of first use.

22 THE COURT: Yes.

23 MR. RUNYAN: I believe so.

24 THE COURT: Right.

25 MR. RUNYAN: And possibly for other reasons as well.

1 THE COURT: Aren't yours different than theirs?

2 MR. RUNYAN: Yes.

3 MS. GOLDING: Yes.

4 THE COURT: Okay. And they got -- and they have federal  
5 registrations, yes.

6 MR. RUNYAN: They have three, four, which work out to be  
7 two, essentially, yes.

8 THE COURT: Right. You don't want them?

9 MR. RUNYAN: No.

10 THE COURT: You just want yours?

11 MR. RUNYAN: Yes, Your Honor.

12 THE COURT: Do you want theirs?

13 MR. SMITH: Your Honor, our position is --

14 THE COURT: Answer me. Do you want theirs?

15 MR. SMITH: Well, we want ours, and we believe that  
16 theirs are ours.

17 THE COURT: Well, then that's yours to use. Don't worry  
18 about yours. Do you want theirs?

19 MR. SMITH: Yes.

20 THE COURT: Even though they're registered with the  
21 State of South Carolina, yes?

22 MR. SMITH: Yes, they're registered.

23 THE COURT: And even though they have been in use by  
24 them before you even existed.

25 MR. SMITH: That's not true.

1 MS. KOSTEL: No.

2 THE COURT: Okay. Well, before you registered yours.

3 MR. SMITH: Your Honor, can I make a general point?

4 THE COURT: No. Answer my question.

5 MR. SMITH: Yes, we want theirs --

6 THE COURT: You want theirs.

7 MR. SMITH: -- because we think ours is theirs and, yes,  
8 we want it.

9 THE COURT: Then that's where your testimony must go --

10 MR. TISDALE: Right.

11 THE COURT: -- because they don't want yours. That's  
12 not an issue. You can have yours. They're cool with that.

13 MR. SMITH: Okay.

14 THE COURT: See what I'm saying?

15 MR. SMITH: Okay.

16 THE COURT: Don't want them, don't want to use them,  
17 taking them down, taking the flags down. Remember, I  
18 listened to --

19 MR. SMITH: Right.

20 THE COURT: -- like, five days of taking flags down,  
21 taking "the Episcopal Church Welcomes You" down, remember  
22 that? Did that all week.

23 MS. KOSTEL: If I may, Your Honor.

24 THE COURT: No. He's got the witness. You can handle  
25 it in a minute.

1 Are you with me? You want their marks.

2 MR. SMITH: Our defense, our basic defense is their  
3 marks are our marks, and that is a defense to trademark  
4 infringement.

5 THE COURT: Let's be clear what our issues are. These  
6 marks are not identical. They are different. If your eyes  
7 look at them, they're not the same. You've got some that are  
8 federally registered, yes?

9 MR. SMITH: Yes.

10 THE COURT: Don't worry about those. They don't want  
11 them, okay? Do you think they're using your federal ones?

12 MR. SMITH: Yes.

13 THE COURT: You think they're using your federal ones?

14 MR. SMITH: Yes. We think -- the difference between our  
15 marks and their marks, our mark is the Episcopal Church.  
16 Their mark adds the word "diocese" and "South Carolina." In  
17 trademark terms, both of those are geographic descriptors.  
18 They are not -- they do not create an independent mark from  
19 the Episcopal Church.

20 THE COURT: That's where your testimony needs to go,  
21 then, with regards to their marks. They don't want yours.  
22 See what I'm saying? Yours are not in issue. Your federally  
23 registered marks are not in issue. They do not wish to use  
24 those, okay?

25 Where your testimony's got to now go is that based on

1    this witness's expertise, for some reason, she would opine  
2    that their marks, although registered with the State of South  
3    Carolina and they're in existence for a very long time, you  
4    need to know that, that they really don't belong to these  
5    folks.  You see what I'm saying?

6           MR. SMITH:  Yes, Your Honor.

7           THE COURT:  But what's not in issue, and what you don't  
8    need to spend any time on is yours, because they don't want  
9    them.  See what I'm saying?

10          Now, if you want to say they're too similar, they've  
11    conceded that yours are yours, okay?

12          MR. SMITH:  Okay.

13          THE COURT:  Okay.  So talk about theirs, because those  
14    are the ones you want, right?

15          MR. SMITH:  Right.

16          THE COURT:  Okay.  And the reason, you say why am I  
17    referring to them as theirs, because they are registered to  
18    them.  I have seen those documents.  They are registered to  
19    the plaintiffs for the State of South Carolina.  There's  
20    testimony now in this trial that centuries before they were  
21    actually registered, they were in use for the plaintiffs.  So  
22    that's where your testimony, I think, needs to focus with  
23    regards to this witness.  And since I've got to make the  
24    decision, that's probably, if I were you, where I'd go, okay?

25          MR. SMITH:  Thank you, Your Honor.

1 Q. Ms. Lott, can you speak to the use of the marks and how  
2 that may affect ownership?

3 A. Could I ask you to be a little bit more specific?

4 Q. Let me ask you this: Can you evaluate the similarities  
5 between the mark the Episcopal Church and the mark the  
6 Episcopal Church in the Diocese of South Carolina?

7 A. Yes. Yes. As I mentioned, the term "diocese"  
8 designates a subdivision of a larger group in general terms.  
9 South Carolina's a geographic location; so the Episcopal  
10 Diocese in South Carolina, if you were looking at, for  
11 example, trademark infringement, that would be considered an  
12 infringing mark. And the reason is members of the public  
13 seeing that mark would logically assume this is the South  
14 Carolinian diocese of the national church.

15 Q. And would the plaintiffs, therefore, need a license from  
16 the Episcopal Church to use the name the Episcopal Diocese or  
17 the Episcopal Church in the Diocese of South Carolina?

18 A. Yes, yes.

19 MR. SMITH: Thank you, Ms. Lott. If you could answer  
20 questions from the plaintiffs.

21 THE COURT: National church.

22 MS. KOSTEL: One moment, Your Honor. I'm sorry.

23 THE COURT: Probably weren't quite ready for that.

24 MS. KOSTEL: I didn't think it was coming up that fast.

25 THE COURT: I understand.



1 DIRECT EXAMINATION BY MS. KOSTEL:

2 Q. Ms. Lott, I'm Mary Kostel. I represent the national  
3 church. I just have a couple of questions. The first  
4 question is, is a trademark property?

5 A. Yes.

6 Q. Okay. And is a license to use a trademark property?

7 A. I think it has been considered property.

8 MS. KOSTEL: Thank you.

9 Forgive me, Your Honor. I'm struggling a little bit  
10 here technologically.

11 THE COURT: With technology?

12 MS. KOSTEL: Yeah. I can't find what I'm looking for.

13 THE COURT: Thank you. Can you just step back until she  
14 finds the document?

15 Q. Okay. I'd like to show you a document that will be  
16 marked for evidence but right now for identification. This  
17 is a document that you see says, "Journal of the Proceedings  
18 For the Bishop, Clergy and Laity for the Protestant Episcopal  
19 Church of the United States of America." Do you see that?

20 A. Yes.

21 Q. And do you see what the date of that is?

22 A. September 19th, 1792.

23 Q. Okay.

24 MS. GOLDING: If we're going to refer to it, can we go  
25 ahead and have it marked for identification?

1 THE COURT: It should be marked for identification. In  
2 fact, it shouldn't be published to the Court until it's in  
3 evidence. That's the rule, for what it's worth.

4 MS. KOSTEL: Just let me refer you to another document  
5 that we'll mark for identification. What are we on, 12 or  
6 13?

7 MR. TISDALE: 13.

8 Q. Can you take a look at that document and read it to  
9 yourself. I won't read it -- don't publish it to the Court.

10 A. I can't read it very clearly. Do you need me to read  
11 the whole thing?

12 Q. Just if you could read the title.

13 A. Oh, that's better. Thank you.

14 Q. Is that better?

15 A. Much.

16 Q. Do you see the name that is used of that body under  
17 "Tenth convention"?

18 A. Yes.

19 Q. So I think you were opining, or you were asked to opine  
20 about the use of the names the Episcopal Church, which is a  
21 registered mark of the Episcopal Church, right?

22 A. Yes.

23 Q. And the use -- and the other registered mark that you're  
24 discussing of the Episcopal Church is the Protestant  
25 Episcopal Church in the United States of America, right?

1 A. Yes.

2 Q. Okay. And in these two documents, you see that in the  
3 first document, that name was used --

4 MS. GOLDING: Your Honor, I'm going to make an  
5 objection. She's leading the witness, and I think it's only  
6 proper if she would just ask the witness a question.

7 MS. KOSTEL: Okay. I'll ask a question.

8 Q. Do you understand what these two documents are?

9 A. They appear to be recordings of meetings of, I assume,  
10 the national church that took place in the 1790s.

11 MS. GOLDING: Your Honor, there again, that assumption  
12 is incorrect. The document is meetings of the South  
13 Carolina -- the Protestant Episcopal Church in the State of  
14 South Carolina.

15 MS. KOSTEL: Correct. That's -- the second one is.  
16 Let's go back to the first one. What's the first one?

17 THE WITNESS: Meeting of the Protestant Episcopal Church  
18 in the United States of America.

19 Q. And so if you look at that document, what name do you  
20 think, at least at this point in time as of 1792, what name  
21 is the national church using?

22 A. Protestant Episcopal Church.

23 Q. Would you read the whole name, please?

24 A. In the United States of America?

25 Q. Right. And then what -- what name -- I think

1 Ms. Golding identified the second document as a record of  
2 the -- of a meeting of, I suppose, what is now the plaintiff  
3 diocese or the Episcopal Church in South Carolina, depending  
4 on how you look at it, but what is the name that that South  
5 Carolina entity is using in 1792?

6 A. The Protestant Episcopal Church of South Carolina.

7 Q. Okay. Thank you very much.

8 Have you looked at the mark that was registered by the  
9 plaintiff diocese?

10 A. I do not recall seeing it.

11 MS. KOSTEL: Okay. Thank you. Nothing further.

12 THE COURT: Cross-examination?

13 MS. GOLDING: Ms. Lott, I'm Henrietta Golding. I  
14 represent the plaintiff trustees in this lawsuit as well as  
15 the parish St. Luke's.

16 CROSS-EXAMINATION BY MS. GOLDING:

17 Q. Now, my understanding, you were retained on about  
18 May 19th, 2014; is that correct?

19 A. That's correct.

20 Q. Okay. And with respect to the information that was  
21 provided to you to perform your services and render an  
22 opinion, you were provided -- you were not provided all the  
23 pleadings in this lawsuit, were you?

24 A. Not to my knowledge, no.

25 Q. Okay. And, in fact, the only documents, again, you were

1 provided were the temporary restraining order; is that  
2 correct?

3 A. No. There were a number of others as well.

4 Q. I know. I'm going through each of them. The temporary  
5 restraining order?

6 A. The temporary restraining order is one of them; that's  
7 correct.

8 Q. And then you were provided with the defendant TECSC's  
9 memorandum in support of its motion to vacate the answer --  
10 motion to vacate the temporary injunction, it's motion for  
11 preliminary injunction; is that correct?

12 A. I believe that's correct.

13 Q. Okay. And you did not ask for any opposing memorandums  
14 with respect to the plaintiffs, did you?

15 A. No.

16 Q. And you did not receive any from the plaintiffs, did  
17 you?

18 A. No.

19 Q. Okay. Then the next item you received from your client  
20 was answer and counterclaims of the Episcopal Church to  
21 second amended complaint for declaratory injunctive relief;  
22 is that correct?

23 A. Yeah, I think so. I think that's correct.

24 Q. You did not receive the complaint from the plaintiffs,  
25 did you?

1 A. I don't believe so.

2 Q. Okay. You didn't ask for the complaint, did you?

3 A. It wasn't pertinent to the questions I was being asked.

4 Q. So my question is you didn't ask for the complaint, did  
5 you?

6 A. No.

7 Q. Okay. And in the complaint there are allegations and  
8 statements as to the origin of the marks and how long the  
9 plaintiffs' marks had been in existence. You say that's not  
10 pertinent to your assignment?

11 A. The factual background is pertinent, but the allegations  
12 of the complaint, as I understood it, were primarily around  
13 corporate organizations and so forth, and I was looking at  
14 particularly at the trademarks.

15 Q. Okay. So when you provided this opinion, you had no  
16 information as to the plaintiff diocese as to how long it had  
17 been an incorporated association, did you?

18 A. I'd have to look again. I don't -- I don't recall, but  
19 that would not have been relevant to my analysis.

20 Q. Well, let's get to this now. We all know that use of a  
21 mark is relevant, correct?

22 A. Yes.

23 Q. Okay. And so use of a mark, you have to go back in time  
24 to say when that use first started and who first started that  
25 use; is that not correct?

1 A. If that's the question you're asking, you'd have to go  
2 back in time to answer that, yes.

3 Q. And use is relevant because the first user of the mark  
4 is the owner of the mark; is that not correct?

5 A. Initially, yes; that's correct.

6 Q. Okay. And so if there's a dispute as to mark, you  
7 understood that there was a dispute between the parties as to  
8 the mark; is that correct?

9 A. Yes.

10 Q. Okay. So you are telling this Court that it's not  
11 relevant as to who first started using the mark and when that  
12 occurred?

13 A. It depends on the information --

14 Q. You can answer my question, then you may explain.

15 MR. TISDALE: Excuse me, Your Honor.

16 THE COURT: I will control it. If there's an objection  
17 directed to me, then I will direct her.

18 Answer the question "yes" or "no." If you need to  
19 explain your response, feel free to do that, but answer it  
20 "yes" or "no."

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Thank you.

23 THE WITNESS: Sorry. Would you repeat the question.

24 Q. Certainly. I have now forgotten my question. I  
25 apologize.

1 THE COURT: I think that the question, if you read it  
2 back, was, "Is it not relevant to know" --

3 Q. Is it not relevant to know which party first used the  
4 mark and when it was used, first used?

5 A. I need to know with respect to what? In general, you  
6 would want to have that information, yes, but --

7 Q. So the answer to that question is "yes"?

8 A. In general, yes.

9 Q. Okay. And you have no idea today when the plaintiff  
10 diocese contends it first used the mark, do you?

11 A. I do not know when they contend -- you mean as a  
12 separate entity, separate from the national organization? I  
13 don't understand the question. Sorry.

14 Q. Okay. When did the plaintiff diocese first use the word  
15 "Protestant Episcopal"?

16 A. I don't know, but my understanding is that when the  
17 plaintiff diocese first used the name "Episcopal" or  
18 "Protestant Episcopal," it was part of the larger church  
19 organization at that time.

20 Q. And where did you get that understanding from, the  
21 defendants?

22 A. The historical background that is -- that's recited that  
23 was provided to me, yes, and based part on my own knowledge  
24 and experience and information.

25 Q. Okay. If it's based on your own --



1 THE COURT: Counsel, let me see you, please.

2 (Judge and attorneys confer.)

3 THE COURT: Okay. You may continue.

4 Q. Let's go back into the data that you received and you  
5 reviewed. We stopped at answer and counterclaims, but you  
6 admit you did not ever see the complaint of the plaintiffs?

7 A. I don't recall seeing it.

8 Q. Okay. Well, it's certainly not in the data. It's not  
9 referenced or set forth in the data that you had attached to  
10 your opinion as reviewing; is that correct?

11 A. If I had seen it, it would be there; so if I --

12 Q. Well, look at Page 13 of your report under D, "Data and  
13 other information considered."

14 A. Okay. So, no, that's not included.

15 Q. Okay. Then the next item you have you said you  
16 considered, "Answer, affirmative defenses and counterclaims  
17 of the Episcopal Church in South Carolina to second amended  
18 complaint for declaratory and injunctive relief"; is that  
19 correct?

20 A. Yes, that's correct.

21 Q. And then the item you have, "TECSC's notice and motion  
22 to join additional parties"; is that correct?

23 A. That's correct.

24 Q. Okay. So these five items are the only pleadings that  
25 you have reviewed or received in this lawsuit for your

1 opinion; is that correct?

2 A. Yes, that's correct.

3 Q. Okay. And none of these items set forth the position of  
4 the plaintiff diocese in this lawsuit as to any marks, do  
5 they?

6 A. I'll agree with you that probably not, no.

7 Q. Now, you also stated or, if I understand correctly, you  
8 did not personally conduct any research with respect to your  
9 opinions that you present to this Court; is that correct?

10 A. No, that's not correct.

11 MS. GOLDING: Let's go to your deposition then.

12 Your Honor, may I hand the witness her deposition?

13 THE COURT: Yes, thank you. You may unseal it.

14 (The Court's Exhibit 6 marked for identification.)

15 Q. Let me hand you a copy of your deposition taken on  
16 June 18th, 2014? I would like for you to first turn to  
17 Page 19 of your deposition.

18 A. Okay.

19 Q. I will read -- starting with Line 12, I'm going to read  
20 the question, and then I'm going to go to Line 20. So you  
21 will read the answer, please.

22 A. Okay.

23 Q. "Question: So from whom or from what sources did you  
24 get these facts?"

25 A. "The facts were derived from pleadings in this case that

1 were provided to me by defendants' counsel."

2 Q. "Question: I thought they sounded familiar." Please --

3 A. "Answer: Déjà vu. Yes. That was not independent  
4 research on my part. That was provided."

5 Q. Okay. Let's go to Page 20.

6 A. If I may just --

7 Q. Ma'am, I haven't completed this. Let's go to Page 20  
8 and then you can explain.

9 A. Okay.

10 Q. Line 18, No. 2, I'll read the question. "Question:  
11 No. 2, still under Section D of your report. Give statutes  
12 and case law listed A through L or A through K, I suppose.  
13 And how did you arrive at that list of statutes and case  
14 law?"

15 A. The answer says, "I didn't personally do the research.  
16 This is in looking at likelihood of confusion factors.  
17 Different circuits in the United States have different lists  
18 of factors that they turn to to determine likelihood of  
19 confusion of trademarks, and this list was derived from the  
20 seminal factors relied on in the fourth circuit and in case  
21 law specific to the fourth circuit and specific, in some  
22 cases, to South Carolina in the fourth circuit, but that's  
23 where these specific cases came from. But these are  
24 essentially -- I think all of them essentially go to the  
25 likelihood of confusion factors relied on by federal courts

1 in the fourth circuit, including the South Carolina courts."

2 This was the subject -- there were two mistakes in  
3 transcription that were submitted to the court reporter as --  
4 on an errata sheet, and this was one of them. This was  
5 research that I did personally do, and I have submitted the  
6 sheet to ask the court reporter to correct the "didn't  
7 personally do the research" to "did" because this is research  
8 that I did personally.

9 Q. Okay. Now, it's my understanding you are not an expert  
10 or even knowledgeable about church history or religious  
11 organizations; is that correct?

12 A. I am not an expert in church history or religious  
13 organizations; that's correct.

14 Q. Nor in church governance or church structure; is that  
15 correct?

16 A. That's correct.

17 Q. Okay. And you testified on direct that an entity's  
18 organization is significant with respect to determining the  
19 control of its marks; is that correct?

20 A. Yes.

21 Q. Okay. And you testified that you reviewed or went to  
22 the website of the defendant national church, and you saw an  
23 organization; is that correct?

24 A. No.

25 Q. No. Then I misunderstood --

1 A. But I'm sorry. I'm sorry. I was trying to explain an  
2 earlier answer, and you interrupted me and said we'd get back  
3 to that.

4 The first question you asked me was with regard to  
5 specific facts that were derived from the pleadings, and  
6 that's what the answer was: These specific facts. These  
7 facts were derived from the pleadings, but we were looking --  
8 if you'll look up at Page 19, starting at Line 4, we're  
9 talking about Section C of the report. We're talking about  
10 one section of facts.

11 That was not meant to say that no other research, no  
12 other investigation was done. Clearly there was. But the  
13 point is the specific facts listed at that specific section  
14 of the report came from the pleadings and were provided by  
15 counsel. I just want to be sure that the record is clear  
16 that we're talking about one specific section there.

17 I'm so sorry. Please go ahead.

18 Q. Thank you.

19 In direct examination you testified as to the  
20 organization of the defendant national church, did you not?

21 A. Yes.

22 Q. Okay. And, in fact, you went to some detail about how  
23 organized it was; is that not correct?

24 A. Based on the facts provided to me, underlying  
25 assumptions that I relied on in forming my opinion, that's

1 absolutely correct.

2 Q. And you have absolutely no knowledge of the plaintiff  
3 diocese organization, do you?

4 A. No, I have no knowledge of the plaintiff diocese  
5 organization.

6 Q. And you have absolutely no knowledge of the plaintiff  
7 trustees organization, do you?

8 A. No.

9 Q. Okay. And you have no knowledge of any of the plaintiff  
10 parishes' organizations do you?

11 A. No. But those would not be relevant to any of the  
12 questions that I'm considering or testifying on.

13 Q. Okay. Are you saying that the plaintiff diocese  
14 organization has no relevancy?

15 A. The form of organization or the manner of organization  
16 is not -- it does not matter. The issue is the likelihood of  
17 confusion of the public by use of a mark; so it doesn't  
18 matter what entity or what organization is -- I guess it  
19 doesn't matter how they're organized. No, it doesn't.

20 Q. Okay. And so that should be the truth for the defendant  
21 national organization; it shouldn't make any difference how  
22 its organized.

23 A. No, that's not correct.

24 Q. Okay.

25 A. That's not correct.

1 Q. Okay. So the defendant national corporation's  
2 organization is pertinent to you, but the plaintiff diocese  
3 or the plaintiff trustees organization is not pertinent to  
4 you, is it?

5 A. That's right.

6 Q. Okay. And you call yourself an expert giving an opinion  
7 that this Court relies upon, but you totally ignore one side  
8 of the case; is that what you're telling us?

9 A. That's correct. May I explain why?

10 THE COURT: Yes.

11 THE WITNESS: Thank you.

12 The reason it doesn't matter is there is a single  
13 organization. As long as that -- as long as that  
14 organization exercises quality control, controls the need to  
15 submit, submit audit reports, governance control, has canons,  
16 has a constitution, has rules and regulations, that is the  
17 body that is identified by the word "Episcopal."

18 This was recognized by the plaintiffs themselves when  
19 they designated themselves Episcopal, Episcopalians and part  
20 of the Episcopal Church. That's why it's important. It  
21 doesn't matter who the plaintiffs are or what -- it could be  
22 a single individual. It could be an unincorporated  
23 association. It could be a corporation. They were members  
24 of the national church.

25 They had chosen to withdraw from the national church.

1 Whether it's an individual or whatever, it does not matter  
2 how they're organized. There can be no organization,  
3 ultimate organization. It doesn't matter, if this group  
4 continues to hold themselves out as the Episcopal Church,  
5 particularly given the fact that this group or groups were,  
6 in fact, part of the national church for so long. Members of  
7 the public are going to be confused or deceived or misled  
8 into believing there's a connection or an affiliation with  
9 the national church.

10 Q. So if I have a mark and I join an organization and I  
11 have a mark that's just my mark and I join that organization  
12 that may use the same words as my mark, then I automatically  
13 lose my mark; is that what you're telling this Court?

14 A. No.

15 Q. Okay. Thank you. Now --

16 A. No. But that's not the situation here.

17 Q. And let me ask you this, then --

18 A. Sorry.

19 Q. The situation here that you have is just based upon what  
20 the defendants' information was given to you, nothing about  
21 the plaintiffs; isn't that a fact?

22 A. The information given to me by defendants, the  
23 information based on my own knowledge and background and 40  
24 years of experience and also information based on my  
25 individual research, Internet research and analysis, yes.



1 Q. Now, let's go into the registrations of the defendant  
2 national church. I think you said the first registration was  
3 when?

4 A. I don't think I said. You mean the date the  
5 registration issued?

6 Q. Yes, ma'am.

7 A. 2007.

8 Q. Okay.

9 A. Actually, I believe the first three were 2007 and the  
10 fourth was 2008.

11 Q. I did not note on direct examination that you told this  
12 Court, with respect to the first registration, the type, what  
13 was registered. What specifically was registered by the  
14 defendant national church?

15 A. The mark?

16 Q. Yes, ma'am.

17 A. The Protestant Episcopal Church in the United States of  
18 America.

19 Q. And in that registration, what is set forth as to the  
20 date of first use?

21 A. I don't have it in front of me.

22 Q. Where is it?

23 A. I don't know.

24 Q. Do you recall?

25 A. I don't off the top of my head. I don't recall.

1 Q. Well, then let's go to your deposition. Let's go to  
2 Page 23 of your deposition.

3 A. Okay.

4 Q. Okay. I want you to look at Lines 12 through 15.  
5 That's your answer; is that right?

6 A. Yes.

7 Q. Now, does that refresh your memory as to this  
8 registration as to the first -- the date of first use that is  
9 present on the registration?

10 A. According to the transcript, it was January 1, 1836.

11 Q. Okay. And that was you testifying?

12 A. Yeah. I was reading from the actual document at the  
13 time, yes.

14 Q. And so, again, tell the Court the mark that is in this  
15 registration of 3-342-725.

16 A. The Protestant Episcopal Church in the United States of  
17 America.

18 Q. And its first use is when?

19 A. That is -- the first use recited in the registration was  
20 January 1, 1836. We were just looking at a document that  
21 said "1793." So -- but -- so it's an important distinction.  
22 This is what was recited in the registration.

23 Q. Well, that registration was done by the national church,  
24 was it not?

25 A. I would assume so.

1 Q. Well, I mean, you're a lawyer in trademark. Isn't  
2 that -- if you're going to get a client to do a registration,  
3 you're going to get that client's permission, aren't you?

4 A. Yes.

5 Q. Okay. And it would be a fair assumption that the  
6 national church knew that their attorney was registering the  
7 name, wouldn't it?

8 A. I would assume that.

9 Q. Okay. And it would be also an assumption, a fair  
10 assumption, that the registration would properly set forth  
11 the date of first use?

12 A. Initially you could assume that, but there are a lot of  
13 reasons why you would -- the dates -- getting down to the  
14 bottom line, a use date in a registration is a presumption, a  
15 legal presumption that the mark was in use at least as early  
16 as that date. And the presumption is rebuttable by evidence  
17 of prior use or subsequent use.

18 Q. Okay. Let me ask you this: That registration,  
19 3-342-725, it has not been amended or revised in any way, has  
20 it?

21 A. Not to my knowledge.

22 Q. Okay.

23 A. It has not.

24 Q. So as of today in the U.S., in the U.S. documents, the  
25 date of first use of the term "the Protestant Episcopal

1 Church in the United States of America" is January 1, 1836?

2 A. I need you to repeat the question.

3 Q. I'm sorry.

4 A. Because clearly that is the date that for some reason  
5 was recited in this registration, whether it was in error,  
6 whether it was the specific use of these exact words in  
7 connection with these specific services, I just don't know.  
8 But it is not the definitive answer. It's the starting  
9 point.

10 There's an initial presumption of this date, but we just  
11 saw -- I just was asked to look at a document that reflected  
12 a much earlier date; so I would not assume that this is the  
13 actual, factually accurate date.

14 Q. And the document you were just asked to look at was  
15 through Mary Kostel, wasn't it?

16 A. Yes.

17 Q. Okay. And that's the first time, today, that's the  
18 first time you saw those two documents; is that not correct?

19 A. I believe that's correct.

20 Q. Okay. Now, let's look at the next registration that  
21 you --

22 A. I do not have copies of the registrations in front of  
23 me.

24 Q. Where are they?

25 A. I don't -- I don't have them.

1 Q. You didn't bring them with you?

2 A. No, I did not bring them with me.

3 Q. Okay.

4 A. They may be attached as exhibits to the deposition  
5 transcript.

6 THE COURT: Then I'll tell you what we're going to do,  
7 since it's 1:15, we're going to take our lunch break. And it  
8 would be my request, ma'am, that you get familiar, please,  
9 with your exhibits and your report between now and lunch,  
10 okay, so you'll know what you have and what you've brought  
11 with you and perhaps what you have not, okay?

12 THE WITNESS: Your Honor, I didn't bring anything with  
13 me.

14 THE COURT: You brought nothing with you?

15 THE WITNESS: I brought a copy of my report, but I  
16 didn't bring exhibits with me or anything.

17 THE COURT: You did not bring with you all of the copies  
18 of the information provided to you by the defendant on which  
19 you were coming to Court to opine?

20 THE WITNESS: I don't -- I don't believe I was requested  
21 to bring documents or exhibits with me.

22 THE COURT: So you didn't bring all of the information  
23 upon which you had possession that you were coming to this  
24 Court to opine?

25 THE WITNESS: I have some files with me, but, no, I did

1 not.

2 THE COURT: Why don't you do this for me: Why don't you  
3 try to get familiar with what you did bring, okay? There's a  
4 lot of time that's being wasted while you try to figure out  
5 whether or not you're familiar with a document or you have a  
6 document. I would be most grateful to you if you would, over  
7 the lunch break, take a look maybe at your report and what  
8 you brought with you, okay? Can you do that for me?

9 THE WITNESS: I'm --

10 THE COURT: Okay. We'll handle it this way: I will  
11 order you to do that, okay?

12 THE WITNESS: No question, Your Honor. I absolutely  
13 will take care of that.

14 THE COURT: Okay. And, otherwise, please do not discuss  
15 your testimony with anyone over the lunch break. I will see  
16 you all please at 2:30. Thank you.

17 (Lunch recess held.)

18 THE COURT: All right. Cross-examination to continue.

19 MS. GOLDING: Thank you, Your Honor.

20 Q. Ms. Lott, I believe we stopped before lunch when we  
21 discussed the first registration of the defendant national  
22 church; is that correct?

23 A. Yes.

24 Q. Okay. And then we were going to go into the second  
25 registration. And do you have that information in front of

1     you?

2     A.    Okay.  Give me just a second, yes.  I have the excerpt  
3     that I printed out from the Patent and Trademark Office right  
4     here, yes.

5     Q.    Very good.  When was the second registration made?

6     A.    Are you referring to -- the one I have on top is  
7     3379870.  The mark is the Episcopal Church, the registration  
8     was filed in 2004 and registered in February 12th, 2008.

9     Q.    And what is the date of first use on that mark?

10    A.    1967.

11    Q.    And that date of first use was placed in there by the  
12    defendant the national church; is that correct?

13    A.    That's the applicant.

14    Q.    And that's the applicant; is that correct?

15    A.    That's correct.

16    Q.    Okay.  And then the third trademark is -- the last four  
17    numbers are 5, excuse me, 454.  Do you have that?

18    A.    I do.

19    Q.    And when was that registration approved?

20    A.    It was registered January 9th, 2007.

21    Q.    And the date of first use?

22    A.    1967.

23    Q.    And what is that mark?

24    A.    The Episcopal Church.

25    Q.    And then the fourth mark, I believe that number ends

1 with 870; is that correct?

2 A. Oh, the 870 is the first one we talked about just now.

3 Q. Okay.

4 A. The one that I'm at, the next one ends with 455.

5 Q. Very good.

6 A. Sorry.

7 Q. When was that registered?

8 A. The registration date is January 9, 2007.

9 Q. And what is reflected as the date of first use?

10 A. 1967.

11 Q. Now, with regard to the names that were registered in

12 these four marks, aren't there two names that were

13 registered, two distinct names?

14 A. Yes.

15 Q. Okay.

16 A. Three of the registrations are for the Episcopal Church,

17 and one registration is for the Protestant Episcopal Church

18 in the United States of America.

19 Q. So we have two different names essentially; is that

20 correct?

21 A. Two different trademarks, yes.

22 Q. Okay. And one is the Protestant Episcopal Church in the

23 United States?

24 A. Of America.

25 Q. Of America. And the other is the Episcopal Church?



1 A. That's correct.

2 Q. Now, initially these registrations were denied; is that  
3 correct?

4 A. I didn't bring that information with me. I believe  
5 that's correct, yes.

6 Q. And they were denied -- one of the reasons for the  
7 denial is because there are other institutions such as  
8 churches that use the Episcopal -- the words "Episcopal  
9 Church"; is that correct?

10 A. I'm sorry. I don't know that.

11 Q. Okay.

12 A. I don't -- I didn't see the exemplar.

13 Q. You didn't see what?

14 A. The office action.

15 Q. Okay. So you do not have any knowledge as to why these  
16 four applications were initially denied?

17 A. No, I don't.

18 Q. Well, it's a fact, though, that there are other entities  
19 that use the word Episcopal Church; is that correct?

20 A. I believe that there are, but I have no independent  
21 knowledge of them.

22 Q. Well, don't you think that that's a factor that should  
23 be taken into consideration by an expert?

24 A. In determining what?

25 Q. In determining a mark, the strength of a mark.

1 A. Yes, I do.

2 Q. Because if a mark is weak, that is less of a -- the  
3 weaker the mark, the less possibility of infringement; is  
4 that not correct?

5 A. The less the scope of protection if a mark is weak;  
6 that's correct.

7 Q. And one indicia of a weak mark is use of words by  
8 others; is that correct?

9 A. Yes.

10 Q. Now, you'll agree that it is appropriate, in reviewing  
11 or determining a mark and whether or not that mark is  
12 infringing on another mark, is you have to look at the mark  
13 in its entirety; is that correct?

14 A. That's correct.

15 Q. Okay. So let's look at these marks in their entirety.  
16 Now, first of all, let's make sure. You know the plaintiffs'  
17 marks, right?

18 A. I have the -- you're referring to the Protestant  
19 Episcopal Diocese of South Carolina.

20 Q. Well, let me ask you, I want to ask you, you're here  
21 today to testify.

22 A. Okay.

23 Q. What do you believe to be the marks of the plaintiff  
24 diocese?

25 A. Okay. The marks that I am aware of -- bear with me just

1 a second. There are four South Carolina registrations and  
2 two federal applications that have been abandoned. Those are  
3 the ones that I am aware of.

4 Q. Now, with respect to the two federal applications that  
5 have been withdrawn, that withdrawal, or you say abandoned,  
6 does not affect the plaintiffs' common law rights to those  
7 marks, does it?

8 A. No, it does not.

9 Q. So let's go ahead and tell me what you believe to be the  
10 two names of the plaintiff diocese, the two marks.

11 A. Okay. The two marks that the plaintiff diocese is  
12 claiming?

13 Q. Yes, ma'am. I want to know what you think they are.

14 A. Based on the records I have, they are the Protestant  
15 Episcopal Church in the Diocese of South Carolina, the  
16 Diocese of South Carolina, the Episcopal Diocese of South  
17 Carolina, and then there's a design mark.

18 Q. Okay. Now, I think on direct you testified as to what  
19 you believed to be the definition of diocese; is that  
20 correct?

21 A. Yes.

22 Q. Okay. Now, you'll agree that that word, "diocese," is  
23 not in the name of the defendant national church, is it?

24 A. Right.

25 Q. Okay. And your understanding of diocese, I think you

1 said it was some subdivision?

2 A. That's my understanding.

3 Q. Okay. Now, in your expertise it's proper to go to the  
4 dictionary to find the meaning of a word, is it not?

5 A. Yes.

6 Q. Okay. And, in fact, if you went to Merriam-Webster, the  
7 definition of a diocese is "The area that is controlled by a  
8 bishop" --

9 MS. KOSTEL: Objection, Your Honor. Is she going to  
10 testify about what's in Merriam-Webster?

11 MS. GOLDING: I hadn't finished my question, Your Honor.

12 MS. KOSTEL: Is that a question?

13 MS. GOLDING: Yes.

14 MS. KOSTEL: It didn't sound like a question.

15 THE COURT: Hold up. We'll see.

16 Q. Okay. You'll agree with me, if you went to  
17 Merriam-Webster, the definition of a diocese is -- the word  
18 diocese, "the area that is controlled by a bishop in a  
19 Christian church," correct?

20 A. I don't dispute that, if that's what you're saying.

21 Q. Okay.

22 A. I can't testify to that, but I don't dispute it.

23 Q. Did you find a definition of that word, "diocese," as  
24 being a subdivision?

25 A. I'm referring to the commonly accepted, commonly used

1 parlance, but that's not at all inconsistent with what you're  
2 saying. It's controlled by a bishop. It's controlled by  
3 a -- that makes sense to me.

4 Q. Well, no. My question was did you find in a commonly  
5 accepted dictionary a definition of diocese as being a  
6 subdivision?

7 A. I don't recall that specific word. That's paraphrasing.

8 Q. So let's go to the names. We have the national  
9 Episcopal Church as the Protestant Episcopal Church in the  
10 United States of America; is that correct?

11 A. That's one of the trademark registrations, yes.

12 Q. Okay. You will agree that the three names of the  
13 plaintiff diocese that are registered in South Carolina do  
14 not have the words "in the United States of America"?

15 A. That's correct.

16 Q. Okay. And you will agree that the words "in the United  
17 States of America" are distinctive words?

18 A. No. It's a geographic designation.

19 Q. Okay.

20 A. So, I mean, it's -- no, I would not agree they're  
21 distinctive.

22 Q. Then the next one, you've already said that the word  
23 "diocese" is not in either name of the defendant national  
24 church, correct?

25 A. That's correct.

1 Q. Okay.

2 A. Because it's the national church.

3 Q. Okay.

4 A. It's not in a separate diocese.

5 Q. The mark of the plaintiff, the Diocese of South  
6 Carolina, there's nothing that's similar between those two  
7 names between -- with the defendant national church?

8 A. Oh, no. I agree with that.

9 Q. Okay.

10 A. I agree with that, yes.

11 Q. Then the next one is the Episcopal Diocese of South  
12 Carolina. There again, the words "Diocese of South Carolina"  
13 are not found in the defendant national church's name, is it?

14 A. No. Because this is a -- a diocese is a subdivision of  
15 the national church; so it wouldn't be found in the name of  
16 the national church. It's indicating a subdivision of the  
17 national church.

18 Q. Where do you -- I can't -- I have looked in the  
19 dictionaries, I've looked in the encyclopedias, but I don't  
20 see where the word "diocese" is defined as a subdivision of  
21 the national church. How did you get that understanding?

22 A. That is common parlance. There are Catholic dioceses,  
23 there are Episcopal dioceses, probably others, and it is a --  
24 well, and by the definition you just read, it's a separate  
25 subdivision of the national church, the part of the national

1 church that's under the authority of a specific bishop. I  
2 didn't realize that's how it was laid out. I thought it was  
3 maybe geographic, but I don't disagree with what you said.  
4 It's the separate bishop's area of authority.

5 Q. Well, let me read the definition again. The definition  
6 under Merriam-Webster of diocese, I want to see if you'll  
7 agree with me, "The area that is controlled by a bishop in a  
8 Christian church."

9 A. Right.

10 Q. "The area that is controlled by a bishop in the  
11 Christian church." And you will -- is that correct?

12 A. That's what --

13 Q. Okay.

14 A. You're reading it to me, yes. I don't take issue with  
15 that. I don't think that's inconsistent with what I've  
16 always understood it to be.

17 Q. And there's no authority in your -- the data you  
18 reviewed, you didn't present any authority, whether it's  
19 McCarthy, as you say is the leading scholar, that says that  
20 diocese means an Episcopal entity?

21 A. No, I don't think a diocese does mean an Episcopal  
22 entity. It can be, like I just said, there are Roman  
23 Catholic dioceses and probably other entities as well are  
24 organized that way.

25 Q. And you will agree that the defendant national church

1 has not marked the word "diocese"; is that correct?

2 A. The word "diocese" can't be a trademark. It's a -- it's

3 a --

4 Q. Thank you.

5 A. It's descriptive.

6 Q. And you will agree that the national church has not

7 registered the word "Episcopal"?

8 A. It has. The word "Episcopal" is a part of the

9 registration, when you say "The Episcopal church," for

10 example.

11 Q. Maybe I -- the word, just the word "Episcopal," that is

12 not registered by the national church, is it?

13 A. Not to my knowledge, no.

14 Q. Okay. So in concluding, you agree that there are

15 differences between the marks of the defendant national

16 church and the plaintiff diocese?

17 A. Yes, I do.

18 Q. Thank you.

19 A. Thank you.

20 THE COURT: All right. Mr. Runyan.

21 CROSS-EXAMINATION BY MR. RUNYAN:

22 Q. Good afternoon. I gather from your direct testimony

23 that an important component to your opinions is that there is

24 some measure of control asserted by the national church over

25 the plaintiffs in this case; is that right?



1 A. Yes.

2 Q. And you got that solely from the documents you reviewed?

3 A. Yes.

4 Q. And, of course, if you were to see the documents that  
5 you didn't review, you might see that that's very contested,  
6 might you not?

7 A. It's possible, yes.

8 Q. Okay. Just to continue along the lines that my  
9 colleague was asking you questions concerning, it's the  
10 combination of words together that can create the uniqueness,  
11 is it not?

12 A. When you say "that can create the uniqueness," I'm  
13 sorry. I don't --

14 Q. Well, "Episcopal" is not something that you can say  
15 infringes the use of the Episcopal Church?

16 A. Oh, yes.

17 Q. Yes, it does or it doesn't?

18 A. Yes, it does.

19 Q. So the use of "Episcopal" and another name or by itself  
20 infringes the mark the Episcopal Church?

21 A. It can, yes.

22 Q. I didn't ask you that. Does it?

23 A. Well, it's not an absolute question.

24 Q. Okay.

25 A. If it is used in such a way as to cause a likelihood of

1 confusion to the public, that is the definition of trademark  
2 infringement.

3 Q. So you could have lots of different uses. You could use  
4 "diocese," you could use "Episcopal," you could use  
5 "Episcopal Church," you could use "Protestant Episcopal" or  
6 you could use "Protestant Episcopal Church," and it's  
7 conceivable that any number of these would be just fine?

8 A. I do not see how any of those would be -- would not  
9 cause confusion of the public, and if they caused confusion  
10 of the public, by definition, they are infringing.

11 Q. Well, what if they occur -- what if they were in use a  
12 long time before the Episcopal Church ever took its first  
13 breath? Would that affect your opinion?

14 A. If you're saying that the term "Episcopal" was used  
15 before there was an Episcopal Church.

16 Q. Absolutely. That's what I'm saying. Would that affect  
17 your opinion?

18 A. Yes. If the term "Episcopal" -- let me think. If  
19 you're using the term "Episcopal" before there's -- not  
20 related to a church, not related to the Episcopal Church,  
21 before there's an Episcopal Church?

22 Q. Can you answer my question?

23 A. I have to -- I have to change it. It would not.  
24 Because if there was a use of "Episcopal," when you say a  
25 long time, if you're talking about -- we saw documents today

1 in the 1700s. When you look at trademark infringement, when  
2 you look at whether or not the public is going to be  
3 confused, you're looking at what's happening today; so  
4 trademark infringement is based on what living, breathing  
5 people today perceive and whether they're likely to be  
6 confused.

7 Q. So --

8 A. And if I can just explain what I mean by that, why it's  
9 important. Because today, the recent history has been  
10 there's been one church organization. If you go back  
11 historically, and there may have been different  
12 organizations, different corporations, different entities,  
13 unincorporated, but the most recent history, prior to this  
14 situation, was a single organization known as the Episcopal  
15 Church.

16 If that single organization -- and, like I said, based  
17 on my information, the groups that you represent were part of  
18 that organization. They, in fact, recognized it. If they  
19 now continue, having been part of the organization, having,  
20 kind of, educated the public, having the public believe  
21 they're part of that organization, if they continue to use  
22 the name Episcopal or Episcopal Diocese, not being part of  
23 that organization, it will inevitably cause confusion of the  
24 public.

25 Q. You've seen our marks that are registered?

1 A. Yes. I've got copies of the registrations.

2 Q. All right. Registered with the State of South Carolina?

3 A. Yes.

4 Q. Are you saying the use of those state registered marks  
5 violates the Episcopal Church mark; is that your testimony?

6 A. I believe they do, yes.

7 Q. Okay. Is there a process in South Carolina for dealing  
8 with that?

9 A. Trial. I mean, an infringement --

10 Q. Is there a process in the statute for challenging those  
11 marks?

12 A. I don't know. I've read the statute, but I do not  
13 recall whether there's a process, other than coming into  
14 court.

15 Q. Okay. So I want to get this clear: You're not saying  
16 that the use of the word "diocese" or "Episcopal Diocese" or  
17 "Protestant Episcopal" or "Protestant Episcopal Church" that  
18 may have been in use for hundreds of years has any bearing  
19 whatsoever on the your claim that the Episcopal Church mark  
20 would be infringed by the diocese's use of something that we  
21 are, in fact, using; no relevance. It's just today.

22 A. I'm saying that an analysis of likelihood of confusion  
23 of the public is based on what the public perceives today.

24 Q. But that's not something you can testify about.

25 A. And that --

1 Q. Just a minute.

2 A. Okay. No, that's okay.

3 Q. That's not something you can testify about. My question  
4 relates to the derivation of the marks that we have  
5 registered. Is it your testimony that they are derived from  
6 the Episcopal Church marks?

7 A. Okay. Number one, that is my belief. I'm not  
8 testifying to that because I'm not a church historian.

9 Q. Okay.

10 A. But that's my -- if I can just finish.

11 Q. Well, if you're not a church historian, I don't need to  
12 hear the answer.

13 A. But the reason that doesn't matter in terms of what  
14 we're doing is, initially, the first to use the word  
15 "Episcopal" owns -- has common law rights. My understanding  
16 is there was a church organization, and the church  
17 organization, whether it was international -- but even if the  
18 very first church organization, there was no Episcopal Church  
19 whatsoever anywhere until the South Carolina diocese  
20 organized, even if that were the case, over the years, that  
21 organization joined with the national church and became part  
22 of the national church. And at that point, with the national  
23 church's control of the character and quality and nature of  
24 the services that were provided and control of the  
25 organization, and with the South Carolina church groups

1 joining that organization and recognizing it, it is the  
2 trademark owner.

3 Q. Take away the word "control." How does that affect your  
4 opinion? There is no control. Take that away. How does  
5 that affect your opinion?

6 A. If there were no control, you're still a member of the  
7 organization.

8 Q. That's not my question. You testified on direct control  
9 is important. You said that a while ago. I want to know if  
10 it is not true that the Episcopal Church controls, as you  
11 have defined it, the Diocese of South Carolina, how does that  
12 affect your opinion?

13 A. If it -- if it controls the service.

14 Q. That is not -- you're not listening to my question.

15 A. But I'm telling you --

16 Q. I'm taking that away from you. I'm taking that away  
17 from you.

18 THE COURT: Mr. Runyan, if there's an objection about  
19 responsiveness, don't forget, I'm here still.

20 MR. RUNYAN: I'm sorry.

21 THE COURT: Are you concerned about responsiveness?

22 MR. RUNYAN: I am indeed.

23 THE COURT: All right. Listen very carefully, please,  
24 to the question, and respond to that question if you can,  
25 okay?

1 THE WITNESS: Thank you.

2 THE COURT: Yes.

3 THE WITNESS: I'm having trouble understanding the  
4 questions.

5 THE COURT: What he's asking you is he wants you to  
6 take -- you've testified to control, that that's important,  
7 and I have heard that. What he's asking you is what if there  
8 is no control. What if there's no control? Then, in terms  
9 of the marks, what is the effect?

10 Is that correct, Mr. Runyan?

11 MR. RUNYAN: That is correct, Your Honor.

12 THE COURT: In other words, if there is no control, does  
13 it matter?

14 THE WITNESS: And the distinction that I need to know  
15 what you're talking about is whether you're talking about  
16 corporate control or control over the operation of the  
17 corporation or control over the nature of the services, the  
18 Book of Common Prayer, the ordination of priests, that sort  
19 of thing.

20 Q. Which one's important to you?

21 A. The one that's important to me is the nature and  
22 character and quality of the services because that's what the  
23 public perceives.

24 Q. Okay. And important to you in that process is that  
25 somehow that nature and quality and whatever is under the

1 control of the Episcopal Church?

2 A. Is governed by the rules and regulations and adhered to  
3 by the participants, yes.

4 Q. And if you take that away, all right, how does that  
5 affect your opinion?

6 A. If the --

7 Q. Is this a difficult question to answer?

8 A. It really -- it is.

9 Q. Well, why?

10 A. Because I'm not sure -- I'm not sure what you mean. And  
11 I know I'm talking about control, but the hypothetical is  
12 that there's an organization that you're not saying it has no  
13 relation. So I'm thinking if there's not a control, what's  
14 the relationship between the two?

15 Q. Let's stop and start again.

16 A. Yeah.

17 Q. You've made an assumption that the form of worship and  
18 whatever the characteristics are, are a product of the  
19 Episcopal Church and are somehow under their control in some  
20 fashion, correct?

21 A. Mm-hmm. I'm sorry. Yes.

22 Q. The assumption now is that that is not true.

23 A. That there's no control whatsoever.

24 Q. You don't have to rephrase it. The assumption is that  
25 that is not true. Does that affect your opinion?



1 A. There's no control whatsoever, yes, that would affect my  
2 opinion.

3 Q. How would it affect your opinion?

4 A. Then it would be -- then it would be -- it would be  
5 infringing use. It would be infringing use. There's no  
6 control now, as I understand it.

7 Q. Wait a minute.

8 A. And it --

9 Q. It would be infringed or not infringing?

10 A. The use of the mark of the name Episcopal by groups that  
11 are not adhering to the Episcopal Church and under the  
12 control of the Episcopal Church, in terms of the nature and  
13 character and quality of services offered, would be  
14 infringing use.

15 Q. I just told you and you just agreed, we took that away.  
16 Why did you add it back?

17 A. We took away control, and if there's no control, there's  
18 infringement. That's what I'm saying.

19 Q. So if the Episcopal Church does not control the form of  
20 the service and the rights and what have you, there's still  
21 infringement; is that your testimony?

22 A. Right now today, if an organization is not --

23 Q. That's not my --

24 MR. RUNYAN: Your Honor.

25 THE WITNESS: I'm trying -- I'm sorry. I'm trying to

1 understand the question.

2 MR. RUNYAN: Your Honor, I'd ask the witness to answer  
3 the question. I'll rephrase it.

4 Q. An assumption, I believe, in your testimony, and you  
5 tell me if I'm wrong, is that there is a measure of control  
6 by the Episcopal Church over the form of worship and over the  
7 rights and over such other types of things; is that correct?

8 A. A measure of control over the members, the adherents to  
9 the Episcopal Church, yes.

10 Q. And that's an important part of your opinion, true?

11 A. Yes.

12 Q. I want you to assume that that measure of control does  
13 not exist. Would that affect your opinion?

14 A. If the -- yes.

15 Q. And how would that affect your opinion?

16 A. If there is an organization, a group, holding itself out  
17 as the Episcopal Church that's not operating under the  
18 tenants and constitution and so forth of the Episcopal  
19 Church, that would be trademark infringement. It would  
20 confuse the public.

21 Q. One of us is not getting this; so I'm going to try one  
22 more time.

23 A. I'm sorry.

24 Q. I'm going to try one more time. Your picture, if you  
25 will, mental picture, is that the Episcopal Church has put

1 this blanket, if you will, over the diocese, and that blanket  
2 contains the form of worship and the -- and all the things  
3 like that. And that's the kind of control that I think  
4 you're talking about, is it?

5 A. Yes.

6 Q. Okay. Take the blanket off. The Episcopal Church has  
7 no control of the worship service, has no control of the form  
8 of the service, then the diocese could use that form of  
9 service and not infringe anything, couldn't it?

10 A. You're saying if the Episcopal Church, if there are --  
11 if there are no standards, there are no canons, there are no  
12 rules, there's no Book of Common Prayer for any of the  
13 Episcopal Churches in the country?

14 Q. No. You're trying --

15 A. Then it wouldn't control this one?

16 Q. I'm just asking you to assume that the issues of control  
17 are gone. The Episcopal Church doesn't control the way that  
18 the diocese and the parishes do their worship. You've told  
19 me that that's an important component. I'm now taking that  
20 away from you. If you assume that that is not the case, then  
21 would there be, could there be any problem with the use, the  
22 worship services that we are engaged in?

23 A. I'm sorry. I don't know how to answer you other than  
24 the way I've answered you. I may be totally  
25 misunderstanding, but I don't know how else to respond.

1 Q. Okay. All right. You're not testifying that an entity  
2 that calls itself the Episcopal Diocese of something  
3 something would be somehow misusing the Episcopal Church's  
4 mark, are you?

5 A. If it was not an Episcopal Diocese, it would be, of  
6 course.

7 Q. No, it is an Episcopal Diocese by definition because it  
8 has it in its name. Are you saying that use of the term  
9 "Episcopal Diocese" means it must be a part of the Protestant  
10 Episcopal Diocese in the United States of America; is that  
11 your testimony?

12 A. I'm saying if it's not, I think it would be confusing to  
13 the public.

14 Q. Does it matter where that happens geographically?

15 A. I don't think so.

16 Q. So an Episcopal Diocese in Canada might infringe?

17 A. Might infringe the -- not the Episcopal Church of the  
18 United States. Episcopal -- trademarks are territorial.

19 Q. Okay.

20 A. And they're country by country.

21 Q. Okay. So you could have an Episcopal Diocese of Vienna  
22 or Jerusalem or wherever, and that's not an issue.

23 A. I'm not saying it's not an issue. I'm saying if there's  
24 an Episcopal Diocese in another country or in another --  
25 outside of the United States, it would not have any bearing

1 on -- we're talking about U.S. trademark registrations and  
2 U.S. trademark rights. There could be other Episcopal  
3 organizations in other countries.

4 Q. So the use of the terms "Episcopal Diocese" by  
5 themselves, in some contexts, don't necessarily mean that  
6 that entity is a part of the Episcopal Church?

7 A. It doesn't mean that entity is a part of the Episcopal  
8 Church, the national church, as we refer to it.

9 Q. Right. Same question with the use of the terms  
10 "Protestant Episcopal Church." That doesn't necessarily mean  
11 that that entity is a part of the Protestant Episcopal Church  
12 in the United States of America, or affiliated with it for  
13 that matter.

14 A. If it were used in the United States, I believe that it  
15 would lead people to believe that it is affiliated with the  
16 Protestant Episcopal Church of the United States.

17 Q. Okay. And your testimony now concerns recent times,  
18 right?

19 A. Mm-hmm. Yes.

20 Q. All right. So the use of that routinely and regularly  
21 in the past goes to the strength of the mark but not  
22 necessarily to whether it's being misused now?

23 A. I'm sorry. Say again.

24 Q. Does the use of those terms in the past go to the  
25 strength of the mark?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. When an owner of a mark gives consent, how is that  
5 typically done?

6 A. Frequently through a license, not always. It can just  
7 simply be a consent or a concurring use agreement but  
8 frequently through a license.

9 Q. Can consent be granted when two people know they're  
10 using something that's very similar?

11 A. Can be, yes.

12 Q. And neither of them complain about it?

13 A. That would be the concurrent use agreement that I  
14 mentioned to you, for example.

15 Q. Well, I don't mean agreement. I just mean they're just  
16 using it and they know each other are using it. Is that  
17 consent?

18 A. It's forbearance to take action. You can just not take  
19 action.

20 Q. Is it consent?

21 A. It's acquiescence, I think, at least.

22 Q. Acquiescence. Good enough.

23 How about agreeing in writing that you cannot use  
24 someone else's marks, would you consider that to be consent?

25 A. No. That's forbidden. That's forbidden use, not

1 consenting to use.

2 Q. I see.

3 A. -- right.

4 Q. I see.

5 Would you consider it important if the Episcopal Church  
6 had consented in writing that it could not use the marks of  
7 the plaintiff diocese?

8 A. If the national church consented that it would not use?

9 Q. That's right.

10 A. Would not use a mark that said the Episcopal --

11 Q. No, no, no.

12 A. -- Episcopal Diocese of South Carolina.

13 Q. The marks of the diocese. Want me to state the question  
14 again?

15 A. Well, okay. Yeah, state the question again.

16 Q. Would you consider it important to your opinions if the  
17 national church had consented to a requirement that they not  
18 use the marks of the Protestant Episcopal Church in the  
19 Diocese of South Carolina, the Diocese of South Carolina and  
20 the Episcopal Diocese of South Carolina?

21 A. It's interesting. It's hard -- it's hard to imagine how  
22 that would come up, but if they consented that they would not  
23 use -- you can do that. You can make an undertaking that I  
24 will not use certain language, that the use of that language  
25 still could infringe their rights, but, yeah, you can consent

1 not to use certain language. I mean -- I'm so sorry. Tell  
2 me the question -- what is the question again?

3 Q. It's really very simple. It's really very simple. Do  
4 you consider it important -- would you consider it important  
5 to your opinions if the Episcopal Church, also known as the  
6 Protestant Episcopal Church in the United States of America,  
7 agreed in writing that it could not use the following names:  
8 The Protestant Episcopal Church in the Diocese of South  
9 Carolina, the Diocese of South Carolina and the Episcopal  
10 Diocese of South Carolina?

11 MS. KOSTEL: Objection, Your Honor. There's no  
12 foundation for that question. I can state another objection  
13 if that one doesn't work for you.

14 THE COURT: Well --

15 MS. KOSTEL: What he's doing is he's bringing in, I  
16 believe, unless there's a writing I'm not aware of, he's  
17 bringing in what's happened in the litigation of this case.

18 MR. RUNYAN: I don't think it -- I think wherever it  
19 happens, it happens. I mean, I'm -- and that may not be it.  
20 I'm just asking her a hypothetical.

21 THE COURT: I think you are correct, and your objection  
22 is does that have any relevance. I think he can ask if it  
23 has any relevance.

24 MS. KOSTEL: What we did in litigation?

25 THE COURT: Well, it depends on who the "we" is, because



1 it wouldn't be the "we," because you wouldn't be -- you're  
2 not the "we."

3 MS. KOSTEL: I'm the Episcopal Church.

4 THE COURT: I know. But you're not the "we."

5 MS. KOSTEL: Who's the "we"?

6 THE COURT: They're the "we."

7 MS. KOSTEL: He's not -- I believe he's talking about --  
8 I believe he said the Episcopal Church.

9 MR. TISDALE: We're not the "we," Your Honor.

10 MR. RUNYAN: Let me just --

11 THE COURT: They didn't agree; you agreed. Temporarily.

12 MS. KOSTEL: I don't believe so.

13 THE COURT: Was it the other way around? You agreed?

14 MS. KOSTEL: Yes.

15 THE COURT: I'm sorry. You used to be them and now  
16 you're someone else.

17 MS. KOSTEL: Right.

18 THE COURT: You're everywhere, Mr. Tisdale. I  
19 understand what you're saying.

20 MS. KOSTEL: That's a position we took in litigation.

21 THE COURT: Exactly. It was the intention it would be  
22 done without prejudice, right?

23 MS. KOSTEL: Exactly.

24 THE COURT: I understand.

25 MS. KOSTEL: Thank you.

1 THE COURT: Yes.

2 Q. Ms. Lott, is the use of the word -- words "the reformed  
3 Episcopal Church" an infringement of the Episcopal Church's  
4 mark?

5 THE COURT: Say again? I missed that one.

6 Q. Is the use of the words "the reformed Episcopal Church"  
7 an infringement of the Episcopal Church's marks?

8 A. Without knowing anything more than that, because there  
9 are factors that you have to analyze to make that  
10 determination, but just initially on its face, initially it  
11 looks like it might be. But obviously, the ultimate question  
12 is, is there a likelihood of confusion. And there are a lot  
13 of factors that go into that. So there's not enough  
14 information to form an opinion, but on its face, you'd sure  
15 want to look closer.

16 MR. RUNYAN: Thank you.

17 THE COURT: Anyone else on behalf of the plaintiffs?  
18 Mr. Phillips.

19 MR. PHILLIPS: Yes, ma'am.

20 THE COURT: Mark Phillips representing St. Philip's.

21 MR. PHILLIPS: Yes, I'll let her know.

22 CROSS-EXAMINATION BY MR. PHILLIPS:

23 Q. Ms. Lott, my name is Mark Phillips, and I represent an  
24 entity whose name is the Protestant Episcopal Church of the  
25 Parish of St. Philip in Charleston in the State of South

1 Carolina. Does the use of that name that I just gave you, in  
2 your view, constitute an infringement on the Episcopal  
3 Church, the defendants? And I'll give it to you again. It's  
4 the Protestant Episcopal Church of the parish of St. Philip's  
5 in Charleston in the State of South Carolina.

6 A. There is -- and I don't mean to hedge, but there is a  
7 difference between an official corporate entity, corporate  
8 name and the trademark or trade name that you hold out to the  
9 public. I mean, is the sign on the front of the church the  
10 Protestant -- you know what I mean, is it the whole thing or  
11 is it -- I'm sorry, St.?

12 Q. St. Philip's Church.

13 A. St. Philip's.

14 Q. That's right.

15 A. So if it says "St. Philip's Episcopal Church" or  
16 "St. Philip's Church" on the front, that of course would be,  
17 in my view, probably. Even the corporate name would cause  
18 confusion. You know, I haven't evaluated all of the factors,  
19 but, frankly, I would assume it's an Episcopal Church.

20 Q. Okay. And I think you indicated earlier for either  
21 Ms. Golding or Mr. Runyan that the first to use the word  
22 "Episcopal" has the common law rights in the name; is that  
23 right?

24 A. Initially, yes.

25 Q. Okay. Now, I'm going to show you what's already been

1 marked and what's already in evidence as Exhibit No. 3 and  
2 just ask you quickly have you ever seen the 1785 General  
3 Assembly Act, State of South Carolina, which incorporated  
4 St. Philip's Church?

5 A. I have not. I've heard of it, but I have not seen it.

6 Q. And are you familiar with an act from 1791, Exhibit 4?

7 A. I'm sorry. Can I just take a quick look? They've blown  
8 up a part of this.

9 Q. Excuse me. I called the wrong exhibit up.

10 Exhibit 5. It's on the bottom of the page, the first  
11 page of that exhibit, the last three lines. There we go.  
12 It's coming up.

13 A. Okay. This looks to me as if there are existing  
14 vestries and wardens of the Episcopal Church, and they are --  
15 they're now incorporating, but they're -- yeah, but  
16 they're -- they are the Episcopal Church.

17 Q. Right. So there was a second incorporation in 1791 of  
18 what had been incorporated in 1785, both of which regarded  
19 St. Philip's Church, whose proper name as given by the  
20 legislature, was the Protestant Episcopal Church of the  
21 Parish of St. Philip in Charleston in the State of South  
22 Carolina.

23 A. Okay.

24 Q. Do you agree with that?

25 A. Well, I think so, but it looks as if they even

1 preexisted this -- the entity was there, it was part of the  
2 the Episcopal Church, and they incorporated the entity that  
3 incorporated. Is that --

4 Q. All right. You testified for Ms. Golding, I believe,  
5 that when the Episcopal Church registered its own marks, it  
6 indicated in a filing, in a federal filing, that it first  
7 used the title "the Protestant Episcopal Church in the United  
8 States of America" on January 1, 1836, correct?

9 A. I said that that's the date that appears on the  
10 registration; that's correct.

11 Q. All right. And, again, St. Philip's Church was  
12 incorporated well before the national church ever used that  
13 name, "the Protestant Episcopal Church in the United States  
14 of America," correct, if, in fact, it was incorporated in  
15 1785 as indicated by Exhibit 3?

16 A. I don't believe the date of incorporation governs. I  
17 think that -- I think these were, based on the little blurb I  
18 just saw of this, they were -- there was a -- the Episcopal  
19 Church was there already. These were apparently maybe  
20 parishes of the Episcopal Church, and they were -- they  
21 incorporated at that time. But, again, it's -- they're still  
22 part of the Episcopal Church. This was not the original  
23 first anywhere Episcopal Church.

24 Q. Ms. Lott, can you testify under the oath that you've  
25 given to us that the entity known as the Episcopal Church or

1 any organization known as the Episcopal Church existed at any  
2 time before 1785?

3 A. No, I cannot. I don't have that background.

4 Q. So you really don't have the facts to say that Episcopal  
5 Churches existed in relation to a national organization at  
6 any time before 1785, can you?

7 A. I cannot testify of independent knowledge of that.

8 Q. Okay.

9 A. But I can, by way of example, you point to the federal  
10 registrations of the national church. There were two federal  
11 applications filed on behalf of the South Carolina diocese  
12 that recited dates of first use in 1977 and 1821. I mean,  
13 they went in -- there are a lot of different reasons why  
14 dates go in applications. They may or may not be correct.  
15 You know, especially given what we're seeing here, it looks  
16 to me like you can't really rely on that.

17 Q. Let's take a look, please, at Exhibit 36 that's also in  
18 evidence. And if you'd please go to the last page of this  
19 registered mark. This is Exhibit SPH 36. All these are SPH  
20 exhibits. Do you recognize the name St. Philip's Church  
21 we've been discussing?

22 A. Yes. There you go. That's what we're talking about.

23 Q. And do you see when St. Philip's Church, in its  
24 registration as issued by the state, indicated the date of  
25 first use? What date is that?

1 A. 1680.

2 Q. Right. Are you aware of anything for the Episcopal  
3 Church, from your knowledge, that predates either 1785 or  
4 1680?

5 A. I'm not personally aware of it, no.

6 Q. Okay. And certainly you're not going to give any  
7 testimony like that to Judge Goodstein, correct?

8 A. I'm not.

9 Q. And you said that the use of marks of the name  
10 Episcopal, the first to use the word "Episcopal" is the  
11 entity that has the common law rights, correct?

12 A. Initially.

13 Q. Yes.

14 A. Initially, yes.

15 MR. PHILLIPS: Okay. Thanks. Thank you.

16 THE COURT: All right. Does that conclude your  
17 examination?

18 MR. PHILLIPS: Yes, please.

19 THE COURT: Thank you, Mr. Phillips. Anyone else? All  
20 right.

21 MR. TISDALE: Your Honor, just one thing. And she  
22 doesn't have to be on the stand for this, I don't think, but  
23 she has her report that has been provided to everybody in  
24 this matter, her report, minus the matter you excluded this  
25 morning.

1 THE COURT: Yes.

2 MR. TISDALE: We would like to mark it as an exhibit.

3 MR. RUNYAN: Objection. It would be cumulative, Your  
4 Honor.

5 THE COURT: It would be cumulative.

6 MR. TISDALE: Thank you.

7 THE COURT: Sustained. All right. Yes, sir.

8 MR. SMITH: One question, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION BY MR. SMITH:

11 Q. Ms. Lott, can you clarify what you mean when you just  
12 said, "Initially, yes"? Can you clarify that?

13 A. Yes, yes. Because trademark ownership, trademark rights  
14 evolve over time. Sometimes marks are valid at one time and  
15 subsequently declared invalid, depending on the public  
16 perception at the time. For example, cellophane, escalator,  
17 aspirin all used to be valid trademarks.

18 When the public perception changes so that that does not  
19 designate a specific entity, it's just the generic name, then  
20 that's no longer a trademark. But in terms of -- but you're  
21 always seeking to see what does this mean to the public, what  
22 does the term mean to the public and is use by another going  
23 to be likely to cause confusion.

24 And the owner of a trademark at a given time is the one  
25 who controls the nature and character and quality of the



1 goods and services offered under that trademark.

2 MR. SMITH: Thank you, Ms. Lott.

3 THE COURT: All right. We have the national church.

4 Redirect.

5 MS. KOSTEL: We have nothing, thank you.

6 THE COURT: Nothing?

7 MS. KOSTEL: No.

8 THE COURT: All right. Recross?

9 MS. GOLDING: Nothing, Your Honor.

10 MR. RUNYAN: No.

11 THE COURT: All right.

12 MR. PHILLIPS: No more.

13 THE COURT: Very well. You may come down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Yes. Call your next witness.

16 MR. TISDALE: Your Honor, I think Ms. Kostel wants to  
17 move to admit a group of exhibits, getting ready for some  
18 testimony coming up tomorrow.

19 THE COURT: Sure. Okay.

20 MS. KOSTEL: Your Honor, you'll recall that, I think --  
21 I don't know, I've lost track of what day -- two days ago I  
22 mentioned exhibits on a hard drive, which we provided two  
23 copies for the plaintiffs with exhibit lists, but the exhibit  
24 lists were not yet numbered. They were descriptions and  
25 Bates numbers, but now I have numbered lists. I have a hard

1 drive with numbered lists for the Court. I have an  
2 additional hard drive for Your Honor, if you -- okay.

3 THE COURT: Very well. And what are the numbers?

4 MS. KOSTEL: Let me give the list to the plaintiffs  
5 first.

6 THE COURT: All right. So the numbers are?

7 MS. KOSTEL: To not cause confusion with the hard copies  
8 that we already put in, we started at 100. And they go  
9 through 512 plus. And those are sort of the general ones,  
10 and then we have parish-specific exhibits.

11 And I can go through -- this may take a little bit, but  
12 I'll just go through the -- not every number, but I'll tell  
13 you. For example, we have "D," for defendant, "AS," for All  
14 Saints, 1 through -- for All Saints, it's through 61. So  
15 DAS-1 through DAS-61; DSLP-1 through DSLP-48; DCC-1 through  
16 DCC-72; DCSP-1 through DCSP-56; DCTK-1 through DCTK-22; DOS-1  
17 through DOS-73; DTC-1 through DTC-42; DE-1 through DE-23;  
18 DHC-1 through DHC-43; DR-1 through DR-39; DRS-1 through  
19 DRS-59; DGS-1 through DGS-39; DHC-1 through DHC-51; DHT-1  
20 through DHT-46; DOSA-1 through DOSA-62; DPG 1 through DPG 28;  
21 DSAMP-1 through DSAMP-60; DSB-1 through DSB-64; DPCSH-1  
22 through DPCSH-70; DSJJ-1 through DSJ -- I'm sorry. That's  
23 wrong. DSJJI-1 through DSJJI-35; DSJC-1 through DSJC-59;  
24 DSJF-1 through DSJF-97; DSJ-1 through DSJ-63; DSL-1 through  
25 DSL-59; DSM-1 through DSM-31; DSMFM-1 through DSMFM-43;

1 DSMT-1 through DSMT-30; DDMI-1 through DDMI-42; DSPB-1  
2 through DSPB-74; DSPC-1 through DSPC-23; DSPS-1 through  
3 DSPS-69; DSPH-1 through DSPH-97; DTED-1 through DTED-33;  
4 DTMB-1 through DTMB 66; DTP-1 through DTP-49.

5 And what we tried to do -- that's it. And what we tried  
6 to do is those letters correspond with the Bates designations  
7 of the parishes; so just to make it a little easier.

8 THE COURT: I got it. I got it. Absolutely.

9 And have you had an opportunity to meet and confer with  
10 counsel for each of the entities to determine whether or not  
11 there are any objections to the proffered documents?

12 MS. KOSTEL: I have not. I provided them to Mr. Runyan  
13 and Ms. Golding. Generally, we've been working through them,  
14 and so --

15 THE COURT: Got it.

16 MS. KOSTEL: -- I've not heard one way or the other.

17 THE COURT: I understand. I understand.

18 So, Counsel, I just ask, is it appropriate for me to ask  
19 at this point with regards to objections? Is that something  
20 that needs to be handled by the individual counsel for the  
21 different parishes? In other words --

22 MR. RUNYAN: They're offering these in evidence, is that  
23 what she's doing?

24 THE COURT: Yes.

25 MR. RUNYAN: Well, we have a few objections.

1 THE COURT: You do?

2 MR. RUNYAN: Yes.

3 THE COURT: Okay. And are you in a position, at the end  
4 of today, to be able to share that with Ms. Kostel?

5 MR. RUNYAN: Sure. It's --

6 THE COURT: Terrific. Sure. Great.

7 MR. RUNYAN: It's very simple. Yes.

8 THE COURT: Okay. And then whatever we need to do  
9 tomorrow, we'll do.

10 MR. BRYAN: I'm William A. Bryan on behalf of Church of  
11 the Resurrection.

12 THE COURT: Come on down.

13 MR. BRYAN: I'm not sure I understand exactly what's  
14 being offered into evidence. I just want to be clear on  
15 behalf of the parishes what it is.

16 THE COURT: Good for you. And remind me. Your parish  
17 is?

18 MR. BRYAN: Church of the Resurrection, Surfside.

19 I couldn't hear all that was said; so I'm trying to  
20 determine if any of these documents pertain to my parish.

21 MS. KOSTEL: They do.

22 MR. BRYAN: All right. I didn't hear anything that says  
23 RS anything.

24 THE COURT: There's DRS.

25 MR. BRYAN: Pardon me?

1 THE COURT: There is DRS.

2 MR. BRYAN: DRS?

3 MS. KOSTEL: D is defendant. D was before everything.

4 THE COURT: DRS-1 through 59.

5 MS. KOSTEL: And to be clear, everything in these  
6 letters are documents that were produced to us.

7 THE COURT: Gotcha.

8 MS. KOSTEL: By the plaintiffs.

9 THE COURT: So what were your designations for your  
10 exhibits?

11 MR. BRYAN: RS.

12 THE COURT: You were just plain old RS?

13 MR. BRYAN: Plain old RS, right.

14 THE COURT: So it would be DRS.

15 MR. BRYAN: DRS.

16 THE COURT: You've got some, 1 through 59.

17 MR. BRYAN: Do you have a list you can give me?

18 MS. KOSTEL: Sure, I can give you a list.

19 MR. BRYAN: I think all the parishes need it to see  
20 exactly what it is you're trying to offer.

21 MR. PHILLIPS: I was about to speak on behalf of  
22 St. Philip's Church, Your Honor. I have not seen the actual  
23 documents they intend to tender or a list of them. I would  
24 need to in order to make an intelligent objection.

25 THE COURT: Great. I got it.

1 MR. CAMPBELL: Your Honor, Pierce Campbell for Church of  
2 the Holy Cross. There were two parishes listed as HC. I  
3 imagine the other was Holy Comforter, but not having seen  
4 these exhibits, I have no idea which one is supposed to be  
5 mine.

6 THE COURT: I'm with you. I got it. Ditto and ditto  
7 and ditto and more ditto. Lots of ditto. Ditto, ditto.  
8 Okay.

9 MS. KOSTEL: I'm assuming that Mr. Runyan and  
10 Ms. Golding did not confer in the last two days with the  
11 other parishes.

12 THE COURT: Sounds kind of like it.

13 MR. EASTERLING: Your Honor, please.

14 THE COURT: Mr. Easterling.

15 MR. EASTERLING: Harry Easterling for St. David's  
16 Church, Cheraw. I got a copy of the list, but I did not see  
17 St. David's on any of the list.

18 THE COURT: You'd be SDS. Hold on.

19 MS. KOSTEL: I think that's correct. I think  
20 St. David's -- you're right that those are -- because of the  
21 way things came in to us, they're going to have to be offered  
22 later.

23 THE COURT: Okay.

24 MS. KOSTEL: This is not the universe of what we're  
25 offering.

1 THE COURT: These are the ones now.

2 MS. KOSTEL: This is all I could get on here before --

3 THE COURT: Thank her.

4 MS. KOSTEL: Yes, you're right about that. And I  
5 realize now, as I look at this list, that there's an  
6 additional folder on that hard drive called "missing  
7 documents," which includes -- and there's no printout here --  
8 which are documents that were -- that came in late for a  
9 variety of reasons that are different parishes. And I've got  
10 to get that -- I've got to get that printed out and give it  
11 to both of them.

12 THE COURT: I gotcha.

13 MS. KOSTEL: Yes.

14 THE COURT: So it sounds as though there needs minimally  
15 to be a caucus.

16 MS. KOSTEL: I think most of the plaintiffs, if they see  
17 this list with the descriptions and their Bates numbers, they  
18 will know what -- they'll readily recognize what documents --  
19 I mean, they're documents that they produced to us.

20 THE COURT: Gotcha. Let me ask you this question: One  
21 of the very, very easy ways to disseminate the information  
22 would be to post electronically your information on the  
23 website. That way everybody's got the -- everybody has equal  
24 access to their documents.

25 MS. KOSTEL: Okay.

1 THE COURT: Do you think --

2 MS. KOSTEL: Post this list on the website?

3 THE COURT: Yes.

4 MS. KOSTEL: Because this would be hard to post. This  
5 is big. This is a lot of data, which is why it's on a hard  
6 drive. But this just has the descriptions and the Bates  
7 numbers so they have the documents themselves with their  
8 Bates numbers on them.

9 THE COURT: I understand.

10 MS. KOSTEL: Yeah.

11 THE COURT: How does that work for everybody?

12 MS. KOSTEL: I could even email this list to everybody.  
13 That might be the fastest way for me to do it.

14 THE COURT: Because you've already got everybody's  
15 emails?

16 MS. KOSTEL: Yes.

17 THE COURT: Okay.

18 MR. PHILLIPS: Just a question, Ms. Kostel.

19 MS. KOSTEL: Yes.

20 MR. PHILLIPS: Just if you email them, will you be able  
21 to give us the Bates number, the description and the proposed  
22 exhibit number?

23 MS. KOSTEL: Yes.

24 MR. PHILLIPS: That'll help.

25 THE COURT: Great.



1           MR. CAMPBELL: Just making sure, Your Honor, that just  
2 the provision of this list does not mean we don't have a  
3 chance to offer any other objections we may have once we've  
4 reviewed all this information, correct? That's not what  
5 we're trying to do here, right?

6           THE COURT: What do you think?

7           MR. CAMPBELL: I wanted to make sure. I just wanted to  
8 make sure. It's not like that's going to resolve the  
9 problem. And I don't know whether it will or it won't.

10          THE COURT: It begins to, like, drain the swamp.

11          MS. KOSTEL: Okay. So I'll email this. And how else  
12 would you like me to proceed? Confer with Mr. Runyan this  
13 afternoon?

14          THE COURT: Well, here's what I think probably makes  
15 more sense is rather than try to do that this afternoon,  
16 because folks aren't going to have an opportunity to take a  
17 look, that would be like homework. And then maybe we'll  
18 talk. Maybe instead of starting at 9:30 in the morning, we  
19 may start a little bit later. Give everyone an opportunity  
20 to confer.

21          MS. KOSTEL: Okay.

22          THE COURT: Okay.

23          MS. KOSTEL: Because some of it, some things I would  
24 like to have the benefit of knowing his position going into  
25 some of the testimony.

1 THE COURT: Sure.

2 MS. KOSTEL: Right.

3 THE COURT: Sure.

4 MS. KOSTEL: Okay. Good.

5 THE COURT: Sure.

6 MS. KOSTEL: Thank you.

7 THE COURT: Absolutely. So, I guess -- I'm trying to  
8 think. Can we facilitate the ability to email that like  
9 sooner rather than later? What can I do to help facilitate  
10 that? What can I do to help facilitate that now?

11 MS. KOSTEL: As soon as I get the list, I'll use this  
12 little device to email it to everybody.

13 THE COURT: Have you got the list? I mean, we've all  
14 got lists sort of floating around.

15 MS. KOSTEL: I have the list that I just read out to  
16 Your Honor, the two lists. I have them. I mean, they will  
17 be -- I didn't type it myself, but I'll have it sent to me.

18 THE COURT: Are you going to divide them up per --

19 MS. KOSTEL: I don't think so. But, I mean, it's easy  
20 to flip through.

21 THE COURT: Okay. I think that will be so much quicker  
22 than if you have to go back.

23 MS. KOSTEL: Yes. That would take me forever. Thank  
24 you, Your Honor.

25 THE COURT: Okay. So as I understand it, just for

1 everybody's informational purposes, it is my understanding  
2 that other than the "D" that the designations that follow are  
3 the ones that are used on your exhibits. Everybody cool  
4 about that? Like, for example, DAS is All Saints.

5 MR. CAMPBELL: Your Honor, I just want to make sure that  
6 the Court understands there were two that were HC, and my  
7 parish used HCS for its exhibits, and so I have no way of  
8 knowing. I'm happy to work with Ms. Kostel to find out, but  
9 I just want to make sure the Court knows that there are still  
10 even some numbering issues that exist.

11 MS. KOSTEL: Well, you know what, Your Honor? I can  
12 speak to that. First of all, in the descriptions, you'll be  
13 able to tell. I mean, the descriptions are pretty complete.  
14 I'm looking at HC now, and that's Holy Comforter. I don't  
15 know why HCS is not in front of me.

16 MR. CAMPBELL: One had 43 exhibits; one had 51 exhibits.

17 THE COURT: Yes, there are two DHCs.

18 MS. KOSTEL: That I read out, two DHCs?

19 THE COURT: Yes. Yes. The first one is DHC Exhibits 1  
20 through 43, and the other is DHC-1 through 51.

21 MS. KOSTEL: Yes. Okay. Well, maybe we need to  
22 change -- we will change that, Pierce.

23 MR. CAMPBELL: Thank you.

24 THE COURT: DHC, you might call it, for the Holy  
25 Comforter --

1 MS. KOSTEL: Yes.

2 THE COURT: -- DHCP.

3 MS. DURANT: Your Honor, I'm Bess Durant. I represent  
4 Holy Comforter. If Mary could tell me 1 through 43, is that  
5 Holy Comforter, or is that Pierce's church, Holy Cross?

6 MS. KOSTEL: 1 through 51 is Holy Comforter.

7 THE COURT: Okay.

8 MS. KOSTEL: And 1 through 43 is Holy Cross.

9 THE COURT: Got it. Holy Cross. Okay. So it'll be  
10 DHCP is 1 through 43.

11 MS. KOSTEL: HCP will be Holy Comforter.

12 THE COURT: Yes. DHCP will be Holy Cross.

13 MS. KOSTEL: Holy Cross.

14 THE COURT: You're Holy Cross?

15 MR. CAMPBELL: Your Honor, we used HCS. I'm just trying  
16 to --

17 THE COURT: You're HCS?

18 MR. CAMPBELL: Holy Cross, Stateburg. We used that in  
19 our exhibits. If we can just use --

20 THE COURT: All right. Let's just use HCS for my  
21 purposes.

22 MS. KOSTEL: Yes.

23 THE COURT: Yes.

24 MS. KOSTEL: And I'll change this so it says HCS.

25 THE COURT: Great, great, great.

1 MS. KOSTEL: But I may not be able to change it before I  
2 circulate it.

3 THE COURT: Got it.

4 MS. KOSTEL: Okay.

5 THE COURT: You won't. But Pierce has got it. You got  
6 it, right, Pierce?

7 MR. CAMPBELL: Yes, Your Honor.

8 THE COURT: All right. Next.

9 MR. TISDALE: Your Honor, we will call Eleanor Koets.

10 ELEANOR BROWNLEE KOETS,  
11 being first duly sworn, testified as follows:

12 THE COURT: If you would state your name and spell your  
13 last name for our record.

14 THE WITNESS: Eleanor Brownlee Koets -- I married a  
15 Dutchman -- rhymes with boots, K-O-E-T-S.

16 THE COURT: Great. Thank you.

17 Your witness, Mr. Tisdale.

18 MR. TISDALE: Thank you very much, Judge.

19 DIRECT EXAMINATION BY MR. TISDALE:

20 Q. Ms. Koets, where do you live?

21 A. I live in Summerville, South Carolina.

22 Q. How long have you been a resident of Summerville?

23 A. Since 1975.

24 Q. And you --

25 A. 40 years.

1 Q. 40 years. And you mentioned just now that you are  
2 married?

3 A. Yes.

4 Q. To a Dutchman?

5 A. I am.

6 Q. Okay.

7 A. A good one.

8 Q. Good. Ms. Koets, are you engaged in any occupation, or  
9 have been, in Summerville; or what is your status?

10 A. Yes. I'm a photographer. I have a photography studio  
11 in Summerville.

12 Q. What sort of photography do you do?

13 A. I do portrait photography, and I used to do wedding  
14 photography.

15 Q. And --

16 A. And I have been doing that since '77.

17 Q. And what is your husband's occupation, if any?

18 A. He's an optometrist.

19 Q. Okay. Ms. Koets, what has been your and your husband's  
20 religious affiliation since 1975 in Summerville?

21 A. We joined the Episcopal Church in -- at St. George's  
22 Episcopal Church at that point in 1981, '82.

23 Q. Okay. And after that?

24 A. And then we transferred to St. Paul's Episcopal Church  
25 maybe '85, '86. My husband was senior warden and junior

1 warden of St. George's at that point.

2 Q. All right. But you went to St. Paul's church, a party  
3 to this lawsuit, St. Paul's?

4 A. That's right.

5 Q. In around 1985 or '86?

6 A. That's right.

7 Q. All right. And were you all communicants in St. Paul's  
8 in more recent years up until, say, the fall of 2012?

9 A. That's right.

10 Q. And what I would like you to do and, of course,  
11 everybody at this point I think knows the issues that we're  
12 here about, and that is, why some people are no longer being  
13 able to go to what were Episcopal Churches that aren't now.  
14 So what I would like to ask you to do is to describe for the  
15 Court's benefit, please, your experience in what happened at  
16 St. Paul's, and after you determined that, as matters were  
17 being determined, as to whether or not it would remain an  
18 Episcopal Church.

19 A. All right. Sure.

20 Q. Thank you.

21 A. I was on the vestry from 1998, 1999 and 2000 at  
22 St. Paul's. After that point, I was aware that there was a  
23 gradual change in a number of ways. The prayers for the  
24 presiding bishop were deleted from the prayers of the people  
25 on Sunday mornings.

1 Q. This was 1999 or so?

2 A. No. This was sometime after 2000.

3 Q. After 2000?

4 A. Yes.

5 Q. Okay.

6 A. Signage was changed to delete the word Episcopal and off  
7 of other written documents and some other shifts. In I think  
8 it was December 2011, there was a special called meeting of  
9 the parish. I think it was for the purpose -- I can't even  
10 remember the purpose, but I'll tell you what happened at the  
11 meeting.

12 Q. Please.

13 A. The -- all three of the clergy spoke to the fact that  
14 they could no longer conform with the doctrine, discipline  
15 and worship of the Episcopal Church.

16 Q. Just for the record, tell us who those three clergy  
17 were.

18 A. Okay. Mike Lumpkin.

19 Q. Is he the rector of the parish, or was he?

20 A. Yes.

21 Q. Michael Lumpkin.

22 A. John Scott, who's a retired clergy, but he's with the  
23 church, and Tyler Prescott.

24 MR. SHELBOURNE: Your Honor, Brandt Shelbourne on behalf  
25 of St. Paul's. I'm going to object to hearsay testimony by



1 anyone not part of the leadership of the church. And I think  
2 it only goes to senior rector. The other assistant rectors  
3 are not. Only the rector would be appropriate, Your Honor, I  
4 think.

5 MR. TISDALE: Your Honor, with all due respect, I think  
6 the three clergy who were on the staff of the church and made  
7 presentations on behalf of the church at the meeting would  
8 certainly be relevant testimony. It's a party to this  
9 lawsuit.

10 THE COURT: Mr. Tisdale, let's sort of divide it.  
11 There's no objection with regards to Mr. Lumpkin.

12 MR. TISDALE: Yes.

13 THE COURT: We'll move him aside for the moment.

14 MR. TISDALE: Okay.

15 THE COURT: And then the question, it would be Mr. Scott  
16 and Mr. Prescott, as I understand it, is an objection. What  
17 I would just ask you to do as you go into things that they  
18 may have said --

19 MR. TISDALE: Yes.

20 THE COURT: -- lay some foundation for me.

21 MR. TISDALE: I will.

22 THE COURT: Where were they, how were they dressed, what  
23 were they doing, whatever. You know what I mean?

24 MR. TISDALE: I do.

25 THE COURT: Okay.

1 MR. TISDALE: And I will endeavor to do that, Your  
2 Honor.

3 THE COURT: In other words, give me some foundation.

4 MR. TISDALE: All right. Thank you very much.

5 Q. Ms. Koets, let's talk about the people who you testified  
6 were making these presentations.

7 A. They were listed on the bulletin as either associate or  
8 assistant rectors.

9 Q. All right. And at this meeting on that occasion, did  
10 Father Scott speak?

11 A. Yes, he did. And so did Tyler Prescott.

12 Q. All right. Hold on just a minute now. The judge wants  
13 me to find out a little more about it.

14 A. Okay.

15 Q. Did he speak?

16 A. Yes.

17 Q. Was he dressed as a priest or a clergyman?

18 A. Yes.

19 Q. And you say his name was on the bulletin of the parish  
20 as an associate priest?

21 A. It's either associate or assistant priest --

22 Q. Assistant.

23 A. Rector.

24 Q. And did he appear at this meeting with the rector for  
25 the purpose of --

1 A. Yes.

2 Q. -- participating in the presentation?

3 A. Yes.

4 Q. All right. And you say the other priest there was named  
5 Tyler Prescott?

6 A. Right.

7 Q. And without asking each of those questions again, does  
8 the same thing apply to him that you said about Father Scott?

9 A. Sure.

10 MR. TISDALE: And so, Your Honor, I would think that  
11 they would be representatives of the parish for these  
12 purposes.

13 THE COURT: Yes, sir.

14 MR. SHELBOURNE: Your Honor, they're not corporate  
15 officers, and we would object to that.

16 THE COURT: Well, I understand. I would allow the  
17 testimony because it certainly does appear to be sufficient  
18 showing of apparent agency on this basis. They're on the  
19 bulletin, and Ms. Koets has testified that they were dressed  
20 as clergy folk. They were on the bulletin as being clergy  
21 for that day. They were notified that they would be  
22 speaking, I gather, on behalf of the church.

23 I don't think there's a lot of leap when they're dressed  
24 as clergy folk, and they're on the bulletin, and they're in  
25 the special meeting. Minimally, there would be certainly the

1 existence of apparent authority.

2 MR. TISDALE: And I can also ask, just to bolster that a  
3 little bit, did both of these gentlemen, other than the  
4 rector, lead worship services at the church on a regular  
5 basis.

6 THE WITNESS: Sure.

7 MR. TISDALE: And conduct other programs sponsored by  
8 the parish as a part of their duties on the staff.

9 THE WITNESS: Yes. And Mike Lumpkin testified that they  
10 were in unanimous agreement as the clergy of St. Paul's.

11 MR. TISDALE: May I proceed, Your Honor?

12 THE COURT: Yes.

13 MR. TISDALE: Thank you.

14 Q. Now, Ms. Koets, you were about to tell us what was said  
15 by the clergy at a meeting. But first, when did this meeting  
16 occur?

17 A. December 2011, I believe.

18 Q. All right. And as the Court has said, would you tell us  
19 what each of these gentlemen presented?

20 A. I can't tell you exact quotes from them --

21 Q. No.

22 A. -- but I think the content of it was -- and I think the  
23 senior warden that testified the other day spoke to this to  
24 confirm it -- that there was a communication that they could  
25 not -- could no longer conform to the doctrine, discipline

1 and worship of the Episcopal Church. The rector spoke that  
2 there had been a vestry resolution unanimously agreed upon by  
3 the vestry and by the clergy that they stood in alignment  
4 with Bishop Lawrence wherever it went forward with him.

5 One of the vestry people, not one of the clergy, spoke  
6 to some pretty virulent attacks on the presiding bishop, said  
7 they didn't think she had Jesus as the center of her life.  
8 That was the general tone of it. Also Jim Lewis who was  
9 canon -- excuse me, go ahead.

10 Q. No, go ahead. I wanted to identify him, which you were  
11 getting ready to do. Who is Jim Lewis?

12 A. Jim Lewis is the canon to the ordinary, or of the  
13 ordinary, to the ordinary, who represents the bishop.

14 Q. All right.

15 A. And he was in attendance at the meeting.

16 Q. Let me ask you this: Was he at that meeting?

17 A. He was in attendance and he spoke.

18 Q. All right. And did he speak?

19 A. He spoke.

20 Q. Can you tell us what Canon Lewis, as I think you were  
21 getting ready to do before I interrupted you, contributed to  
22 the presentation at the meeting?

23 A. Right. He encouraged us, at the parish of St. Paul's,  
24 to review, to look at our bylaws, saying that just as the  
25 language of accession to the Episcopal Church was problematic

1 to the diocese, that it might be problematic to our parish.

2 Q. Did he explain how or why?

3 A. I don't remember the details of that, but he did speak  
4 to the fact that it was the language of accession to the  
5 Episcopal Church.

6 Q. Did he --

7 A. And I objected, stood up and objected, and then as an  
8 Episcopalian in the Episcopal Church in the Episcopal  
9 Diocese, expressed support for the Episcopal Church.

10 Q. And how was your objection received?

11 A. It was heard.

12 Q. All right. Well, tell us, did anything else of any  
13 significance to you on this issue occur at that meeting?

14 A. I did ask if a quitclaim had been filed, I mean, had  
15 been received and filed, and Mr. Lumpkin did confirm that it  
16 had been file -- received and was in the process of being  
17 filed.

18 Q. Okay. Anything else that you can recall --

19 A. That's all I can recall.

20 Q. -- of significance?

21 A. But there was the announcement that there would be  
22 consideration of changes to the bylaws and that we would  
23 receive more information on that at the usual annual parish  
24 meeting the next month in January of 2012.

25 Q. Okay. Would anything happen before the annual parish

1 meeting at the next month concerning this issue that affected  
2 you or involved you?

3 A. We received notice of it, of the meetings, in the usual  
4 forms. We did not receive written copies of the changes to  
5 the bylaws. It was said that they could only be accessed by  
6 going to look at them on the bulletin board.

7 Q. At the church?

8 A. At the church.

9 Q. Did you attend the annual meeting?

10 A. Yes.

11 Q. And what concerning this issue happened at that annual  
12 parish meeting? And first of all, roughly when was it?

13 A. January 20-something, '12.

14 Q. 2012?

15 A. 2012, right.

16 Q. Okay.

17 A. The vestry had voted on changes to the bylaws in which  
18 the language of accession to the Episcopal Church and any  
19 mention of the Episcopal Church was deleted. And it was  
20 called to a vote by the parish, and I asked for a written  
21 vote, and that was declined; so it was by a voice vote, and  
22 it passed by majority.

23 Q. All right. Anything else at that meeting or any  
24 presentations made concerning the --

25 A. No, sir.

1 Q. -- bishop?

2 A. Not that I remember.

3 Q. What next occurred, Ms. Koets?

4 A. Was it October or November of 2012?

5 Q. Yes.

6 A. My husband and I were ushering that day and --

7 Q. At a service?

8 A. Yes.

9 Q. What service? Which one was it? Do you remember?

10 A. Happened to be the 11:00 service.

11 Q. All right.

12 A. Which was the only other one in the church besides the

13 8:00 a.m. one.

14 Q. And was this in either October or November 2012?

15 A. Yes.

16 Q. Okay.

17 A. Apparently the clergy, the three of them were sharing

18 the duties of making this announcement because there were

19 several services. I believe John Scott and Tyler Prescott

20 both spoke to this.

21 Q. During the service?

22 A. During the service. Mr. Lumpkin was at the other 11:00

23 service in the other building and announced that the clergy

24 were leaving the Episcopal Church and that the bishop and the

25 standing committee were leaving the Episcopal Church and that



1 they were in alignment with them and in support of them. And  
2 even though it's like a death, you know it's coming --

3 Q. Right.

4 A. -- it was stunning as we walked up to usher that last  
5 time as Episcopalians in that place.

6 Q. Ms. Koets, was anything said about the status of the  
7 property, the buildings and so forth?

8 A. Not that I remember. A few weeks before that  
9 Mr. Lumpkin had mentioned that he had grave concerns about  
10 remaining in the Episcopal Church. And then after the  
11 service, I asked him if he was still an Episcopal priest, and  
12 he said "yes." And he said, "But regardless, I am staying  
13 with St. Paul's."

14 MR. SHELBOURNE: Your Honor, I object. I move to  
15 strike. The question was about property. That has nothing  
16 to do with property. Move to strike that answer as  
17 nonresponsive.

18 THE COURT: As nonresponsive? Okay.

19 MR. TISDALE: I will just ask her that question.

20 THE COURT: Okay.

21 Q. Ms. Koets, I asked about the property, whether anything  
22 was said. And you, in answer to that, I think you said you  
23 had a conversation with the rector?

24 A. Right. He didn't say property, but he said he planned  
25 on staying at St. Paul's.

1 Q. He planned on staying at St. Paul's?

2 A. Right.

3 Q. All right. Now, when did you last go on a regular basis  
4 or at all to St. Paul's church that you just described where  
5 you were ushering --

6 A. That Sunday. I've been back for some funerals, but that  
7 Sunday was my last regular worship service.

8 Q. Do you know whether anyone or you or anyone working with  
9 you attempted to continue to use any of the property at  
10 St. Paul's for worship services?

11 MS. GOLDING: Your Honor, I think that's an improper  
12 question. She can only testify with respect to herself. She  
13 can't testify --

14 MR. TISDALE: I'll limit it to that.

15 MS. GOLDING: Thank you.

16 MR. TISDALE: I just thought she might be walking along  
17 with some other people and, you know --

18 THE COURT: Probably was, but we'll just talk about  
19 Ms. Koets.

20 MR. TISDALE: I understand. If we have to, we'll talk  
21 about it later.

22 THE COURT: Okay.

23 Q. Ms. Koets, I was asking you whether you encountered any  
24 effort to or were involved in any effort to use any of the  
25 property at St. Paul's for a worshiping place for people who

1 wished to remain loyal to the Episcopal Church.

2 A. Yes.

3 Q. Will you explain that to the Judge.

4 A. Sure.

5 After that service, in grief and bewilderment, we met on  
6 my back porch, a number of us who had just heard that news as  
7 well.

8 Q. Now, when was this?

9 A. The afternoon. I guess it might have been in November.  
10 I'm not sure --

11 Q. 2012?

12 A. Of 2012. What do we do? Where do we worship? Where do  
13 we go from here? What do we do --

14 Q. Now, they --

15 MR. SHELBOURNE: I'm going to object to hearsay about  
16 what the other people did.

17 THE COURT: I think Mr. Tisdale's going to do that.

18 Q. The Judge is going to tell us that you can't say what  
19 anybody else at that meeting said.

20 A. Okay.

21 Q. But what I'm asking you to do is describe what happened  
22 in that meeting --

23 A. Sure.

24 Q. -- what your involvement was and how the issues were  
25 resolved.

1 A. Sure.

2 I was at that meeting with a number of other people who  
3 also wanted to remain faithful Episcopalians.

4 Q. Okay.

5 A. We sent two people out of that gathering of fellow  
6 Episcopalians to speak with the rector, Mr. Lumpkin --

7 Q. Okay.

8 A. -- to see if we might worship there in some space --

9 Q. All right.

10 A. -- as Episcopalians.

11 Q. All right. Now, as a result of that, were you able to  
12 worship in some space as Episcopalians at St. Paul's?

13 A. No. He said that he was too busy with --

14 MS. GOLDING: Your Honor, she's already testified she  
15 was not one of the persons that had this communication with  
16 the rector.

17 MR. TISDALE: I think she can testify.

18 THE COURT: I'm actually not clear if she was. I know  
19 there were two people that went, but I don't know if she's  
20 one of the folks or not.

21 MR. TISDALE: I don't think she was.

22 THE COURT: Okay.

23 MR. TISDALE: But she learned that they weren't able to  
24 worship there because --

25 THE WITNESS: We asked her to -- we asked them to.

1 THE COURT: Hold on. Hold on.

2 You can ask, "As a result of the conversation, have you  
3 been worshipping there?"

4 MR. TISDALE: All right.

5 THE COURT: Okay.

6 Q. After that approach to Mr. Lumpkin was made, have the  
7 loyal Episcopalians been allowed to worship at St. Paul's  
8 Church?

9 A. No.

10 Q. All right. Now, let's talk for a minute about where you  
11 have been worshipping.

12 A. During advent, which was right -- the season, holy  
13 season.

14 Q. And that's roughly four weeks before Christmas, right?

15 A. Right.

16 Q. Okay.

17 A. I didn't know where to worship, and I attended a very  
18 small Episcopal Church close by.

19 Q. What's the name of it?

20 A. Church of the Epiphany, I think.

21 Q. I think so.

22 A. For a couple of Sundays.

23 MS. GOLDING: Your Honor, may I make an objection. I  
24 see no relevancy in any of this testimony as to any of the  
25 claims in this lawsuit.

1 THE COURT: I understand where you're coming from, but I  
2 don't know where we're going.

3 MR. TISDALE: Your Honor, we've had this with other  
4 witnesses before. And one of the big issues in the lawsuit  
5 is the manner of departure from the church and how these  
6 people were treated. And all she's doing is describing it  
7 and what they had to do to get reorganized. And I think it's  
8 completely relevant. The parishes and the dioceses and  
9 everything else, others have testified to the same thing.

10 THE COURT: Yes, sir, Mr. Shelbourne?

11 MR. SHELBOURNE: Your Honor, how Ms. Koets feels she was  
12 treated is not part of this lawsuit; it's not relevant to  
13 this case.

14 MR. TISDALE: I'm just asking her what happened.

15 MR. SHELBOURNE: Well, that's how she -- Mr. Tisdale I  
16 thought said, "Look, this is how they felt they were treated  
17 and how they were treated after leaving." It's not part of  
18 this lawsuit; it's not relevant, and I would object on the  
19 grounds of relevancy to that.

20 MR. TISDALE: We can also ask her about how they  
21 reorganized themselves as Episcopalians. That's all I'm  
22 trying to establish. Part of the Episcopal Church in South  
23 Carolina, one of the parties.

24 THE COURT: I understand that. I understand where  
25 you're coming from with regards to that. What about the

1 issue of, for informational purposes for the Court, that they  
2 were reorganized as an unincorporated association. That  
3 might be -- that might have some assistance. I don't know  
4 why, but --

5 MR. RUNYAN: If that's helpful to the Court.

6 THE COURT: It might be.

7 MR. RUNYAN: I think the concerns expressed by a number  
8 of these witnesses about how they felt and their emotional  
9 state, I really don't think that's relevant, but I --

10 THE COURT: I would think that whenever there's a split  
11 in any religious organization that there's tremendous and  
12 terrible angst and upset. I think that's a part of it, and I  
13 certainly understand that. And so there's a tendency to  
14 certainly want to let people testify with regards to that.

15 Unfortunately, for the issues that I have to deal with,  
16 while I understand that completely, I think that the  
17 relevance on these issues, that in and of itself, is probably  
18 not relevant; however, having said that, I am interested,  
19 Mr. Tisdale, in you continuing to pursue this line of  
20 questioning, because I am interested and because you're now  
21 an unincorporated association. I don't know how that  
22 happened, and I --

23 MR. TISDALE: The Episcopal Church in South Carolina.

24 THE COURT: Yes, sir. And I would like to know that.

25 MR. TISDALE: All right.

1 THE COURT: Are you with me? So keep going.

2 MR. TISDALE: Well, let me get her experience, then, in  
3 her parish in Summerville and what they did and what they are  
4 a part of.

5 THE COURT: Well, maybe begin by asking your part of  
6 that and, you know, tell me how that happened, because you're  
7 sort of -- people are everywhere.

8 MR. TISDALE: Well, actually, I think you're going to be  
9 a little bit surprised in this particular case.

10 THE COURT: Okay.

11 MR. TISDALE: But that's part of it too.

12 THE COURT: Okay.

13 Q. Ms. Koets, where do you worship now?

14 A. We worship in Wesley Methodist Church, United Methodist  
15 Church, down Pressley Avenue off of West Fifth South. It's  
16 an African-American population that's graciously accepted us  
17 as -- offered us hospitality worshipping there after their  
18 services are done.

19 Q. Ms. Koets, does the organization that you now worship  
20 with have a name?

21 A. Yes. The Episcopal Church of the Good Shepherd.

22 Q. And that worships at the United Methodist --

23 A. At Wesley United Methodist, yes.

24 Q. -- Methodist Church. You're using space that they are  
25 letting you occupy?



1 A. Mm-hmm. We're renting space.

2 Q. Renting space. All right.

3 And is the Church of the Good Shepherd that you  
4 belong -- are you a communicant of the Church of the Good  
5 Shepherd?

6 A. Yes. I transferred my membership.

7 Q. And is it a mission --

8 A. Yes.

9 Q. -- church of the Episcopal Church in South Carolina?

10 A. Yes. It was just recognized as that at the latest  
11 convention.

12 Q. All right. Latest annual convention of the Diocese of  
13 the Episcopal Church in South Carolina?

14 THE COURT: In the Episcopal Church, right?

15 MR. TISDALE: Episcopal Church in South Carolina.

16 THE COURT: In.

17 MR. TISDALE: Right. An unincorporated association.  
18 The Episcopal Church in South Carolina.

19 Q. And that's what you -- your church is in union with the  
20 convention of that body?

21 A. That's correct.

22 Q. All right. Now, just for the record here, is the Church  
23 of the Good Shepherd incorporated?

24 A. We have articles. I think that's it.

25 Q. Of incorporation?

1 A. I think that's it.

2 Q. Okay.

3 A. I'm not on the vestry, but I think that's what it's  
4 called.

5 Q. Sounds like you weren't involved in getting the  
6 corporate charter and so forth, were you?

7 A. No, hm-mm.

8 Q. Who did that for you?

9 A. I think our senior warden did, I believe.

10 Q. Who's that?

11 A. Ginger Wilder, Virginia Wilder.

12 Q. Ms. Ginger Wilder? Okay.

13 So roughly, without the necessity of being exact, how  
14 many members does the Church of the Good Shepherd --

15 A. We have about 100 on the rolls. Attendance varies.

16 Q. And do you have a regular priest?

17 A. We have an appointed priest in charge, the  
18 Reverend Al Votaw. And then we have -- had supply clergy all  
19 throughout.

20 Q. All throughout?

21 A. More supply than priest in charge until the last year.

22 Q. Have you had -- have you or Church of the Good Shepherd  
23 had any relationship with St. Paul's church in Summerville  
24 since you left in the fall of 2012?

25 A. No official --

1 Q. No official?

2 A. -- connection.

3 Q. Just know people there, I presume.

4 Now, the other day in Court, when a representative of  
5 St. Paul's was testifying -- I've forgotten who that person  
6 was. Do you remember?

7 A. Senior warden currently.

8 Q. Do you --

9 A. Currently the senior warden.

10 Q. Do you know that person's name?

11 A. Bob Armstrong, maybe.

12 Q. All right.

13 A. Is that his name?

14 Q. Whatever. I just can't remember. There's been so many  
15 of these witnesses for parishes.

16 But let me ask you this: One of the issues that has  
17 come up is whether or not, like St. Paul's who still call  
18 themselves an Episcopal Church or not an Episcopal Church, is  
19 there any signage out there that identifies -- and I asked  
20 Mr. Armstrong, if that's his name, was there any signage  
21 identifying it as an Episcopal Church. And were you in  
22 Court?

23 A. Yes.

24 Q. Do you remember what he said about that?

25 A. He said "no." He must have missed this one.

1 Q. All right. Now, why do you say he missed it?

2 A. It's on the front post of the church.

3 Q. Main church?

4 A. Of the main church, and it was on the front page of the  
5 Friday paper just before that.

6 Q. All right. Last week --

7 A. I'd be glad to furnish copies of that.

8 Q. Do you want to show that to the Judge?

9 MR. TISDALE: We'll go ahead and mark it. What's the  
10 problem?

11 MR. SHELBOURNE: Could I take a look at it before it's  
12 published?

13 THE WITNESS: Here are copies. You probably have one at  
14 home too.

15 (Defendant's Exhibit 13 marked for identification.)

16 MR. SHELBOURNE: Thank you, Your Honor. No objection.

17 MR. TISDALE: They don't have any objection.

18 (Defendant's Exhibit 13 admitted into evidence.)

19 THE COURT: And while we're sort of paused, I know my  
20 court reporter's going to ask you, it was Reverend Al?

21 MR. TISDALE: I've got it down.

22 THE WITNESS: V-O-T-A-W.

23 MR. TISDALE: V-O-T-A-W.

24 THE WITNESS: The Reverend Alastair, A-L-A-S-T-A-I-R, I  
25 believe.

1 Q. Now, just for the record, that newspaper that's just  
2 been put into evidence, I think, what does that sign say on  
3 the front of the paper? Front page, isn't it?

4 A. Front page of the Summerville Journal Scene, "St. Paul's  
5 Episcopal Church, founded 1829. I was glad when they said  
6 unto me let us go into the house of the Lord, Psalm 122:1."

7 MR. TISDALE: All right. Ms. Koets, thank you very much  
8 for your testimony. Stay there, though. Somebody else might  
9 have some questions.

10 THE COURT: National church first.

11 MS. KOSTEL: Nothing, Your Honor. Thank you.

12 THE COURT: All right. Your turn.

13 CROSS-EXAMINATION BY MR. SHELBOURNE:

14 Q. Ms. Koets, I know you as Eleanor. Is it all right if I  
15 call you Eleanor?

16 A. It sure is, Brandt.

17 Q. Thank you.

18 Ms. Koets, you were a member, you said, of St. George's  
19 in 1981?

20 A. I think that's when I joined the Episcopal Church  
21 through St. George's.

22 Q. And then you moved to St. Paul's in '85-'86,  
23 approximately?

24 A. Around then, yes.

25 Q. And at that time, do you know what bylaws were in

1 effect?

2 A. I have no idea.

3 Q. Would you be surprised to learn that the bylaws in  
4 effect at that time were 1941 bylaws?

5 A. I have no knowledge of that.

6 Q. Would you be surprised to know that they had no  
7 reference in them at all to the national church?

8 A. Have no knowledge of that.

9 Q. Would you be surprised to learn that, though?

10 A. I don't know. I have no idea what those bylaws said.

11 Q. Do you know when the bylaws were changed to include a  
12 reference to the national church?

13 A. I don't. I'm aware of the bylaws that were changed in  
14 2012.

15 Q. And those bylaws were changed at an annual meeting,  
16 correct?

17 A. Yes.

18 Q. And it was properly noticed?

19 A. Yes.

20 Q. Okay. There was a vote?

21 A. Yes.

22 Q. According to the bylaws?

23 A. Yes.

24 Q. And it was properly taken?

25 A. Sure.

1 Q. And the majority voted in favor of the changes?

2 A. That's correct.

3 Q. And as far as you're concerned, that was a legal vote.

4 A. It was a legal vote.

5 Q. All right. And you objected. I mean, you voted against  
6 it, correct?

7 A. That's right.

8 Q. And there were a few other people who voted against it?

9 A. Well, there were at least ten former vestry members.

10 There were three former junior and senior wardens. There  
11 were a number of people.

12 Q. About 13 or 14 people, maybe?

13 A. Well, no. There were a lot more than that. It just --  
14 it included that.

15 Q. But there's no question that the vote passed?

16 A. It passed by a majority.

17 Q. Okay. Thank you.

18 A. Sorry.

19 Q. And in your opinion, it was a legal vote?

20 A. Yes, it was.

21 Q. And all that did was remove the references to the  
22 national church from the bylaws?

23 A. If you say that's all.

24 Q. Well, did anything else --

25 A. That's pretty significant, yes.

1 Q. Did anything else happen?

2 A. That was it. That was pretty major.

3 Q. And that was Article 2 and Article 7, correct?

4 A. That's correct.

5 Q. In October, nine months later, you were still at the  
6 church.

7 A. Say that again?

8 Q. October 2012, you were still at the church?

9 A. Yes.

10 Q. Okay. So you didn't leave the church because of the  
11 vote?

12 A. I was concerned, but it was still an Episcopal Church at  
13 that point.

14 Q. Well, you testified in October that what happened in  
15 October was that the priests basically said they weren't  
16 Episcopal priests.

17 A. I think it was October or November. It was probably  
18 November because it was closer to advent.

19 Q. Okay.

20 A. They didn't announce that until the last Sunday I  
21 attended.

22 MR. SHELBOURNE: Nothing else --

23 THE WITNESS: That was the reason why I stopped  
24 attending the non-Episcopal services.

25 MR. SHELBOURNE: Beg the Court's indulgence.



1 THE COURT: All right.

2 MR. SHELBOURNE: Nothing else, Your Honor. Thank you.

3 THE COURT: Okay. All right. Any other?

4 MR. RUNYAN: No, Your Honor.

5 THE COURT: Very well. Any redirect?

6 MR. TISDALE: None from me, Your Honor.

7 THE COURT: You may come down. Thank you.

8 MR. TISDALE: Your Honor, let me check and see who my  
9 next witness would be.

10 THE COURT: Sure. Good time to take our afternoon  
11 break, you think?

12 (Recess held.)

13 FRANCES LUCILLE ELMORE,  
14 being first duly sworn, testified as follows:

15 THE COURT: And if you could state your full name for  
16 our record.

17 THE WITNESS: Frances Lucille Elmore. Last name is  
18 E-L-M-O-R-E.

19 THE COURT: All right. Your witness.

20 DIRECT EXAMINATION BY MR. TISDALE:

21 Q. Ms. Elmore, I think I did the right thing by calling you  
22 Doctor a while ago.

23 A. Yes.

24 Q. Do you have a doctorate degree?

25 A. Yes, I do.

1 Q. And what is that?

2 A. It's from the University of South Carolina in education.

3 Q. And what is the degree?

4 A. An Ed.D.

5 Q. Okay. Now, where do you live, Ms. Elmore?

6 A. I live in Florence, South Carolina.

7 Q. How long have you been a resident of Florence?

8 A. All my life.

9 Q. Okay. Now, in Florence, have you been, for a period of  
10 time at least, if not all your life, associated with a  
11 religious organization?

12 A. Yes. My family joined St. John's Episcopal Church when  
13 I was 7; so I was a member of St. John's for 63 years.

14 Q. Okay. And how long -- when did that -- when did you  
15 cease being a communicant at St. John's Church?

16 A. I believe it was in October of 2012. For convenience  
17 sake, I often went to the 8:00 service, although I did attend  
18 the 10:30 service from time to time. But that morning I was  
19 going to the 8:00 service, and I noticed the rector out front  
20 in front of the church. And our rector is Ken Weldon.

21 Q. Okay.

22 A. And he was out there talking with some parishioners, and  
23 one was visibly upset. That was a friend of mine. She was  
24 supposed to lay read that morning. And as I walked up, he  
25 said, "We are no longer in the Episcopal Church, and you may

1 not feel comfortable worshipping here anymore."

2 So I went with my friend to try to console her, and we  
3 ultimately did not go back. I have been back on occasion for  
4 funerals.

5 Q. Okay. Did you see the storm clouds approaching on this  
6 particular issue before this event that you just described?

7 A. Yes, I did. Things began to change, I believe, in 2003  
8 when Bishop Robinson was elected and --

9 Q. That's up in New Hampshire?

10 A. Yes.

11 Q. Okay.

12 A. Then, ultimately, when the presiding bishop was a  
13 female, that sort of did not go well. And I knew from the  
14 time that Father Weldon came to St. John's that he ultimately  
15 would leave the Episcopal Church.

16 Q. You knew that?

17 A. Yes.

18 Q. How did you know that?

19 A. I had conversations with him on many occasions, and he  
20 made that pretty clear.

21 Q. What, for example, without going into a lot of detail on  
22 every occasion, what sort of things did he say from which you  
23 gathered that conclusion?

24 A. Well, I was concerned about the direction that the  
25 church, the diocese was heading, and I voiced that to him.

1 And he made it clear to me that if the diocese left the  
2 Episcopal Church, he would go with Mark Lawrence.

3 Q. All right. Ms. Elmore, prior to the incident that you  
4 described when you were getting ready to lay read that  
5 morning -- now, were you getting ready to lay read?

6 A. No. My friend was.

7 Q. Your friend was.

8 When you were told that you might not be comfortable  
9 worshiping there anymore by the rector, had there been any  
10 meetings of the congregation of which you were aware to deal  
11 with this particular issue?

12 A. I believe that when the bishop came on a couple of  
13 occasions for confirmation in the past that they did discuss  
14 some things. I was not present at all those meetings.

15 Q. Okay. Had you been told before the morning of the  
16 incident that you described that this was going to happen  
17 when it did?

18 A. No, I was not aware.

19 MR. ORR: Objection -- she didn't hear. That's okay.

20 MR. TISDALE: She said she wasn't aware.

21 Q. All right.

22 A. I read it in the paper.

23 Q. Read it in the paper.

24 A. Yes.

25 Q. After this incident, you read it in the paper, or

1 before?

2 A. I believe there was something in the paper in reference  
3 to the bishop having been --

4 Q. Inhibited?

5 A. Yes. Mm-hmm.

6 Q. All right. And was that the Florence Morning News?

7 A. Yes. It would have to have been.

8 Q. All right. Ms. Elmore, what had you done -- are you  
9 still an Episcopalian?

10 A. Yes, I am.

11 Q. In fact, do you have any role in the Episcopal Church in  
12 South Carolina, a leadership role?

13 A. Yes. I'm currently on the steering committee --  
14 standing committee, excuse me.

15 Q. Standing committee of the diocese called the Episcopal  
16 Church in South Carolina?

17 A. Right.

18 Q. Now that this occurred, where do you worship?

19 A. At St. Catherine's Episcopal Church in Florence.

20 Q. How long has that church been in existence?

21 A. Well, we like to say 2012, when we first started meeting  
22 in a house, but officially, I believe we were accepted as a  
23 mission at this past convention.

24 Q. And that would have been maybe in February?

25 A. Yes. Correct.

1 Q. And is your church congregation, St. Catherine's, in  
2 union with the convention of the Episcopal Church in South  
3 Carolina?

4 A. Very much so.

5 MR. TISDALE: Okay. Your Honor, I don't have any  
6 further questions.

7 THE COURT: Thank you.

8 MR. TISDALE: I live by my word.

9 MR. BEERS: No questions.

10 THE COURT: Cross-examination. Yes, sir.

11 MR. ORR: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION BY MR. ORR:

14 Q. Ms. Elmore, the meeting at St. John's, the  
15 congregational meeting at which a vote was taken concerning  
16 the diocese's withdrawal from its affiliation with TEC was  
17 December the 2nd, 2012; is that correct?

18 A. Yes, that's correct.

19 Q. Okay. And was it later that day that you participated  
20 in a meeting at Jane Hart Lewis's house?

21 A. We had conversation, yes, at Jane Hart Lewis's house.

22 Q. Okay. That was a meeting of a steering committee of  
23 Episcopalians of the Pee Dee, or whatever, that wanted to  
24 remain affiliated with the national church?

25 A. It was a group of those who wanted to remain, yes. It

1 encompassed more than just my church.

2 Q. Okay. Also some members of All Saints?

3 A. All Saints, Christ Church.

4 Q. St. Bartholomew's?

5 A. St. Bartholomew's, yes.

6 Q. And ultimately, you all formed St. Catherine's?

7 A. Yes, we did.

8 Q. And there were -- were there any times that you had any  
9 meetings at St. John's or on the property of St. John's?

10 A. No, we did not.

11 Q. Were you refused use of any of the property?

12 A. No. We did not ask.

13 Q. Okay. You didn't ask. So you just went ahead and  
14 started your efforts to form St. Catherine's?

15 A. Well, we started our efforts to find another way to  
16 worship, yes.

17 MR. ORR: Okay. Thank you, ma'am. That's all I have.

18 THE COURT: Anyone else on behalf of plaintiffs?

19 Cross-examination?

20 MR. RUNYAN: No, Your Honor.

21 THE COURT: All right. Any redirect?

22 MR. TISDALE: None, Your Honor, from me.

23 THE COURT: Very well. Ma'am, thank you so much. You  
24 may come down.

25 All right. This really is a good place for us to

1 conclude for the day. We'll start in the morning, but I need  
2 to -- we've got about 15 minutes, and maybe you all can just  
3 caucus just to make sure that those documents are getting  
4 delivered. And those that need to meet, maybe if you all  
5 could be here at 9:30 and meet and then we'll start at 10:00  
6 tomorrow morning.

7 And did we decide what time we're going to -- Mr. Beers,  
8 what time is your flight tomorrow?

9 MR. BEERS: Could we adjourn at 3:30?

10 THE COURT: Yes.

11 MR. BEERS: All right, then.

12 THE COURT: Does that suit everyone? I mean, I don't  
13 want anyone to lose any witnesses because we would be doing  
14 that. Nobody's going to lose any witnesses? Okay. Yes,  
15 we'll certainly plan on that.

16 MR. BEERS: Thank you, Your Honor.

17 THE COURT: Absolutely.

18 MR. TISDALE: Excuse me, Your Honor. Go ahead.

19 THE COURT: You go ahead.

20 MR. TISDALE: I was just reminded that this right here  
21 is the proffer, offer of proof for the witness earlier today  
22 who was excluded. And they might have an objection to some  
23 of it, but we would submit it. It includes his -- what was  
24 given as his report. That's his report.

25 THE COURT: And if you wish, you may attach as



1     attachments those items that were connected to Ms. Lott's. I  
2     don't know if that's in there or not. If you want to go  
3     ahead and attach those items, I don't have a problem with  
4     that.

5           MR. TISDALE: This is fine as it is, and it's marked as  
6     Exhibits 14 and 15.

7           THE COURT: Okay. For identification purposes.

8           MR. TISDALE: We just -- as an exhibit. I mean --

9           THE COURT: I got you.

10          MR. TISDALE: You said we could do that.

11          THE COURT: You can, as a proffer. I just want to be  
12     sure that I --

13          MR. TISDALE: It says "proffer" on it.

14          THE COURT: Perfect. Just as long as I can tell what's  
15     what. That will be fine.

16           (Defendant's Exhibits 14-15 marked for identification.)

17          THE COURT: Now, I want to yield -- because of the  
18     space, I want to yield to everyone. I don't want you all to  
19     have to leave; so I'm going to be leaving. So you all can be  
20     at ease, and then that way you've got your space to have a  
21     conversation as you need to have about the documents.

22           I know security will be fine to give you all the time to  
23     have that preliminary conversation about your documents, and  
24     then you can figure out what you've got concerns about in the  
25     morning.

1           MR. PHILLIPS: Can we ask for anticipated witnesses as  
2 well?

3           THE COURT: Oh, yes.

4           (Trial of the case adjourned for the day.)

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the First Judicial Circuit Court for Dorchester County,  
11 South Carolina, on the 17th of July, 2014.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 August 29, 2014

16

17 /S/ Ruth L. Mott

18 Official Court Reporter

19

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25

## VOLUME IX

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL )  
 CHURCH IN THE DIOCESE OF )  
 SOUTH CAROLINA, THE TRUSTEES )  
 OF THE PROTESTANT EPISCOPAL )  
 CHURCH IN SOUTH CAROLINA, )  
 A SOUTH CAROLINA CORPORATE )  
 BODY, ET AL., )

PLAINTIFFS, )

vs. )

TRANSCRIPT OF RECORD

THE EPISCOPAL CHURCH, (A/K/A )  
 THE PROTESTANT EPISCOPAL )  
 CHURCH IN THE UNITED STATES )  
 OF AMERICA); THE EPISCOPAL )  
 CHURCH IN SOUTH CAROLINA, )

DEFENDANTS. )

JULY 18, 2014  
 ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR  
 Official Court Reporter

## I N D E X

| WITNESS                 | DIRECT | CROSS | REDIRECT | RECROSS |
|-------------------------|--------|-------|----------|---------|
| CLIFTON DANIEL, III     |        |       |          |         |
| MR. TISDALE             | 1705   |       | 1731     |         |
| MR. RUNYAN              |        | 1719  |          | 1737    |
| PATRICIA GARNER NEUMANN |        |       |          |         |
| MR. TISDALE             | 1740   |       |          |         |
| MR. RUNYAN              |        | 1752  |          |         |
| MR. CAMPBELL            |        | 1753  |          |         |
| CERTIFICATE OF REPORTER | 1756   |       |          |         |

## E X H I B I T S

| NO.  | DESCRIPTION                           | ID   | EVD  |
|------|---------------------------------------|------|------|
| D-16 | ANSWERS TO REQUESTS FOR<br>ADMISSIONS | 1736 | 1739 |

- - -

1 THE COURT: All right. With regards to the documents,  
2 do we need to discuss those now or will we do it per witness,  
3 how do you all want at that handle that?

4 Good morning.

5 MS. KOSTEL: Good morning. Probably easiest to do a  
6 general discussion now --

7 THE COURT: Great.

8 MS. KOSTEL: -- to tell you where I think we are, but I  
9 stand to be corrected by any of the plaintiffs. So Your  
10 Honor will recall that there are two separate lists. One is  
11 a parish specific list and one is sort of the not parish  
12 specific list. As to the parish specific list it looks like  
13 there are going to be maybe some authenticity objections.

14 THE COURT: Okay.

15 MS. KOSTEL: Although that may be minimal.

16 THE COURT: Okay.

17 MS. KOSTEL: There will certainly be some relevance  
18 objections.

19 THE COURT: Okay.

20 MS. KOSTEL: I think that what we think is that the most  
21 efficient way to go forward is for us to spend time with each  
22 of them, you know, a half hour maybe, and try to knock it  
23 out. We may still have to call witnesses to get through some  
24 of those.

25 THE COURT: Sure.

1 MS. KOSTEL: So there's that project.

2 THE COURT: Okay.

3 MS. KOSTEL: And, you know, I ask for the Court's  
4 guidance.

5 THE COURT: Let me ask this question of you --

6 MS. KOSTEL: Yes.

7 THE COURT: -- because there are a couple of rules that  
8 come into my mind, and I guess part of it would be sort of,  
9 if you will, the status of the documents; in other words,  
10 because if some of the documents have been the subject of  
11 requests to admit, then the authenticity would be admitted  
12 and we don't have that problem, and then we'll just deal with  
13 the relevancy issues, so that would be a category that comes  
14 to my mind. The other one is that in this case under the  
15 hearsay rule we've had some ancient documents, and so those  
16 are sort of self-authenticating, if you will.

17 MS. KOSTEL: Right.

18 THE COURT: And then there are some documents to which  
19 there may be no objection, and then that would put us down to  
20 a core of documents for which there may be objections, and  
21 then as you call the witnesses, you just put it in through  
22 the witnesses.

23 MS. KOSTEL: Right.

24 THE COURT: So that's sort of what's going through my  
25 mind. Some of them probably will be easier than others. For

1 example, deeds are going to be self-authenticating because  
2 you're going to have certified copies. If there are trusts,  
3 those are going to be self-authenticating, and so we  
4 probably, in the uniqueness of this case we probably have  
5 different categories.

6 MS. KOSTEL: I agree.

7 THE COURT: Some that are self-authenticating, some that  
8 are not.

9 MS. KOSTEL: Correct.

10 THE COURT: So let me maybe ask it this way: Do we have  
11 the documents down to the numbers for which there are  
12 concerns?

13 MS. KOSTEL: No, we've not, and I think what we need to  
14 do is hear, you know, we've obviously given them a list.

15 THE COURT: Yes.

16 MS. KOSTEL: We need to hear from them, and there are  
17 also documents here that are duplicative of what they put in,  
18 and we'll try to pull those out.

19 THE COURT: Of course.

20 MS. KOSTEL: To be clear on one thing, the documents on  
21 here are not subjects of requests for admissions, so that's  
22 not -- the issues are authenticity, and let me just back up  
23 and say that I think that we've been under the impression  
24 that authenticity would not be an issue in documents that  
25 were produced, but there may be, it turns out in discussion



1 with plaintiffs, they may have some individual issues with  
2 some individual documents about authenticity even of  
3 documents that they produced, so we will try to work through  
4 that with them.

5 THE COURT: Okay.

6 MS. KOSTEL: Then there's the issue of foundation,  
7 identifying the document. Many of these documents are  
8 self-identifying, but some are not, and so we have to work  
9 that through with them. And then third there's a relevance  
10 question, and we've already discussed with them what our  
11 general theories are, but obviously each individual parish  
12 has its own historical story and so --

13 THE COURT: Sure.

14 MS. KOSTEL: -- the relevance issues are different --  
15 it's the same kind of issue, but the facts are different for  
16 each parish.

17 THE COURT: They are fact specific, yes.

18 MS. KOSTEL: So one thing I would ask the Court is if  
19 it's possible to set aside some time next week for us to deal  
20 with that with them one by one.

21 THE COURT: Yes. Now, having said that, let me hear  
22 from plaintiffs because I want to give you some heads up  
23 because if authenticity becomes an issue, then I want you to  
24 have an opportunity to have some lead time to subpoena  
25 whoever you need to get here to authenticate them, do you

1 know what I'm saying?

2 MS. KOSTEL: Yes, Your Honor.

3 THE COURT: So that's probably one of the things that we  
4 need to talk about.

5 MS. KOSTEL: Yes, I agree. Would you like to do that  
6 first and then move to the other list, which is the list of  
7 the general documents.

8 THE COURT: Yes. Let's just sort of see where we are in  
9 a general sense, yes.

10 MR. RUNYAN: It's hard to easily answer, I think, the  
11 questions that are on the table except to say that when I  
12 asked the question this morning, how do you intend to  
13 introduce these several hundred documents, the answer was,  
14 I'm just going to move to admit them, and I think my response  
15 was, that's profoundly inappropriate because there are all  
16 kinds of issues here. I think she's hit on part of the  
17 issues. I think the authenticity issues will probably be few  
18 and far between, would be my general expectation. I think  
19 there are foundation issues, there are clearly relevance  
20 issues, there are hearsay issues, there are cumulative  
21 issues, there's even waste of time issues, there's a whole  
22 package of things. So that's sort of a broad response. I  
23 can get specific if the Court wants to, but I know of no easy  
24 way to just globally deal with all this in the absence of  
25 some request for admissions served months ago. We're sort of

1 in the middle of trial having to deal with this. That's the  
2 best way to put it.

3 THE COURT: I understand. Here's where I think we  
4 are -- just in terms of generality, and we'll see if it  
5 loosens up as time goes by -- I think that for your planning  
6 purposes, and it's certainly okay with me for this reason,  
7 over last weekend you all did what I asked you to do, and  
8 that was to meet and confer and see if you could stipulate.  
9 By its very nature stipulation is an agreement of counsel,  
10 and you all did a great job and you got those done. You did  
11 the same thing last evening and this morning, and for that I  
12 am so grateful, and so if you can't stipulate not to worry,  
13 not to worry, and you will simply just admit them as you need  
14 them and put them in as you would normally. But here's what  
15 I want you to know, if there are authenticity issues and you  
16 need to subpoena the custodian of records of like, I don't  
17 know, the South Carolina Historical Society, to authenticate  
18 a record --

19 MS. KOSTEL: Right.

20 THE COURT: -- I'm going to allow you to do that, I'm  
21 just going to allow you to do that. Let me tell you the  
22 reason. The reason is that counsel's had the documents. If  
23 there's a problem of never having a document, that will be a  
24 different objection, but in terms of the authenticity, I'm  
25 not going to keep you from being able to call who you need to

1 to authenticate the document. And the reason is that I don't  
2 love gotcha law, and that falls into the category of gotcha  
3 law. I don't like it. Now, it's a different issue if a  
4 document hadn't been provided in discovery, and you know  
5 that. You would know that. We'll handle it as we get there.

6 MS. KOSTEL: We're talking about documents they produced  
7 right now.

8 THE COURT: Then it would be documents that they're  
9 familiar with, but if you need to authenticate, then you need  
10 to do the custodian of records for, oh, I'm going to pick on  
11 Mark Phillips. Look at him. He loves it.

12 MR. PHILLIPS: Good morning.

13 THE COURT: Hi. See, he's paying attention, everything.  
14 That is not going to be a problem.

15 MS. KOSTEL: And it's possible that we'll be able to  
16 agree to some of this, but if we can't we'll do that.

17 THE COURT: It's okay, and you're not to worry about  
18 that. I got it. You all have done what I've asked you to  
19 do. You met last evening. You've met this morning. You've  
20 done what I've asked you to do. That's wonderful. I am  
21 grateful, so we'll move forward. I'm not going to limit you  
22 in terms of calling witnesses for authentication; not to  
23 worry about that. Then we'll deal with whatever other  
24 objections there are.

25 MS. KOSTEL: Okay. And it may not be until after we

1 have met with them that we know who we need to call.

2 THE COURT: And that's okay. That is absolutely not a  
3 problem.

4 MS. KOSTEL: And Your Honor is planning to go into this  
5 coming week.

6 THE COURT: Yes. I'm so excited.

7 MS. KOSTEL: So then that's how we'll proceed with the  
8 first list.

9 THE COURT: Yes.

10 MS. KOSTEL: Now, as to the second list, which is really  
11 the first list in order, these are sort of what I call the  
12 general documents. Although there are parts of these  
13 documents that we'll use for the parish cases, for example,  
14 pages in the Journal of the Diocese of South Carolina that  
15 discuss a particular parish.

16 THE COURT: Sure.

17 MS. KOSTEL: Okay. I could try to move all of these  
18 into evidence now. I think that there's not going to be an  
19 authenticity issue with most of them or maybe all of them.  
20 Some of them our witnesses will discuss but not all of them.  
21 As Your Honor knows, we believe that this is largely a  
22 documents case, and so for example, let me turn to -- I don't  
23 know if Your Honor has the list. I can get you a copy if you  
24 need it.

25 THE COURT: I took down what you said yesterday. I took

1 really good notes if I could find them.

2 MS. KOSTEL: May I hand one up, Your Honor.

3 THE COURT: Sure. Okay.

4 MS. KOSTEL: Mr. Beers reminded me that we haven't  
5 resolved when we're going to meet with the parish folks to go  
6 over the parish documents, and I'd turn to the Court for  
7 guidance on that. Should we do that on Monday? Obviously  
8 it's up to Your Honor. To go through the individual --

9 THE COURT: I know what you're talking about. I'm  
10 reluctant to say on Sunday because people are going to be all  
11 over, and that's tough because everybody's not here, and they  
12 may need to meet with witnesses or whatever.

13 MR. RUNYAN: Your Honor, might it be possible that we,  
14 since we have at least one flight to catch, maybe is that  
15 something we could do this afternoon?

16 THE COURT: That might be a great idea. Let me ask this  
17 question: Do you have experts that are in here that are  
18 ready to testify that it's going to be a major brouhaha if  
19 they have to come back?

20 MR. TISDALE: Your Honor, we have one witness from out  
21 of state who's going to be not lengthy, and we were planning  
22 on calling him first.

23 THE COURT: Okay. Great.

24 MR. TISDALE: That wouldn't interfere with what you want  
25 to do after that. May I check with one witness concerning

1 the first of the week?

2 THE COURT: Please. I think that's a great idea. At  
3 the point in time when you get to where witnesses are not  
4 being inconvenienced, they're going to be here anyway, then  
5 we'll stop and that's when you'll do it.

6 MS. KOSTEL: So we'll do that now. We'll start this  
7 today at some point. We'll just keep doing it in the cracks  
8 if it flows over, so for example if we don't finish today,  
9 which we may not --

10 MR. TISDALE: Your Honor -- excuse me for  
11 interrupting -- yes, we have that one witness who will not be  
12 long, and then our next witness will be lengthy but can be  
13 here Monday.

14 THE COURT: Perfect.

15 MR. TISDALE: Can make arrangements to be here Monday.

16 MS. KOSTEL: It sounds like the plaintiff parishes  
17 counsel may not be ready to do it today, Your Honor.

18 MR. BEERS: They don't have the documents. They have  
19 them, but they don't have them in court.

20 MR. PHILLIPS: I was going to say that, but I'm not  
21 going to do it without permission.

22 MR. RUNYAN: I think I could speak to the parishes that  
23 I represent and the diocese, I think we're able to do that.  
24 I can't speak for my colleagues as to those, so it's a mixed  
25 bag.

1 THE COURT: Got it.

2 MS. KOSTEL: So what should we do?

3 THE COURT: Here's what I think we do, we take the first  
4 witness, and then we stop, and then we give you an  
5 opportunity and the folks from the parishes -- for example,  
6 if we're talking about parishes in Charleston, while they may  
7 not want to, they can go get the documents and be back by  
8 3:30.

9 MS. KOSTEL: They're all on the disc too.

10 THE COURT: So we'll just work together, but if it  
11 really gets to be burdensome, like the people at the beach,  
12 for example, those people, I'm not going to ask them to go  
13 all the way to the beach, I'm not going to ask them to go to  
14 the beach and back because you can't get there from here, but  
15 we can get a lot of it done.

16 MS. KOSTEL: We can get some of it done today.

17 THE COURT: You can get a lot of it done, I would think;  
18 and then whatever needs to be done is cool, we'll get it  
19 done.

20 MS. KOSTEL: On Monday or Tuesday.

21 THE COURT: Yes, we'll get it done. But we'll take the  
22 bulk of today because --

23 MS. GOLDING: May I interrupt, Your Honor? I apologize.  
24 With respect to their second witness, Mr. Edgar, I don't  
25 think that relates to parishes, so I think that he could be



1 taken and then --

2 MR. TISDALE: He's going to be quite lengthy, I believe,  
3 Henrietta.

4 MS. GOLDING: I'd like to get another witness done  
5 before we --

6 MR. TISDALE: I've got another witness that's not  
7 lengthy that I can call.

8 MS. GOLDING: I just thought, since he's lengthy and  
9 he's here, he's not related to the parishes, we ought to go  
10 forward with the witnesses.

11 MR. TISDALE: That's going to take up most of the day.

12 THE COURT: And that means that parishes' counsel  
13 wouldn't be in here, and you know that makes lawyers  
14 paranoid.

15 MS. GOLDING: I think they'd be reviewing some of the  
16 documents as we go along. I was just trying to see if we can  
17 facilitate --

18 THE COURT: I know that you can multitask and do like 85  
19 things at the same time and all with crispness and  
20 perfection, but you're not normal.

21 MS. GOLDING: I believe you, totally.

22 MR. RUNYAN: It's a compliment.

23 THE COURT: I can multitask too. I can't do as many as  
24 you can, but I can multitask.

25 So I think that's what we need to do, less than lengthy

1 witnesses, and I'll tell you all that story later.

2 MS. KOSTEL: Now, switching back to the first list, the  
3 first section of this list, which are the documents labeled  
4 Edgar on the list.

5 THE COURT: Does that have anything to do with Edgar?

6 MS. KOSTEL: Yes, it does. And so I think we can skip  
7 those because we'll talk with him about those.

8 THE COURT: Of course.

9 MS. KOSTEL: The next section which starts on page 7  
10 starts with Document No. 143.

11 THE COURT: Yes.

12 MS. KOSTEL: And that's the national church constitution  
13 and canons in 1823. Do you see that, Your Honor?

14 THE COURT: I do.

15 MS. KOSTEL: And that goes through -- so I'm sure Your  
16 Honor has gleaned this, that the general convention meets  
17 every three years.

18 THE COURT: Right.

19 MS. KOSTEL: And often adopts amendments to its canons,  
20 and so what we have here through Exhibit 203 on page 11 are  
21 the general church's constitution and canons from 1823 until  
22 2009, and they're organic documents, I don't think there's an  
23 authenticity issue, and I would just move those in right now.

24 MR. RUNYAN: There's no authenticity objection, but I  
25 don't think I can just agree to move these en masse into

1 evidence without more.

2 THE COURT: Tell me what the more is that we need.

3 MR. RUNYAN: Well, I guess --

4 THE COURT: Like what are the differences.

5 MR. RUNYAN: I guess we could start with -- I don't have  
6 a witness to examine. I mean, what are these, ancient  
7 documents or what's the --

8 THE COURT: Some would be and some would not be.

9 MR. RUNYAN: I guess that's --

10 THE COURT: This might be helpful, let me ask you this  
11 question because quite frankly it would be helpful for me,  
12 and we all have a tendency to, particularly in nonjury,  
13 judges are like oh, my gosh, you all are going to leave me,  
14 and what am I going to need. One of the things I know I'm  
15 going to need, as I start looking at this, I'm going to want  
16 somebody to have talked to me about like -- here's what I  
17 know: I know they meet every three years and that every  
18 diocese has like one person that goes from that diocese and  
19 they're the representative.

20 MS. KOSTEL: Eight but --

21 THE COURT: I thought it was one.

22 MS. KOSTEL: One bishop but we will have a --

23 MR. TISDALE: Actually more than one bishop.

24 THE COURT: Well, clearly I need somebody to teach me a  
25 little bit better.

1 MS. KOSTEL: We expect to put on a witness to just give  
2 you that general overview, Your Honor.

3 THE COURT: And so one of the things that I'm going to  
4 want to know, and I'll share this with you, is somebody to  
5 sort of walk through what's going on, if it has any relevance  
6 to these issues, it may or may not, but I can promise you  
7 that one of the issues that's going to be extraordinarily  
8 important for me is the organization in terms of authority.  
9 In other words, I'm going to make up a name, when Diane  
10 Goodstein, imagine that, goes from the diocese in 1975 as a  
11 delegate to the national convention, I was given some degree  
12 of authority. What was it? What was the extent of it? How  
13 much was it? How much authority am I clothed with when I go  
14 up? I mean, I'm an ABA delegate this August for the Circuit  
15 Judges Association, and I'm going to the ABA convention.  
16 Other than the fact that I don't have to pay my own way, I  
17 don't exactly know what my authority is, but I do one daggone  
18 thing, I can't come back and tell Chief Justice Toal, you  
19 know that house you've got over on Wheat Street, I gave it  
20 away, you know what I mean?

21 MS. KOSTEL: Right.

22 THE COURT: So that's going to be really important for  
23 me to know. And so, now, I would presume there's going to be  
24 somebody who's going to testify who's going to know about  
25 these things.

1 MS. KOSTEL: Well, yes, although our intention now is  
2 not to go through every iteration of the constitution and  
3 canons in testimony. We would assume we would do it in  
4 posttrial briefing just because it's tedious.

5 THE COURT: I want somebody to talk to me about it,  
6 though, if it's important.

7 MS. KOSTEL: Okay.

8 THE COURT: And the reason for that is, if I can be  
9 absolutely, completely candid, I'm a verbal learner. I read,  
10 obviously I read a lot, but I'm a verbal learner. If you  
11 tell me something, it stays so much better, so if I can have  
12 the opportunity to have the testimony and have  
13 cross-examination, I can promise you it will stay with me so  
14 much better. And in that I've got to make the decision and  
15 this is core stuff, I really would love to have somebody  
16 testify. This particularly I'm really going to want to have  
17 testimony and have it massaged because it's so important.

18 MS. KOSTEL: But of course, Your Honor, the documents  
19 speak for themselves.

20 THE COURT: They do, they absolutely do, but this is  
21 what I'd like to have dissected, and I'd like for whatever  
22 they want to ask, I want them to ask about it, and whatever  
23 those relationships are, that's going to be wealthy for me.

24 MS. KOSTEL: Okay.

25 THE COURT: But in terms of the admissibility of it, you

1 know, some of it's going to be ancient, a lot of it's going  
2 to be ancient documents.

3 MS. KOSTEL: Correct.

4 THE COURT: But I know that, when they say we need more,  
5 I know that I'm going to want to have testimony because this  
6 is so important.

7 MS. KOSTEL: And on each year in every triennial --

8 THE COURT: I want to throw them all in and then --

9 MS. KOSTEL: Pull out the important ones.

10 THE COURT: I want you to tell me what's important and I  
11 want you to talk about that.

12 MS. KOSTEL: We intend to do that.

13 THE COURT: I want you to really go into that, and then  
14 whatever they see as being important, then they can  
15 cross-examine on it.

16 MS. KOSTEL: Of course.

17 THE COURT: That would be delicious.

18 MS. KOSTEL: That's what we expect to do. What I don't  
19 expect to do is have someone testify about every single three  
20 years. That's just to show that it was continuous.

21 MR. RUNYAN: I think my biggest concern, Your Honor, is  
22 that there's a tendency, based on past practice, to fill the  
23 record with documents that are never discussed and then on  
24 appeal they're discussed in a manner that was never before  
25 the trial court, and I think that's my concern.

1 THE COURT: I gotcha. I'm not worried about that at  
2 all. That's handled by this question: What if anything else  
3 in these documents is relevant to this case. You might want  
4 to write that down. Okay.

5 MS. KOSTEL: Okay. The next series of documents which  
6 starts at 204.

7 THE COURT: Okay.

8 MS. KOSTEL: Document No. 204, it's on page 11, and it  
9 goes through -- this is long.

10 THE COURT: I thought they were already in. No?

11 MS. KOSTEL: The last five are. Plaintiffs put in -- I  
12 don't know if it was the very last five, but it was five  
13 recent ones.

14 THE COURT: I gotcha. Wow.

15 MS. KOSTEL: Yes. And we read them all, Your Honor.

16 MR. RUNYAN: We produced them all. I think there are  
17 20,000 pages.

18 MS. KOSTEL: Right. So that's up through page 27, No.  
19 424.

20 THE COURT: Wow.

21 MS. KOSTEL: Now, let me tell you about those. So those  
22 are the journals of the Diocese of South Carolina. Now, they  
23 include usually at the end the constitution and canons of the  
24 diocese in effect at that time.

25 THE COURT: Sure.

1 MS. KOSTEL: So those we consider the organic documents,  
2 the constitution and canons. They also include the  
3 proceedings of the meetings of the diocese, and the reason  
4 they're here -- there are a number of reasons. One is that  
5 they show how the diocese is relating to the national church.  
6 They also show how the parishes are relating to the diocese  
7 and the national church. It's that kind of stuff. Now,  
8 there is a lot -- there's a lot. You know, we've collected  
9 it, but there's a lot of different pages and lines. Now,  
10 having someone testify about every page and line will take  
11 time. I can identify pages and lines to the Court and to the  
12 plaintiffs if they're concerned about not knowing about which  
13 pages and line we're relying on, but testifying will take --  
14 I mean, we're talking about a lot of testimony because we're  
15 talking about hundreds of years of journals.

16 THE COURT: Let me ask you, but you have the pages and  
17 the lines.

18 MS. KOSTEL: Yes -- well, excuse me. I'm collecting  
19 them. I have most of them.

20 THE COURT: As soon as you have those, you just give  
21 those to the plaintiffs.

22 MS. KOSTEL: Yes.

23 THE COURT: And so I guess this would be what would come  
24 to mind: If you wish to move them in, it's kind of hard not  
25 to find them relevant, big picture stuff, but I would



1 appreciate the pages and the lines going to the plaintiffs so  
2 they'll know what you consider to be appropriate.

3 MS. KOSTEL: Of course.

4 THE COURT: And I would think about a stipulation if you  
5 don't handle it specifically, and counsel you all just think  
6 about this, just let this percolate.

7 MS. GOLDING: As a suggestion, can they not just make  
8 copies of the pages and lines that they want instead of  
9 putting 20,000 pages into the record?

10 THE COURT: This is what's coming to my mind and how do  
11 we handle this because I think what part of their proof is  
12 going to be is the sheer nature of the relationship.

13 MS. KOSTEL: Yes.

14 THE COURT: And the 20,000 pages to large extent go to  
15 show the extent of the relationship.

16 MS. KOSTEL: Exactly.

17 THE COURT: And it has relevance, and it is what it is,  
18 so I think that it's -- I'm comfortable with it, although I'm  
19 thinking of my Clerk of Court who's also my very dear friend  
20 who's going to meet me in the parking lot and beat me with  
21 something. I hope it's Nerf. But I think they go in. I  
22 think that they go in, probably the representation by  
23 witnesses to large extent, to show that throughout, Judge, in  
24 every one of these you're going to see that the constitution  
25 and canons of the national church are in it. I'm making this

1 up.

2 MS. KOSTEL: But you're on the -- I mean, this is what  
3 Professor Edgar will testify to.

4 MR. WILLIAMS: Your Honor, those documents have no  
5 relevancy unless they're dealing with the national church.  
6 You put in 20,000, you're talking about dioceses --

7 THE COURT: They are. They are.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Williams.

10 So and I think that they're in. I think he testifies  
11 generally the constitution, blah, blah, blah, whatever, bam,  
12 done. But I do appreciate the pages and the lines coming to  
13 the plaintiffs because otherwise I feel like I've got to tie  
14 down more in terms of the specific relevancy.

15 MS. KOSTEL: Of course.

16 THE COURT: Yes.

17 MR. RUNYAN: There are some issues with exactly what a  
18 particular one is, such as this very first one, July 1785.  
19 There's no printed journal. There's a historical book and  
20 there's some manuscripts. I'm not really sure what they're  
21 talking about here, but I think we can probably --

22 MS. KOSTEL: We can work that out, yes. Mr. Runyan's  
23 correct. From this period of time there are handwritten  
24 manuscripts, and then they get to be transcribed later. What  
25 we have actually put in here, what we've scanned onto the

1 disc and are referring to here are what gets transcribed  
2 later, but we plan to have a witness explain the difference.

3 THE COURT: Great.

4 MS. KOSTEL: And we can also put in the manuscripts.

5 THE COURT: Great.

6 MS. KOSTEL: The next category is on page 27. This is  
7 short, thankfully, it's exhibits 425 through 428.

8 THE COURT: Before we leave I would ask this question,  
9 because obviously I can't have my plaintiffs put in a  
10 position of getting the pages and lines just as he is  
11 beginning because then --

12 MS. KOSTEL: Of course.

13 THE COURT: So just in terms of where you are, obviously  
14 you haven't finished, and you're going to be putting on a  
15 different hat right here in a few hours, so talk to me just  
16 in terms of schedule, when do you anticipate that they will  
17 go into evidence and when can you do your -- maybe do the  
18 submittals that you have now and then supplement them but  
19 talk to me about that.

20 MS. KOSTEL: About when we can give them the page and  
21 line?

22 MR. BEERS: What are you looking at me for?

23 MS. KOSTEL: Because you and I have been doing this  
24 together.

25 MR. BEERS: Really.

1 MS. KOSTEL: This is the page and line guy.

2 MR. BEERS: We have pages and lines for over 100 years.

3 THE COURT: Lovely start.

4 MS. KOSTEL: We've actually got some for the previous  
5 century too. I can give the pages and lines.

6 THE COURT: Yes.

7 MR. BEERS: Then we have categories of -- I mean,  
8 there's certain things that happen in each convention that  
9 are written up in the journal. We have pages and lines for  
10 some, but for others we have, categories that is, reports of  
11 a certain committee, and I don't have pages and lines on  
12 those.

13 THE COURT: Okay.

14 MR. BEERS: Or reports of the standing committee. In  
15 other words, we're not just dumping in the whole year's  
16 journal. We can give them specific categories.

17 THE COURT: And pages and lines where you have the pages  
18 and lines.

19 MS. KOSTEL: Right. And I think some of this will be  
20 taken care of with testimony. For example, one of the things  
21 that we will get in through testimony is that, you know, oh,  
22 here in this year in this journal the parishes -- the diocese  
23 says you have to put in your parochial reports according to  
24 the national church's rule X, and then the next year it says,  
25 oh, here are the parochial reports that you put in pursuant

1 to the national rule X, and then the next year it says it,  
2 and it says it again and again and again, and so what our  
3 witness will testify, who's looked at all the journals, is it  
4 says here are the first few times, and does it say it  
5 throughout, yes, so we aren't putting in page and line on  
6 that kind of repetitive thing that happens again and again.

7 THE COURT: So here's what I need you to do, whatever it  
8 is that you have, pages and lines, categories, I need that to  
9 get to the plaintiffs as soon as possible because at this  
10 point they just aren't in a position to have a position and  
11 they need to have the stuff to have a position, see what I'm  
12 saying.

13 MS. KOSTEL: I think early -- very early next week.

14 THE COURT: I thought that this was going in through Mr.  
15 Edgar, who was going to testify on Monday.

16 MR. BEERS: Some of it will be but not all of it.

17 MS. KOSTEL: Right.

18 MR. BEERS: Much of the 20th century will not be through  
19 Mr. Edgar.

20 THE COURT: Is there anything that you could give them  
21 perhaps by the end of the day, understanding that it's  
22 partial.

23 MS. KOSTEL: How about by maybe tomorrow so that I can  
24 get home and type it up.

25 THE COURT: Okay.

1 MS. KOSTEL: The next category is Exhibits 425 through  
2 428.

3 THE COURT: Okay.

4 MS. KOSTEL: It's on page 27.

5 THE COURT: Hold up. Okay. These are the individual  
6 parishes.

7 MS. KOSTEL: No, I'm not there yet. I'm just in that  
8 short category before that, 425.

9 THE COURT: Oh, yes.

10 MS. KOSTEL: What they are, so these are the early  
11 journals of the national church. It includes the  
12 constitution and canons of those early years, it includes the  
13 journals, it reflects South Carolina's participation, that's  
14 what that is.

15 THE COURT: Okay, great. And you'll have somebody  
16 testify about that, right?

17 MS. KOSTEL: Oh, yes. Yes.

18 THE COURT: Great.

19 MS. KOSTEL: Okay. And then we've got the parish stuff  
20 we can skip because we really covered that on the other list.

21 THE COURT: Right.

22 MS. KOSTEL: And then, finally, now we get more to sort  
23 of a smattering of things which we can't really talk about in  
24 categories, and so I don't know what the best way is to deal  
25 with this.

1 THE COURT: Well, like I'm at 433. Obviously you would  
2 say, Judge, we would ask that the Court take judicial notice  
3 of IRS, blah, blah, blah, blah.

4 MS. KOSTEL: Yes, but backing up, this category starts  
5 at 429 on the previous page.

6 THE COURT: Okay.

7 MS. KOSTEL: So here what we have on 429 are pages from  
8 the journals of the national church's convention.

9 THE COURT: Sure.

10 MS. KOSTEL: Which is an excerpt, not the whole journal,  
11 so this is like giving them page and line.

12 THE COURT: Which you're going to do anyway.

13 MS. KOSTEL: Well, I'm going to do for the ones that are  
14 complete, but this is essentially page and line.

15 THE COURT: It's already done.

16 MS. KOSTEL: Yes, it's already done. The second item is  
17 essentially a historical document by an expert at the time.  
18 It's an excerpt. So these are all excerpts -- now we're in  
19 the point where we're dealing with mostly excerpts, and so  
20 there's no page and line issue. They may have relevance  
21 objections but --

22 MS. GOLDING: Your Honor, would not documents like 429  
23 and 431 be cumulative because if they bring in the journal  
24 it's already there.

25 MS. KOSTEL: Actually we don't have the '64 journal in,

1 Henrietta.

2 MS. GOLDING: Okay.

3 MS. KOSTEL: What we did for the national church  
4 journals is we just put the early ones in and then we  
5 stopped. And then we go to the just excerpts from the  
6 journals because it would have been even huger.

7 MR. RUNYAN: Just to comment, Your Honor, this is  
8 completely demonstrative of why foundation needs to be laid  
9 with somebody.

10 THE COURT: I know, exactly. Right. Yes.

11 MS. KOSTEL: Okay.

12 THE COURT: And that's why I asked, somebody's going to  
13 be here to testify, and she said yes. And the beauty of  
14 having the excerpts is that you have the excerpts.

15 MS. KOSTEL: Right. So I think that as to the rest of  
16 them, let me confer with Mr. Beers, but I think the rest of  
17 them --

18 THE COURT: They're just documents.

19 MS. KOSTEL: They're excerpts.

20 THE COURT: No, I'm beyond that. I'm looking at letters  
21 from individuals.

22 MS. KOSTEL: Well, it goes back to excerpts after that.  
23 The letters, that all has to do with tax stuff, and then we  
24 go back to basically excerpts.

25 THE COURT: Yes. Wow. Okay. So now those obviously



1 St. Helena's not going to be a problem, but how about the  
2 Journal of the Diocese of Maryland? Yikes. Are you going to  
3 have somebody do that?

4 MS. KOSTEL: Are you talking about relevance?

5 THE COURT: No, no, no, no. I would never do that to  
6 you. That would be awful to do that to you at this point.  
7 No, I'm thinking in terms of authentication. Is there  
8 somebody that can authenticate like the excerpts from the  
9 Journal of the Diocese of Maryland and Massachusetts?

10 MS. KOSTEL: Yes, well, yes we think so. Yes.

11 THE COURT: Okay. Then we'll deal with it then. We're  
12 not going to do it in a vacuum. Then we're down to like 456,  
13 right?

14 MS. KOSTEL: I think we're down to the end, basically,  
15 because these all fall into that category with a couple of  
16 exceptions that we'll have other witness, you know, different  
17 witnesses will testify about.

18 THE COURT: Sure.

19 MS. KOSTEL: Yes, I think that's right. Oh, let's see,  
20 when Your Honor gets to page 38.

21 THE COURT: Let me just say 494, just for what it's  
22 worth.

23 MS. KOSTEL: Yes.

24 THE COURT: Just look at our evidentiary rule on  
25 treatises, just like a little note.

1 MS. KOSTEL: It's not actually a secular law treatise.  
2 It's a -- it's like a canon law.

3 THE COURT: Gotcha. Something different.

4 MS. KOSTEL: Right.

5 MR. RUNYAN: I'm not sure I agree with that.

6 MS. KOSTEL: We can talk about that.

7 THE COURT: That was like a hint. Pull that treatise  
8 rule.

9 MS. KOSTEL: Thank you. So the last, on page 38 at  
10 Exhibit 504.

11 THE COURT: Okay.

12 MS. KOSTEL: Here we get into a series of extracts of  
13 reports from different national church bodies that reflect  
14 aid, money coming from different church -- and that's what  
15 these are. And we plan to have a witness identify them, but  
16 just so that you know that that's what they are.

17 THE COURT: Okay.

18 MS. KOSTEL: And then the very last one, page 5 -- I  
19 mean No. 512 is the church's Book of Common Prayer.

20 THE COURT: Right.

21 MS. KOSTEL: And you've heard about it.

22 THE COURT: Yes. Now I think we've sort of got a plan.

23 MS. KOSTEL: I think so. Thank you.

24 THE COURT: Absolutely. So just to sort of recap, I  
25 think we've been through the more general documents.

1 MS. KOSTEL: Yes.

2 THE COURT: And our plan is we will take two less than  
3 lengthy witnesses, and then we will then free up the parishes  
4 to work with you with regards to the documents.

5 MS. KOSTEL: Thank you.

6 MR. TISDALE: Perfect.

7 MS. KOSTEL: Thank you, Your Honor.

8 MR. TISDALE: May we proceed, Your Honor?

9 THE COURT: Yes, sir.

10 MR. TISDALE: Your Honor, defendants would call Bishop  
11 Clifton Daniel.

12 CLIFTON DANIEL, III,  
13 being first duly sworn, testified as follows:

14 THE COURT: Yes, sir, would you just state your full  
15 name for the record and spell your last name for us.

16 THE WITNESS: Yes, my full name is Clifton Daniel, III;  
17 spell my last name D-A-N-I-E-L.

18 THE COURT: Thank you. Your witness, Mr. Tisdale.

19 MR. TISDALE: Thank you very much, Your Honor.

20 DIRECT EXAMINATION BY MR. TISDALE:

21 Q. You appear to be a bishop, Bishop Daniel; is that  
22 correct?

23 A. I believe I am, yes. Yes, I am a bishop of the  
24 Episcopal Church.

25 Q. You certainly dress like one is the reason I mentioned

1 it in that way.

2 A. Yes.

3 Q. What if anything are you bishop of right now?

4 A. I'm now a bishop of the Diocese of Pennsylvania.

5 Q. And how long have you been in that position?

6 A. A year and a half.

7 Q. Let me go back, please, and ask you a little personal  
8 background. You don't sound like a Pennsylvanian, so where  
9 were you born and grew up?

10 A. I was born in eastern North Carolina, grew up in eastern  
11 North Carolina, went to school in North Carolina, college,  
12 university, and then Virginia Seminary.

13 Q. Where did you go to college in North Carolina?

14 A. University of North Carolina, Chapel Hill.

15 Q. And then to seminary where?

16 A. Virginia Seminary in Alexandria, Virginia.

17 Q. Were you ordained a deacon and priest in due course?

18 A. Yes, in the Diocese of East Carolina.

19 Q. And where is the Diocese of East Carolina, the  
20 headquarters I will call it or the seat city?

21 A. In Kinston, North Carolina is where the offices are.

22 Q. Did you serve parishes in North Carolina after seminary?

23 A. I did.

24 Q. Where?

25 A. In Kinston. I was the assistant rector at St. Mary's in

1 Kinston. I was the rector of St. Thomas in Ahoskie.

2 Q. And after that?

3 A. After that I went to Dayton, Ohio, where I was associate  
4 rector at St. Paul's Church, Oakwood, St. Paul's Episcopal  
5 Church, Oakwood.

6 Q. And have you served any -- don't want to go into a lot  
7 of detail, but in your parish ministry have you served at any  
8 other place?

9 A. Yes, St. Michael's Church in Bristol, Rhode Island.

10 Q. All right. Now, when did you become a bishop in the  
11 Episcopal Church?

12 A. 1996. I was elected bishop coadjutor of the Diocese of  
13 East Carolina.

14 Q. Now just explain to the Court, please, what is a  
15 coadjutor bishop?

16 A. Bishop coadjutor is a bishop who is elected while there  
17 is a bishop, a diocesan bishop, and the bishop coadjutor is  
18 elected with an automatic right of succeeding to being  
19 diocesan bishop upon the death, deposition or retirement of  
20 the sitting bishop.

21 Q. Okay. And so you were elected in East Carolina, Diocese  
22 of East Carolina as a bishop coadjutor?

23 A. Yes.

24 Q. To take over from the diocesan bishop when he for  
25 whatever reason was no longer in office?

1 A. Correct.

2 Q. Okay. And did that happen?

3 A. Yes, it did.

4 Q. How long -- did you go through the process, or were of  
5 course exposed to the process, when you were elected bishop  
6 coadjutor, to have your ordination as bishop consented to by  
7 other bishops in the church?

8 A. Yes.

9 Q. And what is that requirement?

10 A. Requires a consent process, it's a consent to  
11 ordination, to be ordained as the bishop, it requires a  
12 majority of the bishops, consent of the bishops of the church  
13 and a majority of the standing committees of the church  
14 consenting.

15 Q. Now, when you say of the church, is that every diocese  
16 in the United States?

17 A. Well, it's every diocese of the Episcopal Church. The  
18 dioceses of the Episcopal Church are beyond the mainland  
19 United States as well, but yes.

20 Q. Just for example, what would be one beyond the mainland  
21 United States?

22 A. The Diocese of the Dominican Republic, the Diocese of  
23 Honduras and so on.

24 Q. That's fine. How many dioceses currently totally are  
25 there in approximate number?

1 A. 109.

2 Q. Bishop Daniel, did you serve as, ultimately, as Bishop  
3 of East Carolina?

4 A. Yes.

5 Q. Until when?

6 A. Until January -- well, until March of 2012.

7 Q. And was it after that that you became the Bishop of  
8 Pennsylvania?

9 A. Yes.

10 Q. Under what circumstances?

11 A. I'm sorry, it was 2013, pardon me. It was 2013.

12 Q. 2013?

13 A. Yes, 2013.

14 Q. So just last year?

15 A. Just last year, year and a half ago.

16 Q. And so how and under what circumstances generally did  
17 you become the Bishop of Pennsylvania?

18 A. The Bishop of Pennsylvania had resigned. That diocese  
19 had had difficulties with its bishop. They called for the  
20 election of the bishop provisional, and I was nominated and  
21 elected bishop provisional.

22 Q. And you are serving in that position now?

23 A. Yes.

24 Q. And where do you live?

25 A. I live in Philadelphia.

1 Q. Bishop Daniel, let me just ask you a few questions in  
2 line with what the judge mentioned a few minutes ago about  
3 the structure of the church. First of all let me ask you  
4 this: While you were Bishop of East Carolina did you serve  
5 in any regional leadership roles regarding the Episcopal  
6 Church?

7 A. Yes. I was vice president of the Fourth Province of the  
8 Episcopal Church, which is basically the southeastern portion  
9 of the United States geographically. I was the vice  
10 president of the province which automatically made me  
11 president of the bishops of the Fourth Province, and I served  
12 in that capacity on the presiding bishop's council of advice  
13 and chaired that group.

14 Q. What general responsibilities does the president of the  
15 bishops of the province lend to the whole church, what  
16 obligations and duties?

17 A. Well, sitting on the presiding bishop's council of  
18 advice, for one, which calls for certain consultation and  
19 some canonical actions from time to time, making provision  
20 for meetings, regular meetings and gatherings of the bishops  
21 of the Fourth Province, sometimes in terms of diocesan  
22 difficulties, canonical pieces.

23 Q. Now, in the legal business we have a Fourth Circuit  
24 Court of Appeals which is a United States Court that kind of  
25 generally covers the southeast geographically. Would that



1 sort of be the same idea?

2 A. Roughly, yes, yes. What you think of as the old south  
3 except for Virginia and Arkansas, Texas.

4 Q. All right, sir. Bishop Daniel, I'm going to ask you a  
5 few questions now just to give us a little bit of background  
6 on the structure of the whole church with particular  
7 questions about the general convention. We have heard  
8 testimony in this case over the last couple weeks that every  
9 diocese sends deputies, they are called I think --

10 A. Yes.

11 Q. -- to a meeting of the general convention of the  
12 Episcopal Church. Is that something that you are conversant  
13 with?

14 A. Yes.

15 Q. And how often does the general convention of the  
16 Episcopal Church meet?

17 A. Every three years.

18 Q. And where does it meet?

19 A. It meets in a different city each time.

20 Q. Is there one scheduled for say 2015?

21 A. Yes.

22 Q. Where will it be meeting if you remember?

23 A. Salt Lake City, Utah.

24 Q. Now, as deputies from each diocese, South Carolina being  
25 one -- and, incidentally, there's another diocese in the

1 State of South Carolina, isn't there?

2 A. Yes, sir.

3 Q. And that's what?

4 A. The Diocese of Upper South Carolina.

5 Q. Headquartered in Columbia?

6 A. Yes.

7 Q. Now, what sort of, I will call it deputation, how many  
8 people and what categories go from each diocese to each  
9 general convention?

10 A. The deputation consists of the bishop, or bishops if  
11 there are more than one, four clerical deputies, four clergy  
12 persons.

13 Q. Four?

14 A. Four. And four lay persons.

15 Q. All right. Now, when they get to the general  
16 convention, say at Salt Lake City next year, do they meet  
17 together, separately, or in what sort of groupings do they  
18 meet and for what purposes?

19 A. The general convention is divided into two houses, the  
20 house of bishops and the house of deputies. The house of  
21 bishops, all bishops, obviously; the house of deputies are  
22 made up of clerical and lay deputies.

23 Q. All right. And you've said the bishops obviously meet  
24 separately.

25 A. Yes.

1 Q. And do they consider legislation separately?

2 A. Yes.

3 Q. All right.

4 A. It is analogous to the government of the United States,  
5 the senate and the house, and for legislation to pass the two  
6 houses have to agree.

7 Q. All right. Now, in the other house, the second one that  
8 would be the house of representatives in Washington, the  
9 house of deputies -- is it called the house of deputies?

10 A. It is.

11 Q. And does it have a presiding officer like the speaker of  
12 the house of representatives?

13 A. Yes, the president of the house of deputies.

14 Q. Who presides as the presiding officer at the house of  
15 bishops?

16 A. Presiding bishop.

17 Q. Presiding bishop, and that's currently who?

18 A. Katharine Jefferts Schori.

19 Q. Now, Bishop Daniel, in the house of deputies, the  
20 non-bishops I'll say for definition, do they sit together as  
21 a deputation from a diocese, or do they all sit as a whole?

22 A. Each diocese, diocesan deputation, sits together, clergy  
23 and lay.

24 Q. Okay. And do they vote together?

25 A. Yes, yes, they'll vote -- there are different kinds of

1 voting, one is just to get an aye or nay vote, sometimes they  
2 vote by dioceses, by orders within the deputation, clergy and  
3 lay. There are different methods of voting.

4 Q. Sometimes in a written ballot, sometimes not?

5 A. Correct.

6 Q. You said sometimes they vote by orders?

7 A. Yes.

8 Q. What does that mean?

9 A. Well, that means that on a particular issue the  
10 clerical -- the clergy deputies will vote and the lay  
11 deputies will vote separately in each diocese.

12 Q. In each diocese?

13 A. And if both orders vote the same way, aye or nay, then  
14 the diocesan vote is cast in that way. If they are divided  
15 or tied, then it's not counted, it's counted as a no vote, as  
16 a neutral vote.

17 Q. Are you saying that there are some issues that are  
18 presented sometime to this legislative body that can require  
19 a vote in that fashion and simply not individual votes?

20 A. Correct.

21 Q. Okay. Now, have you participated as a member of the  
22 house of bishops since you were ordained a bishop?

23 A. I have.

24 Q. I want to ask you now some questions about our situation  
25 here in South Carolina. When Mark Lawrence was first elected

1 bishop, and there's been testimony here that he was elected  
2 twice, so I'm going to ask you questions about what you know  
3 about it in certain respects. When Bishop Lawrence was  
4 elected for the first time, were you as a bishop asked to  
5 consent to his ordination in accordance with what you I think  
6 explained earlier?

7 A. Yes, I was.

8 Q. And where were you serving then when that occurred? I  
9 think it was around 2006, I believe.

10 A. Diocese of East Carolina.

11 Q. And on that occasion did you give consent for his  
12 ordination as a bishop?

13 A. I did.

14 Q. Now, was the standing committee of your diocese also  
15 required to consider that issue and give consent or not for  
16 his ordination?

17 A. They were.

18 Q. Do you recall what they did?

19 A. Yes.

20 Q. And what was that?

21 A. They did not give consent.

22 Q. Did not give consent?

23 A. Did not.

24 Q. All right. Now, after that occurred are you aware, as  
25 has been testified here, that there was another election in

1 South Carolina for bishop?

2 A. Yes, sir.

3 Q. And are you aware of what the result of that local  
4 election was?

5 A. Mark Lawrence was elected bishop.

6 Q. Okay. Now, in the interim between the first election  
7 and second election did you have any communication or  
8 information concerning the matter of concerns about Mark  
9 Lawrence and whether he should be consented to a second time  
10 or not to become Bishop of South Carolina?

11 MR. RUNYAN: I may not have a problem, Your Honor, but  
12 seems to me he hasn't laid a foundation to establish personal  
13 knowledge.

14 MR. TISDALE: I'm coming to that. I'm sorry. I hadn't  
15 just gotten to it yet.

16 THE COURT: Okay.

17 Q. Did you at one point or another, you and your standing  
18 committee, receive written communication from Bishop  
19 Lawrence?

20 A. Yes.

21 Q. All right. And what, generally -- was it in the form of  
22 a letter or email or --

23 A. A letter.

24 Q. -- essay or what?

25 A. A letter and an essay or written material.

1 Q. Written material?

2 A. Yes.

3 Q. And was that between when he first did not get the  
4 necessary consents and after his -- and before his election  
5 or after his election?

6 A. After his second election, yes.

7 Q. After his section election?

8 A. Yes.

9 Q. And what was the general import --

10 MR. RUNYAN: Your Honor, I believe the best evidence  
11 would require the document itself.

12 MS. GOLDING: And further I would also interpose an  
13 objection as to relevance. I don't believe this is relevant  
14 to any claims in this action.

15 THE COURT: I understand.

16 MR. TISDALE: I believe that it's already been -- you've  
17 accepted that letter, or excerpts from it were read into the  
18 record from a request to admit, I think.

19 MR. RUNYAN: If it's in the record there's not a  
20 problem.

21 MR. TISDALE: Well, it is in the record.

22 MR. RUNYAN: Maybe you could go to that.

23 MR. TISDALE: If we can find it, pull it up. And I'd  
24 like just the bishop to refresh his -- on one aspect of what  
25 was said in the letter, like to refresh his recollection on

1 it, but I can ask him.

2 Q. Leaving that a minute, as a result of the  
3 communication -- it might not be necessary to get into that  
4 but we'll see -- Bishop Daniel, as a result of the  
5 communication that you had from Bishop Lawrence and that your  
6 standing committee received from Bishop Lawrence what  
7 decision, if any, did you make concerning what you would do  
8 to consent or not to his second election?

9 MS. GOLDING: Your Honor, I would also object to this  
10 witness testifying as to what his standing committee or the  
11 standing committee --

12 MR. TISDALE: Well, leave that out for now.

13 MS. GOLDING: Just continuing my objection as to  
14 relevancy, Your Honor.

15 THE COURT: I understand.

16 Q. Did you give consideration during this period of time  
17 whether to consent to his ordination after his second  
18 election or not, did you give consideration to that?

19 A. I did.

20 Q. And can I ask you to describe to the Court what you did  
21 to consider that issue?

22 A. Well, I read the written materials that I received, I  
23 prayed about it, I thought about it, and I believed in the  
24 last result what Mr. Lawrence had written in his material,  
25 that he would be a faithful and loyal bishop of the Episcopal



1 Church and obedient to the canons of the church, and I gave  
2 my consent on that basis.

3 MR. TISDALE: Okay. Bishop Daniel, the Judge might want  
4 to know something more about the structure of the church, but  
5 I think we covered it pretty well if she says we did, and if  
6 any of these lawyers have any questions about your testimony,  
7 I would appreciate your answering.

8 THE WITNESS: Yes, sir.

9 MR. TISDALE: Thank you very much.

10 THE COURT: Thank you. Anything from the national  
11 church first.

12 MS. KOSTEL: Nothing.

13 THE COURT: All right. Very well, yes, sir.

14 CROSS-EXAMINATION BY MR. RUNYAN:

15 Q. Good morning, Bishop.

16 A. Good morning.

17 Q. Just to follow up on that letter, are you sure it wasn't  
18 received during the first consent process?

19 A. My memory is the second, but I may not be correct in  
20 that.

21 Q. I want to ask you a few things about your job as bishop  
22 if I could. You are a bishop with jurisdiction, is that  
23 right?

24 A. Yes, that's correct.

25 Q. As a part of your duties, or I guess that's the wrong

1 word, as a part of your job do you visit congregations that  
2 are in your charge?

3 A. Yes.

4 Q. Do you confirm new members?

5 A. Yes.

6 Q. Do you sometimes write pastoral letters to  
7 congregations?

8 A. Yes, I do.

9 Q. And do you try to keep a record of your official acts,  
10 whatever they may be?

11 A. I do.

12 Q. Do you report the state of the diocese at your annual  
13 conventions?

14 A. I do.

15 Q. Okay. And you understand that as a bishop with  
16 jurisdiction, if you wanted to go into another jurisdiction  
17 where there is a bishop with jurisdiction, you would need his  
18 consent, his or her consent, would you not?

19 A. Yes, absolutely.

20 Q. Okay. And you give approval to Episcopal elections, we  
21 talked about that just now.

22 A. Yes.

23 Q. And you vote in the house of bishops as required?

24 A. Yes.

25 Q. You're president of your diocesan convention?

1 A. Yes, I am.

2 Q. You ordain?

3 A. Yes.

4 Q. And you approve for ordination candidates of the  
5 diocese?

6 A. Yes.

7 Q. And you receive letters dimissory, is that right?

8 A. Yes.

9 Q. Could you tell the Court what that is?

10 A. A letter dimissory?

11 Q. Dimissory, excuse me.

12 A. It is the transfer of the canonical residence of a  
13 clergy person, priest or deacon, from one diocese to another  
14 diocese. It is more than simply a letter of transfer. It is  
15 also an attestation to the character of that priest or  
16 deacon.

17 Q. Likewise you give letters dimissory?

18 A. I give and receive letters dimissory, yes.

19 Q. And if clergy who are not canonically resident come into  
20 the diocese, you license them for that purpose if you choose  
21 to?

22 A. Yes, after a vetting process. We do a background check,  
23 etc., etc., and then I decide -- I confer with their bishop,  
24 and then I decide whether or not to license them.

25 Q. And from time to time you may unfortunately be involved

1 in clergy discipline within your diocese.

2 A. Yes, yes.

3 Q. Now, when you go to the general convention, you go as a  
4 member of the house of bishops; is that correct?

5 A. Yes, I do.

6 Q. Would you agree with me that the other member of general  
7 convention would be the diocese?

8 A. Well, I've never thought of a diocese as a member of the  
9 general convention; diocese is a member of the Episcopal  
10 Church.

11 Q. Let's talk about the voting process.

12 MR. TISDALE: Can he finish that answer, please, Your  
13 Honor? I don't know whether he was finished or not.

14 Q. Please finish.

15 A. I've never thought of it as a member. A diocese is a  
16 constituent part of the Episcopal Church as long as it obeys  
17 the canons and the rubrics of the Book of Common Prayer.

18 Q. Thank you, Bishop. Let's talk about voting.

19 A. All right.

20 Q. Do the delegates vote individually or do they vote as a  
21 diocese?

22 A. Well, sometimes individually and sometimes as a diocese.

23 Q. And when they vote individually, they count each head as  
24 a vote?

25 A. Yes, one person, one vote, yes.

1 Q. And when they vote as a diocese, would it be by orders  
2 sometimes?

3 A. Yes.

4 Q. All the time or just sometimes?

5 A. Not all the time, sometimes.

6 Q. So if it's by orders or not by orders, when they vote as  
7 a diocese, they vote as a unit?

8 A. They vote by orders -- sometimes by orders and sometimes  
9 as a diocese but as a unit, yes.

10 Q. Okay. And if you're a tiny diocese or if you're a huge  
11 diocese and you vote that way you just get one vote.

12 A. That's correct.

13 Q. Okay. And it is those same entities that give consent  
14 to Episcopal elections. It is you as a bishop with  
15 jurisdiction and it is the standing committee of the diocese  
16 who does.

17 A. Yes.

18 Q. And those are the same two groups that vote at  
19 convention.

20 A. No. Which convention, diocesan convention?

21 Q. General convention.

22 A. No, the standing committee is not the deputation to  
23 general convention.

24 Q. I'm sorry. The standing committee vote for consent is  
25 as a body that is representing the diocese when they vote for

1 consent?

2 A. Yes.

3 Q. Okay.

4 A. Oh, yes, yes.

5 Q. And then the diocese in convention votes sometimes?

6 A. To give consent.

7 Q. No, no, no.

8 A. You're confusing me.

9 Q. I'm sorry. Let's leave that. I don't want to do that.

10 When your standing committee voted no on that consent for

11 Bishop Lawrence --

12 A. Mm-hmm.

13 Q. -- you did not have the power to overrule them, did you?

14 A. No, both parties, the bishop and the standing committee  
15 vote separately.

16 Q. All right. I don't know, I didn't hear, but were you at  
17 the 2009 general convention?

18 A. I was.

19 Q. And were you at the 2012 general convention?

20 A. Yes.

21 Q. And when you are at convention, you are given seat,  
22 voice and vote?

23 A. Yes.

24 Q. Is that from the roll call that produces that result?

25 A. Yes, the roll is called of those members of the house

1 who have seat, voice and vote.

2 Q. And because you have seat, voice and vote you can speak  
3 to issues in debate?

4 A. Correct, yes.

5 Q. And the roll call is called in order of consecration,  
6 the order of your consecration, senior to junior?

7 A. No, in alphabetical order by diocese.

8 Q. Okay. Alphabetical order by diocese. And there's a  
9 special place where you sit, bishops?

10 A. Oh, yes, we sit at round tables, yes.

11 Q. But it's the bishops -- the bishops sit there --

12 A. Yes.

13 Q. -- is that right?

14 A. Yes, that's right.

15 Q. Okay. Now, 2009, was Mark Lawrence present as far as  
16 you know?

17 A. Yes, yes.

18 Q. Did he have seat, voice and vote?

19 A. Yes.

20 Q. And in 2012 was Mark Lawrence present?

21 A. Yes.

22 Q. Did he have seat, voice and vote?

23 A. Yes.

24 Q. Okay. You mentioned the province four, and you had some  
25 discussion about that. I don't think I heard you to say that

1 province four was a court. Province four is not a court, is  
2 it?

3 A. There is a provincial court for disciplinary matters,  
4 certain disciplinary matters, yes.

5 Q. Court of review for disciplinary matters from the  
6 diocese?

7 A. Yes.

8 Q. Okay. But there is no ultimate court of review in the  
9 Episcopal Church.

10 A. Yes, there is.

11 Q. There is?

12 A. There is indeed.

13 Q. It says that in the constitution?

14 A. It's in the canons certainly. I was president of the  
15 court of review for the trial of a bishop.

16 Q. I'm with you there. I'm with you there. Let me just --  
17 have you read the constitution recently?

18 A. Not in the last month, no.

19 Q. Are you familiar with the article dealing with -- in  
20 fact, the caption is Of Courts.

21 A. Yes.

22 Q. You are. Do you agree with me that presbyters and  
23 deacons are tried in the diocese?

24 A. Yes.

25 Q. And that the general convention may establish courts of



1 review, you agree with that because you had one.

2 A. For the trial of a bishop.

3 Q. For the trial of a bishop.

4 A. Yes.

5 Q. And that the general convention may establish an  
6 ultimate court of appeal solely for the review of the  
7 determination of any court of review on questions of  
8 doctrine, faith or worship, do you know if that exists?

9 A. For the trial of a bishop the ultimate court is the  
10 house of bishops itself, as my memory serves.

11 Q. Yes, sir. Well, let's switch to another thing.

12 A. All right.

13 Q. In order for discipline to be effective in the Episcopal  
14 Church would you agree with me that the procedures that are  
15 called out for in the constitution and canons must be  
16 followed?

17 MR. BEERS: Your Honor, objection, beyond the scope, far  
18 beyond the scope.

19 MR. RUNYAN: Open cross, Your Honor.

20 MR. BEERS: Sorry. Thank you.

21 THE COURT: Yes. You may proceed.

22 Q. Do you remember the question, Bishop?

23 A. Say it again, please.

24 Q. Would you agree with me that for the discipline of a  
25 member of the clergy, for instance a bishop in the Episcopal

1 Church, to be effective you must follow the rules associated  
2 with that process?

3 A. The canons, yes.

4 Q. Okay. And would you agree with me that a province, a  
5 provincial senate -- what is a provincial senate?

6 A. Provincial senate is made up of the bishops of the  
7 diocese and the members of dioceses of a province. Sometimes  
8 the provincial senate before general convention sits with the  
9 deputations from the various dioceses to review matters  
10 coming before the general convention. Other times assorted  
11 representatives of the dioceses may come to consider other  
12 programmatic issues.

13 Q. Would it be fair to say that that provincial senate is a  
14 meeting of a group of persons from a group of dioceses that  
15 are geographically located?

16 A. Depends on the meeting.

17 Q. All right. But in province four we're talking about a  
18 province that would include the State of South Carolina.

19 A. Yes.

20 Q. Okay. Would you agree with me that province four has no  
21 power to regulate or control the internal policy or affairs  
22 of any of its constituent dioceses?

23 A. Well, it certainly has canonical authority in terms of  
24 how the church is structured and how the life is carried out.  
25 Can the provincial senate walk into the Diocese of East

1 Carolina and say, you're not doing it right, we want you to  
2 do it this way, no.

3 Q. I'm not trying to trick you, Bishop.

4 A. I'm just trying to answer your question as I understand  
5 it.

6 Q. I understand. I was quoting from a canon. If you would  
7 like to see it, I'll be happy to give it to you.

8 A. Just read it.

9 Q. Okay. Section 8, Powers of Provincial Senate: The  
10 provincial senate shall have power, A, to enact ordinances  
11 for its own regulation and government.

12 A. Yes.

13 Q. B, to elect judges of the provincial court of review.

14 A. Yes.

15 Q. C, to perform such duties as may be committed to it by  
16 the general convention. D, to deal with all matters within  
17 the province provided, however, that no provincial senate  
18 shall have power to regulate or control the internal policy  
19 or affairs of any constituent diocese.

20 A. Yes.

21 Q. Do you agree with that?

22 A. Sure, that's what I just said.

23 MS. KOSTEL: Excuse me, Mr. Runyan, could you clarify  
24 what version of the canons -- what year you're reading from?

25 MR. RUNYAN: 2006.

1 MS. KOSTEL: Okay. Thank you.

2 MR. RUNYAN: May be just about done.

3 THE COURT: Sure.

4 Q. Bishop, when your diocese, either East Carolina or your  
5 present diocese, amends its constitution and canons, do you  
6 have to send those before amendment to the national church  
7 for their approval?

8 A. No, but as long as those amendments or changes are in  
9 accord with the constitution and canons of the Episcopal  
10 Church. We're not free to be rebels.

11 Q. There's not something that says, this one's going to be  
12 different, so we have to send it?

13 A. I think common sense says if I'm going to change a --  
14 introduce a constitutional change that takes us away from the  
15 structure, the order, the doctrine, discipline and worship of  
16 the Episcopal Church then, first of all, I don't see any  
17 point in taking it to you, you're rebelling anyway, so as  
18 long as the constitutional changes subscribe to and accede to  
19 the constitution and canons of the Episcopal Church, no.

20 Q. That's common sense.

21 A. Yes.

22 MR. RUNYAN: Thank you.

23 THE WITNESS: That's common sense.

24 THE COURT: All right. Any other plaintiffs?

25 All right. Redirect.

1 MR. TISDALE: A little bit on redirect, Your Honor.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION BY MR. TISDALE:

4 Q. I've gotten at least what I would like to ask you to  
5 look at and identify as to whether this is at least part of  
6 the material in the form of a letter from Bishop Lawrence to  
7 others, including you.

8 MR. RUNYAN: Your Honor, that's beyond the scope of  
9 cross. That is beyond the scope of cross.

10 MR. TISDALE: Well, we were looking for it and found it,  
11 and this is a response to a request for admission that was  
12 read into court the other day.

13 MS. GOLDING: May we see the letter?

14 MR. TISDALE: It's part of the request for admission  
15 response that you all sent us.

16 MS. GOLDING: But you didn't have the letter.

17 MR. TISDALE: I don't have the letter. I've got what  
18 you all sent, and I'm going to ask him is this a part of the  
19 letter that he received that you all sent us.

20 MS. GOLDING: Your Honor --

21 MR. RUNYAN: It's a request for admission so you can --  
22 I'm not trying to tell you -- it's beyond the scope of cross.

23 MS. GOLDING: And a request for admission doesn't come  
24 in through a witness, Your Honor.

25 MR. TISDALE: It's the same language that they gave us.

1 THE COURT: The letter was presented a couple of days  
2 ago.

3 MR. TISDALE: That's correct.

4 THE COURT: I don't know that it was moved in.

5 MR. TISDALE: It was read.

6 THE COURT: It was read.

7 MR. RUNYAN: He published the request for admission.

8 MR. TISDALE: I published it.

9 THE COURT: Yes.

10 MR. TISDALE: I just want to know if it's the same thing  
11 he got.

12 THE COURT: This is what I can offer: You wouldn't put  
13 in the request to admit at this moment. You'd put it in when  
14 the witness steps down. But you can show him the Manhattan  
15 phonebook if he needs to refresh his recollection.

16 Q. Okay. This is a little bit more direct than that but,  
17 Mr. Daniel, I want you to take a minute -- I had put brackets  
18 just for your -- this is a legal document. It's a response  
19 to requests for admissions, and I put brackets here, and it  
20 goes over to one line on the second page, and you just take a  
21 quick look at that and see if -- my ultimate question will be  
22 is that the same language that you received in the form of a  
23 letter?

24 A. Yes.

25 Q. It is?

1 A. Yes.

2 MR. TISDALE: Your Honor, may I ask him to please read  
3 it since he has identified it as the language of the letter  
4 he received?

5 THE COURT: I know what the objection's going to be.

6 MR. RUNYAN: Cumulative.

7 THE COURT: Best evidence rule.

8 MS. GOLDING: Best evidence rule.

9 THE COURT: It has to be sustained.

10 MR. TISDALE: Thank you. And I will identify this as  
11 Request for Admission No. 13.

12 THE COURT: Let's finish with the witness and then you  
13 can publish it.

14 MR. TISDALE: Okay.

15 THE COURT: We'll do it separately.

16 MR. TISDALE: We've published it. I'm not going to  
17 publish it again. I just want to identify it as the same  
18 thing that was published the other day.

19 THE COURT: Sure. Got it.

20 MR. TISDALE: I have a few more questions.

21 THE COURT: Okay.

22 Q. Mr. Runyan asked you a number of questions about a  
23 structure and authority of the church. What are the basic  
24 governing documents for the church?

25 A. The basic governing documents.

1 Q. The fundamental basic governing documents.

2 MS. GOLDING: Are we referring now to the national  
3 church?

4 MR. TISDALE: Yes, the church.

5 MS. GOLDING: Well, I mean, I thought the Court asked,  
6 because we've got --

7 THE COURT: Lots of churches involved.

8 MS. GOLDING: -- 30-something churches in this, that we  
9 agreed that we would refer to TEC as the national church, and  
10 that's why I want to make sure.

11 MR. TISDALE: I thought they were parishes, but I'm not  
12 going to quibble about that.

13 MS. GOLDING: Some of them have names of churches in  
14 there. Your Honor, I just think for clarity I need it. I  
15 need to know when he's talking about a church he's talking  
16 about the national church.

17 MR. TISDALE: I will make that clear for the purposes of  
18 this question and hereinafter to the extent I can.

19 THE COURT: Thank you. And we're right here to help  
20 you.

21 MR. TISDALE: I'm certain that they will help me, and I  
22 appreciate any you can give me.

23 THE COURT: I understood national church.

24 MR. TISDALE: Thank you.

25 Q. Bishop Daniel, what are the basic fundamental governing



1 documents of the Episcopal Church, Protestant Episcopal  
2 Church otherwise known in the United States of America?

3 A. The governing documents are the Book of Common Prayer,  
4 the Constitution of the Episcopal Church and the Canons of  
5 the Episcopal Church, and certainly implicit in that I'll  
6 state now is the Bible.

7 Q. Okay. Thank you. Now, you said the dioceses, I think,  
8 as I believe in answering Mr. Runyan's question, are  
9 constituent parts of the general convention.

10 A. Yes.

11 Q. And of course also they remain a constituent or parts,  
12 do they not, as long as they obey the constitution and canons  
13 of the church?

14 A. Yes.

15 MS. GOLDING: Your Honor, I am going to object.  
16 Mr. Tisdale is leading the witness.

17 MR. TISDALE: I apologize for leading.

18 THE COURT: Okay. Re-ask your question, then we'll see  
19 where we are.

20 Q. Okay. Under what circumstances can a diocese remain a  
21 part, a constituent part of the Episcopal Church in the  
22 United States?

23 A. As long as it accedes to the constitution and canons of  
24 the Episcopal Church or the rubrics of the Book of Common  
25 Prayer.

1 MR. TISDALE: Thank you. Excuse me one moment please,  
2 Your Honor.

3 THE COURT: Surely.

4 Q. Are there any circumstances you know of in which a  
5 diocese can leave the church?

6 A. I believe the diocese could leave the Episcopal Church  
7 if the general convention agreed to it but --

8 Q. Under any other circumstances that you know of could  
9 that happen?

10 A. No.

11 Q. Thank you. Now, Bishop Daniel -- excuse me, I want to  
12 just identify this and then we'll see if there are any other  
13 questions that other counsel have. Your Honor, what I wanted  
14 to simply refer to to the record are the plaintiff diocese's  
15 response to request for admissions.

16 MR. RUNYAN: Your Honor, can we finish with the witness  
17 first?

18 THE COURT: Yes. Just hold on to it. I think you  
19 published it the other day, though. Isn't that what you  
20 published the other day?

21 MR. TISDALE: It's Defendant's Exhibit No. 16.

22 (Defendant's Exhibit 16 marked for identification.)

23 THE COURT: Yes. And I've seen the letter.

24 MR. TISDALE: It's in the record, and my label just now  
25 may be wrong, but we've cleared that up and we're finished.

1 THE COURT: Let me tell you what my memory is because  
2 you all may want to check my memory because of what you may  
3 or may not consider that letter with regards to its  
4 importance. My memory is it was published and perhaps marked  
5 for identification but not placed into evidence. You might  
6 want to check.

7 MR. TISDALE: That is correct.

8 THE COURT: Okay.

9 MR. TISDALE: You're correct.

10 THE COURT: All right. Anything from the national  
11 church?

12 MR. BEERS: No, Your Honor.

13 THE COURT: All right. Very well. Recross.

14 RECROSS-EXAMINATION BY MR. RUNYAN:

15 Q. Bishop, just one question, but I'm going to hand you two  
16 big old heavy documents before I ask it, and would you just  
17 look at those two and tell me what they are?

18 A. Well, the top page says constitution and canons.

19 Q. Would you look at the next page and tell us what year?

20 A. Next page says 2006 on one set and 2009 on the next set.

21 Q. Okay. And those are the constitution and canons for  
22 those two years of the national church, that's not the  
23 diocese, is it?

24 A. Yes, yes, yes, the national church.

25 Q. Would you please turn to the page in those two where it

1 says the diocese cannot withdraw from the Episcopal Church  
2 and read it to us?

3 A. You're asking me to find the page, you're going to have  
4 to wait a little while.

5 Q. I am.

6 A. What is your question?

7 Q. My question is is there a page or a phrase or a sentence  
8 in either of those that says, quote, a diocese may not leave  
9 the Episcopal Church without the consent of the general  
10 convention?

11 A. I don't believe so.

12 MR. RUNYAN: Thank you, sir.

13 THE WITNESS: But I may be wrong.

14 MR. RUNYAN: I'm sure it will be pointed out if you are.  
15 Thank you, Bishop.

16 THE COURT: Anything further from any of the plaintiffs,  
17 cross-examination?

18 Thank you, sir, you may come down.

19 THE WITNESS: Thank you.

20 THE COURT: Very well.

21 MR. TISDALE: I just wanted to, about the third time  
22 I've tried improperly, I'd just like to identify this. It is  
23 marked as an exhibit for identification, and it is responses  
24 to requests for admissions, just for identification in the  
25 record, from the plaintiff diocese dated August 15th, 2013,

1 just so we can identify it to what had already been  
2 submitted.

3 THE COURT: Thank you so much. Yes, sir, thank you so  
4 much.

5 MR. TISDALE: And we would like to mark it an exhibit if  
6 Your Honor would allow.

7 THE COURT: You can certainly publish --

8 MR. TISDALE: Well, we have published it, but would you  
9 accept it as an exhibit, Defendant's Exhibit?

10 THE COURT: Let's mark it for identification purposes.

11 MR. TISDALE: It's already marked.

12 THE COURT: And it's in in any event. Let me just  
13 explain to you, it's been published to the Court. It is a  
14 request to admit. If I need to refer back to it, gosh, what  
15 was that, then I'll have it and be able to refer back to it.

16 MR. TISDALE: And, Your Honor, it is already marked for  
17 identification.

18 THE COURT: Yes, and it is part of the record.

19 MR. TISDALE: And it is. Thank you.

20 THE COURT: Thank you.

21 MR. TISDALE: I have nothing further from this witness.

22 THE COURT: Very well. Next witness.

23 MR. TISDALE: I have one that's not lengthy, Your Honor.

24 THE COURT: Less than lengthy.

25 MR. TISDALE: Less than lengthy.

1 THE COURT: Thank you. And then once we hear that  
2 witness, then the different parishes are going to go to work  
3 on exhibits.

4 MR. TISDALE: That's what we'll do after this witness.

5 THE COURT: Yes, sir. Thank you. Call your witness.

6 MR. TISDALE: Pat Neumann.

7 MS. KOSTEL: Your Honor, may I leave the courtroom for a  
8 few minutes?

9 THE COURT: Yes.

10 MS. KOSTEL: Thank you.

11 PATRICIA GARNER NEUMANN,  
12 being first duly sworn, testified as follows:

13 THE COURT: I'm going to ask you just to state your full  
14 name for our record and spell your last name, please.

15 THE WITNESS: Patricia Garner Neumann, N-E-U-M-A-N-N.

16 THE COURT: Your witness.

17 DIRECT EXAMINATION BY MR. TISDALE:

18 Q. Good morning, Ms. Neumann.

19 A. Good morning.

20 Q. Ms. Neumann, please for the record and the Court tell us  
21 where you live.

22 A. Edisto Island, South Carolina.

23 Q. And where were you born and grew up?

24 A. Well, I was actually born in Charleston, but I grew up  
25 right here in St. George.

1 Q. St. George. All right. How long have you lived down at  
2 Edisto Island?

3 A. A little over nine and a half years.

4 Q. And where were you living before you moved there nine  
5 and a half years ago?

6 A. Hopkinton, Massachusetts.

7 Q. Are you married?

8 A. Yes.

9 Q. And you and your husband lives down in Edisto?

10 A. Yes.

11 Q. Do you live there as your permanent residence?

12 A. Yes, our full-time residence.

13 Q. Okay. Have you been involved in any church or religious  
14 organization while living at Edisto?

15 A. Yes, Trinity Church on Edisto Island and the Episcopal  
16 Church on Edisto Island.

17 Q. Now, let's take them -- you mentioned two separate ones,  
18 right?

19 A. Yes.

20 Q. Let's do the first one first. Trinity Church, Edisto  
21 Island, is that the parish that was an Episcopal Church at  
22 Edisto?

23 A. Yes.

24 Q. And has now left the Episcopal Church?

25 A. Yes.

1 Q. Okay. When did you become associated with that parish?

2 A. 2005.

3 Q. All right. And tell us the circumstances of how you  
4 became involved in your activities in the church?

5 A. I did a bit of church shopping when I first moved to  
6 Edisto. I was raised a Methodist. I actually went to that  
7 Methodist church that's right over there on Parler Avenue as  
8 a child. I first went to the Methodist church. I then went  
9 to the Presbyterian church, and then I went to Trinity  
10 Church, and that's where I found my home. I tend to get  
11 involved with an organization when I join it, usually rather  
12 rapidly. I became the chairman of the Pon Top Cookbook. I  
13 became a chalice -- lay reader first and then a chalice  
14 bearer.

15 Q. Do you want to explain to the Court just briefly what a  
16 chalice bearer is in the church?

17 A. In a small church like Trinity we were responsible for  
18 assisting the priest with communion and also reading portions  
19 of the scripture during the service.

20 Q. Okay. And chalice refers to the chalice --

21 A. That has the wine in it.

22 Q. -- that's part of the communion service?

23 Okay. Excuse me. Go ahead.

24 A. I also was involved with something called Martha's  
25 Ministry which prepared food and took food to people who were



1 sick or bereaved and we also assisted with funeral  
2 receptions, and then I also was on the vestry for a year.

3 Q. All right. Now, did there come a time, Ms. Neumann,  
4 that you discovered that there was a possibility the parish  
5 might be interested in leaving the Episcopal Church?

6 A. Yes.

7 Q. Tell us about that and the circumstances of it.

8 A. There had been rumors sort of circulating. The first  
9 time it really came to the forefront was in an annual meeting  
10 in November of 2011.

11 Q. 2011?

12 A. Yes.

13 Q. And who led the discussion about the issue at that  
14 meeting, if anyone?

15 A. The Reverend Wey Camp.

16 Q. Was he the rector?

17 A. He is.

18 Q. And is that just for the court reporter's purposes  
19 spelled W-E-Y?

20 A. Yes.

21 Q. Camp, C-A-M-P?

22 A. Yes.

23 Q. Tell us about that.

24 A. He led the discussion, we also had the senior warden at  
25 the time which was H. Wayne "Bubba" Unger.

1 Q. Okay.

2 A. The meeting consisted of discussing the quitclaim deeds,  
3 the one quitclaim deed that was issued to Trinity, and it had  
4 already been executed by that point.

5 Q. What do you mean executed, received?

6 A. I don't understand exactly what you do to execute a  
7 quitclaim deed, but it had been filed or whatever needed to  
8 be done with it.

9 Q. The parish had it and you think filed it.

10 A. Yes.

11 Q. Okay. Now, was anything said at that meeting about a  
12 plan to depart the Episcopal Church?

13 A. No. Basically we were told this was being done for our  
14 protection.

15 Q. What?

16 A. Getting the quitclaim deeds, you know, that the diocese  
17 had relinquished control over our property.

18 Q. What happened after that with regard to the issue of  
19 departure from the church, if anything did?

20 A. Well, we then -- the bylaws were in the process of being  
21 rewritten to primarily remove -- primarily they were being  
22 rewritten to remove the accession clauses to the national  
23 church and also to the plaintiff's diocese.

24 Q. When did that happen?

25 A. I don't know when the team that was rewriting -- was

1 writing the bylaws was actually appointed because I was not  
2 on the vestry, but they were completed right around the end  
3 of 2011, beginning of 2012.

4 Q. Early 2012 at the latest would you say?

5 A. That would be the latest.

6 Q. Now, did the congregation ever vote on those issues that  
7 you know of?

8 A. Yes, they did.

9 Q. And was it approved?

10 A. It was approved in February 2012, that set of bylaws.

11 Q. And you say that removed accession to the Episcopal  
12 Church?

13 A. Yes, it did.

14 Q. And did there come a time that you stopped worshiping at  
15 Trinity Church, Edisto?

16 A. Yes.

17 Q. When was that and the circumstances of it, why?

18 A. Okay. I left Trinity Episcopal Church December 31st,  
19 2012. That was the day following a hastily called vestry  
20 meeting at which we were asked to vote on leaving the  
21 national church.

22 Q. All right. And the vestry voted on that?

23 A. Yes.

24 Q. And were you present?

25 A. I was.

1 Q. And did you vote?

2 A. I did.

3 Q. And how did you vote?

4 A. I voted not to leave the Episcopal Church.

5 Q. But was that vote passed in the affirmative or not?

6 A. It was passed in the affirmative.

7 Q. And have you worshiped at Trinity Edisto since then?

8 A. No, I have not.

9 Q. Okay. Now what did you, if you did anything, I want you  
10 to explain to the Court what you -- were there others who  
11 wanted to remain loyal to the Episcopal Church?

12 A. Yes.

13 Q. All right. Did you get together to decide what to do  
14 for worship as an Episcopalian, did you do that?

15 A. There was a group that got together in November of 2012,  
16 toward the end of November, to start to make plans to worship  
17 as an Episcopal Church because we knew it was coming.

18 Q. And were those plans carried forward?

19 A. Yes.

20 Q. Explain to the Court what you did to worship as  
21 Episcopalians down on Edisto, how did that evolve?

22 A. There are two retired Episcopal priests living on  
23 Edisto, so they assisted with the spiritual side or the  
24 actual worship services. The first worship services were  
25 held in private homes, and the first service was actually

1 held on December the 1st, 2012. The meetings were in private  
2 homes, and I'm not sure how many Sundays that was because I  
3 was still at Trinity Church at that point, I think there were  
4 three or four, and then the services were moved to Po Pigs  
5 Bo-B-Q Restaurant, Edisto Island.

6 Q. Now, did the Episcopalians there, the ones who had not  
7 left, conduct worship services -- and what did you say the  
8 name of the of the place was?

9 A. Po Pigs Bo-B-Q Restaurant.

10 Q. Is that a restaurant?

11 A. It is.

12 Q. All right. And did you all conduct worship services at  
13 the barbecue restaurant?

14 A. We did.

15 Q. Every Sunday?

16 A. Every Sunday.

17 Q. Okay. And about when did that start?

18 A. I believe that had to have started at the end of  
19 December or beginning of January. It was during my  
20 transition from one church to the next.

21 Q. Okay. And how long did you worship at the barbecue  
22 restaurant?

23 A. Until the beginning of April 2013.

24 Q. What arrangements were made, if any, for the worship of  
25 the Episcopal Church people in the Episcopal Church at that

1 point?

2 A. Repeat that again.

3 Q. Where did you go to worship after you stopped worshipping  
4 at the barbecue restaurant?

5 A. Oh, yes, began to rent the historic sanctuary of the New  
6 First Missionary Baptist Church.

7 Q. Where is that?

8 A. That is on Highway 174, 1644 Highway 174 on Edisto  
9 Island.

10 Q. How far is it from the old Trinity, the place you used  
11 to worship, Trinity?

12 A. Maybe an eighth of a mile.

13 Q. Okay. And what arrangements were made to worship  
14 there -- first of all is it an old building?

15 A. Built in 1818.

16 Q. Okay. And what arrangements did you all make to worship  
17 there?

18 A. We rent from them.

19 Q. And how often do you conduct services there?

20 A. Every week.

21 Q. On Sunday?

22 A. Sunday at 10:00.

23 Q. All right. And do you have a priest for the worshipping  
24 community?

25 A. We have two retired priests on Edisto, and they each

1 take a Sunday, and the other Sundays we have supply priests,  
2 and we do occasionally have morning prayer.

3 Q. Okay. Now, just for the court record, you said  
4 occasionally have morning prayer, when you don't have morning  
5 prayer, what do you have?

6 A. We have a supply priest or one of the two retired  
7 priests.

8 Q. I know, but you said you have morning prayer, is that  
9 without a priest?

10 A. That is without a priest. That would be led by a  
11 layperson.

12 Q. A layperson would lead the morning prayer?

13 A. Yes.

14 Q. When you're not having morning prayer and have a regular  
15 service, what service is it normally?

16 A. Rite II of the Holy Eucharist, is that what you mean?

17 Q. Rite II of the Holy Eucharist of what?

18 A. The national Episcopal Church.

19 Q. Book of Common Prayer?

20 A. Book of Common Prayer.

21 Q. And is a priest necessary to conduct that service?

22 A. Yes.

23 Q. Okay. Now, have you been active in the leadership of  
24 that group at the Missionary Baptist Church Episcopal group?

25 A. Yes, I am the senior warden.

1 Q. Senior warden. And have you organized yourself as a  
2 unit of the Episcopal Church in South Carolina?

3 A. Yes, we have. We were accepted into union with the  
4 convention on February 21st, 2014. We are a mission church.

5 Q. A mission congregation of the Episcopal Church in South  
6 Carolina?

7 A. Yes.

8 Q. And you say you're the senior warden?

9 A. I am.

10 Q. Do you obviously have a vestry or mission committee?

11 A. We have a mission committee.

12 Q. Which is sort of the same as a vestry?

13 A. Yes.

14 Q. And what legal structure do you have for the  
15 organization, are you incorporated?

16 A. We are incorporated and we have a set of bylaws.

17 Q. All right. And what's the name of the corporation?

18 A. The Episcopal Church on Edisto Island -- no, the  
19 Episcopal Church on Edisto, Incorporated.

20 Q. All right. And for the signage and everything out front  
21 what name do you use to identify?

22 A. The Episcopal Church on Edisto.

23 Q. Okay. Episcopal Church on Edisto?

24 A. Yes.

25 Q. Now, just for the record, does Trinity Church down an



1 eighth of a mile down the road, does it identify itself in  
2 any way as an Episcopal Church or not?

3 A. Their signage indicates Trinity Episcopal Church.

4 Q. Still does?

5 A. Still does.

6 Q. Okay. Ask you briefly about one other issue that came  
7 up the other day. Down at Trinity Church a mile or eighth of  
8 a mile from the Episcopal Church on Edisto does it have a  
9 cemetery in the yard?

10 A. Yes, it does.

11 Q. And obviously for the use of people who have -- well,  
12 who can be buried in the cemetery?

13 A. When my husband and I were members of that church, we  
14 did buy a cemetery plot.

15 Q. All right. And how much did you pay for it?

16 A. \$400.

17 Q. Has that arrangement changed as far as you know?

18 A. I paid \$400 for a plot. Whether I would be allowed to  
19 use it or not is not known.

20 Q. Have you inquired about it?

21 A. We are discussing it because we do have members of our  
22 church who also have plots there or either have loved ones  
23 whose ashes are scattered along the wall.

24 Q. Okay. By the way, you said that Bubba Unger had  
25 something to do down at Trinity Church with the bylaws and

1 changing the accession and so forth.

2 A. Yes, he did.

3 Q. What congregation is he active in at this point?

4 A. The Episcopal Church on Edisto.

5 Q. So he's with the loyal Episcopalians?

6 A. Yes, he is.

7 MR. TISDALE: Okay. Ms. Neumann, answer any questions  
8 any of these other lawyers have.

9 MR. HOLMES: May I be excused for a moment?

10 THE COURT: Bye.

11 All right. Yes, plaintiffs.

12 CROSS-EXAMINATION BY MR. RUNYAN:

13 Q. Ms. Neumann, do you remember if you were -- you went to  
14 a meeting late November of 2012 about reorganizing or  
15 something such as that?

16 A. A meeting where?

17 Q. At the Methodist Church on Palmetto Road?

18 A. I did go to that meeting, yes.

19 Q. Do you know Walter Edgar?

20 A. I do.

21 Q. Was he at that meeting?

22 A. No, he wasn't.

23 Q. How do you know Dr. Edgar?

24 A. Doesn't everybody know Dr. Edgar? Dr. Edgar had gone to  
25 Trinity Church. I had met him I think at one of the

1 services.

2 Q. When he's down there does he worship with you all?

3 A. He does.

4 MR. RUNYAN: Thank you.

5 THE COURT: Yes, sir.

6 MR. CAMPBELL: Thank you, Your Honor, briefly, Pierce  
7 Campbell for All Saints Parish.

8 CROSS-EXAMINATION BY MR. CAMPBELL:

9 Q. Ms. Neumann, we met a few weeks ago.

10 A. We did.

11 Q. Just a couple quick questions. I wanted to clarify your  
12 testimony in a few things. You said that the bylaws removed  
13 all the accession language in February 2012, right?

14 A. Those were the bylaws that were passed in February 2012.

15 Q. Okay. And you remained on the vestry for the next ten  
16 months in 2012 of that church, right?

17 A. I did.

18 Q. And the vestry actually voted on this affiliation with  
19 the diocese, leaving the national church, whatever the  
20 resolution was, was December 30th, 2012, correct?

21 A. They did.

22 Q. Okay. You were at that meeting.

23 A. We did. I was at that meeting, yes.

24 Q. And you knew it was the vestry's responsibility to make  
25 that decision, right?

1 A. Yes, I did.

2 Q. Okay. And you were there.

3 A. I was there.

4 Q. And you voted against it.

5 A. I did.

6 Q. Did you speak out against it?

7 A. I certainly did.

8 Q. And were you heard at the meeting?

9 A. I hope so.

10 Q. But it didn't turn out your way, did it?

11 A. No, it didn't.

12 Q. So you left the next morning, right?

13 A. I did.

14 Q. Okay. Now, has anybody at Trinity Episcopal told you  
15 you cannot be buried there?

16 A. No.

17 Q. Has anybody told your husband he cannot be buried there?

18 A. No.

19 Q. Do you have any evidence that you can't be buried there?

20 A. Not yet.

21 MR. CAMPBELL: I think that's all the questions I have.

22 Thank you, Ms. Neumann.

23 THE COURT: Redirect?

24 No. You may come down.

25 THE WITNESS: Thank you.

1 MR. TISDALE: Ms. Neumann, thank you very much.

2 THE COURT: All right. That will conclude the testimony  
3 that we will take today. Here's what we'll do: I am going  
4 to leave the courtroom with my documents, of course, and my  
5 laptop. If you need me, I'll be in chambers, but I'm going  
6 to leave. You're welcome to the courtroom. You're also  
7 welcome to the jury assembly room downstairs. I don't know  
8 if you all have visited that room, but Becky is here to show  
9 it to you. It's just, it's a large room, there are tables  
10 there, and it really might be more efficacious in terms of  
11 trying to review documents with a number of folks. And I'd  
12 like to just have a list, and you can just email it at the  
13 conclusion of the work that you all are able to do, and let  
14 me know who was able to have their documents reviewed and who  
15 still needs to do that. I have obviously a fax machine, I  
16 think you all have email capacity, I certainly have it. If I  
17 can assist in obtaining documents or printing documents,  
18 please just let me know, and I will assist in any way I can.  
19 And I'll be here throughout the balance of the day if anyone  
20 needs me or needs the business of the Court, I will be here,  
21 and without further ado I will leave you guys to the task  
22 looking at the documents.

23 (Trial of the case adjourned for the day.)

24 - - -

25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the First Judicial Circuit Court for Dorchester County,  
11 South Carolina, on the 18th of July, 2014.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 September 7, 2014

16

17 Ruth L. Mott

18 Official Court Reporter

19

20

21

22

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24

25

## VOLUME X

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL  
CHURCH IN THE DIOCESE OF  
SOUTH CAROLINA, THE  
TRUSTEES OF THE PROTESTANT  
EPISCOPAL CHURCH IN SOUTH  
CAROLINA, A SOUTH CAROLINA  
CORPORATE BODY, ET AL.,

TRANSCRIPT OF RECORD

JULY 21, 2014  
ST. GEORGE, SC

vs.

THE EPISCOPAL CHURCH,  
(A/K/A THE PROTESTANT  
EPISCOPAL CHURCH IN THE  
UNITED STATES OF AMERICA);  
THE EPISCOPAL CHURCH IN  
SOUTH CAROLINA,

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR  
Official Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 WALTER EDGAR

MR. TISDALE 1760

5 MS. GOLDING 1878

MR. RUNYAN 1902

6 MS. KOSTEL 1908 1910

7

- - -

8

9 E X H I B I T S

10 NO. DESCRIPTION ID EVD

11 D-17 PROCEEDINGS OF MEETING 1834

12

- - -

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1 THE COURT: All right. Anything before we begin from  
2 the plaintiffs?

3 MR. RUNYAN: Your Honor, we just have an inquiry. We're  
4 starting our third week today, and I just would like to know  
5 if we can get some sense of when they might finish. We have  
6 a few scheduling issues with a couple of reply witnesses, and  
7 if I could get some rough sense, that would help.

8 THE COURT: Great. Rough, rough, rough sense.

9 MR. TISDALE: I'm going to do the best to comment on  
10 that, Your Honor. Certainly I think it's pretty certain we  
11 will not finish today. Possibly, I suppose, we could finish  
12 tomorrow.

13 THE COURT: Okay.

14 MR. TISDALE: To be on the safe side, with follow-up  
15 stuff at the end and cleanup, no later than Wednesday.

16 MR. RUNYAN: Okay.

17 THE COURT: When you say "Wednesday," Wednesday midday?

18 MR. TISDALE: Perhaps tomorrow, if we're lucky.

19 THE COURT: Okay, great.

20 MR. TISDALE: Do you agree, Mary?

21 MS. KOSTEL: Yes, I do. I think Your Honor will recall  
22 that last week we were talking about parish-specific  
23 exhibits, and we're working hard together, and I think while  
24 there may be -- there will be some relevance objections, so  
25 far there's been no suggestion that we need to bring a

1 witness to put on any parish, so that's -- you know, that's  
2 the only thing that could extend the length of our case.

3 THE COURT: Of course.

4 MS. KOSTEL: So far so good, but I can't give a full  
5 report on that yet.

6 THE COURT: Perfect. Thank you so much. That's great.  
7 So is that helpful?

8 MR. RUNYAN: Yes, Your Honor. Thank you.

9 THE COURT: Great. Call your next witness.

10 MR. TISDALE: Walter Edgar.

11 WALTER EDGAR,  
12 being first duly sworn, testified as follows:

13 MR. TISDALE: Your Honor, Ms. Kostel, Mary Kostel's  
14 going to help with the documents. There will be a lot of  
15 documents to put on the screen with his testimony and she's  
16 agreed to handle that aspect of it.

17 THE COURT: Aren't you glad?

18 MR. TISDALE: Very.

19 THE COURT: If you would state your full name for the  
20 record for us and spell your last name.

21 THE WITNESS: Walter Bellingrath Edgar.

22 THE COURT: Your witness.

23 MR. TISDALE: Thank you. Thank you, Your Honor.

24 DIRECT EXAMINATION BY MR. TISDALE:

25 Q. Dr. Edgar, I want to start asking you just a few

1 questions about your background. Where were you born and  
2 grew up?

3 A. I was born and reared in Mobile, Alabama.

4 Q. And at the very beginning I want to ask you if you're  
5 affiliated with any particular religious denomination.

6 A. I grew up in All Saints Episcopal Church in Mobile,  
7 Alabama, and I currently attend Trinity Episcopal Cathedral  
8 in the state capital.

9 Q. Are you a communicant -- that means a member I guess --  
10 of Trinity in Columbia?

11 A. Yes, I'm a member, very active member, served on the  
12 vestry diocesan delegate, Sunday school teacher, youth  
13 leader.

14 Q. And, as a matter of fact, I think you're in the middle  
15 of trying to write a history of our Trinity Church in  
16 Columbia, are you not?

17 A. Yes, sir, I am. It's not very easy writing a  
18 congregational history.

19 Q. All right. Now, one day last week it was mentioned by  
20 Ms. Neumann, I believe, and in testimony it was asked by Mr.  
21 Runyan about your involvement in the Episcopal Church on  
22 Edisto Island. Have you had a connection down there?

23 A. My wife and I had a vacation home in Edisto, and when we  
24 travel on vacation, whether it's at Edisto or in Europe, we  
25 always choose to worship at a church affiliated or in

1 communion with the Archbishop of Canterbury, a member of the  
2 Anglican communion.

3 For a number of years we worshiped at Trinity Edisto, we  
4 gave money to Trinity Edisto. We now worship with the  
5 Episcopal Church on Edisto when we're on the island.

6 Q. Were you ever an official member or communicant of  
7 either Trinity or Edisto --

8 A. No, sir.

9 Q. -- of an Episcopal Church on Edisto?

10 A. No, sir. My membership -- I've had two memberships in  
11 my life, the church in which I grew up, All Saints, Mobile,  
12 and then I was transferred to Trinity Columbia in 1972.

13 Q. Now, Dr. Edgar, let's talk about your professional life  
14 for a few minutes.

15 What educational background do you have in your field of  
16 work?

17 A. I did my undergraduate work at Davidson College where I  
18 was a major in history, did my graduate work at the  
19 University of South Carolina, both my masters and my Ph.D.  
20 Among the individuals I studied with are renowned historians  
21 George C. Rogers, Jr. and Daniel Walker Hollis.

22 After my military service I had a postdoctoral  
23 fellowship from the National Archives and worked on the  
24 papers of Henry Laurens, which were housed -- the editorial  
25 project was housed at the University of South Carolina.

1 Q. Have you been a faculty member at the University of  
2 South Carolina?

3 A. I have been a faculty member. In fact, I retired two  
4 years ago after 40 years at the University of South Carolina.

5 Q. And would you just give us an example of what you taught  
6 in your position on the faculty?

7 A. In the course of teaching, introduction to US history to  
8 250 students, South Carolina, 1670 to 1865. That was an  
9 upper division course. I taught courses in historic  
10 preservation. I taught honors seminars. I taught courses in  
11 contemporary southern culture, so -- and graduate seminars.  
12 I also directed theses and dissertations, graduate theses and  
13 dissertations.

14 Q. Have you written any books on history, books of history  
15 concerning the history of South Carolina?

16 A. I have written two books. One is "South Carolina in the  
17 Modern Age." The other is "South Carolina: A History," and  
18 I also was editor in chief of the South Carolina  
19 Encyclopedia.

20 Q. Did you not also write a book about the American  
21 Revolution in South Carolina?

22 A. Yes, sir, I did, "Partisans and Redcoats. The Southern  
23 Campaign that Turned the Tide of the American Revolution."

24 Q. Now, Dr. Edgar, in connection with preparing to testify  
25 in this matter, could you give the Court a general idea of

1 what sort of research, study and reading you have done to  
2 answer questions about documents that we would like to show  
3 you beginning in a few minutes?

4 A. Since I will be -- I am a factual witness, not an expert  
5 witness, I used primary documents, documents at the National  
6 Archives, documents at the South Carolina Historical Society,  
7 documents at the University of South Carolina, South  
8 Caroliniana Library, and those documents are detailed in the  
9 report that I believe, sir, is filed with this Court.

10 Q. Have you also studied, read and studied, journals of the  
11 convention of the Diocese of South Carolina?

12 A. Yes, sir. I have read every journal of the Diocese of  
13 South Carolina from 1785 to 2010.

14 Q. All right, sir. What has been your intent to learn  
15 about in the examination of all the documents you just  
16 testified about, testified that you looked at?

17 A. My intent was to learn about the relationship between  
18 the Diocese of South Carolina and the Episcopal Church.

19 Q. And the Judge has asked us, and we will try to do that,  
20 do this, when you say the Episcopal Church, do you mean the  
21 national church?

22 A. Yes, sir.

23 Q. One and the same for our conversation?

24 A. Yes, sir.

25 Q. All right. So let's ask you to begin in a minute by

1 taking a look at some of these documents. And I first would  
2 like to ask you to look at a series of documents and tell us  
3 from those documents what you can about the historic  
4 connection between the diocese and the national church.

5 MR. RUNYAN: Your Honor, we have an objection here.

6 THE COURT: Okay.

7 MR. RUNYAN: As a lay witness, I don't believe he can  
8 testify from documents in this fashion, nor do I believe that  
9 makes the documents admissible. He cannot offer opinion  
10 testimony. So we are at a place where he seeks to elicit  
11 from this witness information that is not in his personal  
12 knowledge as a lay witness and I don't think he can do that,  
13 and I can speak to that with case law as needed, but he's a  
14 lay witness, not an expert.

15 MR. TISDALE: Your Honor, we intend to show him a lot of  
16 documents that he knows of his own knowledge exist and knows  
17 the contents of. We're going to put them on the screen for  
18 everybody to see and ask him to read from them. That's all.  
19 He's not going to give any expert opinion about them. He's  
20 simply going to read from documents for what they say. And  
21 they are relevant to his study of the connection between the  
22 national church and the Diocese of South Carolina, which is  
23 certainly an issue in this case.

24 MR. RUNYAN: Your Honor, may I reference one case if I  
25 could?

1 THE COURT: Sure.

2 MR. RUNYAN: Watson versus Ford Motor Company, 389 South  
3 Carolina 434, 2010, Chief Justice Toal on behalf of a  
4 unanimous Court made the following assertion on Page 446:  
5 Expert testimony differs from lay testimony in that an expert  
6 witness is permitted to state an opinion based on facts not  
7 within his firsthand knowledge or may base his opinion on  
8 information made available before the hearing so long as it  
9 is the type of information that is reasonably relied upon in  
10 the field to make opinions.

11 On the other hand, a lay witness may only testify as to  
12 matters within his personal knowledge and may not offer  
13 opinion testimony which requires special knowledge, skill,  
14 experience or training.

15 By definition, based on the foundation that's been given  
16 so far, it is exactly that specialized knowledge and training  
17 that has allowed Dr. Edgar to selectively gather information  
18 to support the defendants' positions in this case. That is  
19 opinion testimony. And the documents themselves may or may  
20 not be independently admissible, I don't know the answer to  
21 that question, but he certainly can't go through documents  
22 extracting information as a lay witness.

23 THE COURT: Yes, sir.

24 MR. TISDALE: Your Honor, it's as if he's an  
25 investigator to testify on the basis of an investigation of



1 anything, and he's gone and investigated the history of this  
2 matter and he is providing exhibits, journals of the diocese,  
3 all of which have been provided to us by the plaintiffs, and  
4 he's going to show a document, he's going to read from that  
5 document to establish what it has to do with its relevance to  
6 this case, and I think it's certainly admissible testimony  
7 and he's simply presenting his research and his  
8 investigation.

9 THE COURT: Well, there are a couple of things that are  
10 ongoing with that. First thing is that the documents speak  
11 for themselves.

12 MR. TISDALE: They do.

13 THE COURT: And the documents -- I don't remember where  
14 we were in terms of admissibility or not. Some of them are  
15 going to be self-authenticating because they're ancient  
16 documents.

17 MR. TISDALE: They're their documents.

18 THE COURT: Yes.

19 MR. TISDALE: They say they are their documents.

20 THE COURT: And certainly, certainly, once the documents  
21 are in, you're entitled to a summary of excerpts from those  
22 documents.

23 MR. TISDALE: Yes.

24 THE COURT: But herein is the concern, and it's got to  
25 be one of two things. It's either got to be just the

1 documents and the documents speak for themselves, even if  
2 they are done in summary fashion, or based upon Mr. Edgar's  
3 knowledge, training and experience he is opining with regards  
4 to what the relationship may or may not be.

5 So while, just given the ease of it, it would certainly  
6 be nice for me to have somebody read me a story, I'm not  
7 allowed to do that.

8 MR. TISDALE: Right.

9 THE COURT: Because of -- and Mr. Runyan spoke of one  
10 case, but there are many cases that talk to expert testimony,  
11 so the question is when he does that, is he then going to say  
12 this is an example of the relationship that existed between  
13 the Diocese of South Carolina and the national church,  
14 which -- the National Episcopal Church. See, I've learned so  
15 much over the last two weeks. You know, we can do National  
16 Episcopal. I got that now.

17 But I guess that would be the question, and at the point  
18 in time when he shifts from saying this is what it says to  
19 this is what it means, it's at that point that we've come  
20 across to expert testimony, so that would be my question.

21 MR. TISDALE: Agreed, Your Honor, agreed, and I can tell  
22 you exactly what we intend to do is put a document on the  
23 screen, get him to identify the document, get him to say he's  
24 read this document, and ask him does this document contain  
25 anything in its own right, in its language, that has to do

1 with the issue we're interested in and will he read that  
2 portion. That's all.

3 THE COURT: That's expert testimony.

4 MR. RUNYAN: That is expert testimony.

5 THE COURT: For this reason, for this reason: Because  
6 he's a historian, familiar with these issues, at that point  
7 he is opining that this text has this meaning which is  
8 relevant to these issues.

9 MR. TISDALE: Okay. Well, Your Honor, let's take  
10 another look at it, and maybe we can handle it this way.

11 THE COURT: Okay.

12 MR. TISDALE: He was listed as an expert witness.

13 THE COURT: Yes.

14 MR. TISDALE: His deposition was scheduled.

15 THE COURT: Yes.

16 MR. TISDALE: They indicated they did not wish to take  
17 his deposition.

18 THE COURT: Yes.

19 MR. TISDALE: We thought it was a lot simpler then not  
20 to offer him as an expert because we thought his testimony's  
21 factual along the lines that we talked about; however --

22 THE COURT: Not only did you list him as an expert, I  
23 listed him as an expert in my order.

24 MR. TISDALE: However, he is an expert, and I just told  
25 Mr. Runyan Friday, I think, that we didn't think he would be

1 giving any expert testimony. We filed the report that you  
2 have that says he is.

3 THE COURT: Yes.

4 MR. TISDALE: So given your ruling, we offer him as an  
5 expert, exactly.

6 THE COURT: Now let's talk about that.

7 MR. TISDALE: All right.

8 THE COURT: Let's talk about that.

9 MR. TISDALE: Not your ruling but your indication?

10 THE COURT: Right. If he were to testify -- here's  
11 what's very clear: He's clearly an expert --

12 MR. TISDALE: Yes.

13 THE COURT: -- with regards to -- he's the preeminent  
14 expert regarding South Carolina history, period, nuance and  
15 all of it. I know when it comes to Charleston Robert Rosen,  
16 you know, he'd want to arm wrestle you about that.

17 THE WITNESS: We've discussed that, Your Honor.

18 THE COURT: I think he'd lose.

19 But, in any event, having said that, let me tell you  
20 what my concern is: My concern is that are we going to the  
21 hierarchical relationship, what are we doing when we do that.  
22 Help me there.

23 MR. TISDALE: Well, I mean his testimony will relate to  
24 beginning of what the relationship was between the Diocese of  
25 South Carolina and the national church, how it developed in

1 history, beginning -- our intent would be beginning in 1841.  
2 Then we would ask him to show documents that he's studied  
3 that show how the diocese conformed with the rules,  
4 constitution and canons of the national church. Then we  
5 would show about how the Diocese of South Carolina complied  
6 with all the constitution and canon provisions of the  
7 national church to divide the State of South Carolina into  
8 two dioceses in the early 20th Century. Then we would show  
9 how the Diocese of South Carolina complied with the national  
10 church canons by helping decide when the territories of  
11 dioceses in the United States could be modified.

12 We would show what evidence there is in documents that  
13 he's examined, journals of this diocese, of how they  
14 complied, this diocese complied with the constitution and  
15 canons generally of the Episcopal Church throughout history.

16 We would show further what was the relationship between  
17 the Diocese of South Carolina and the national church during  
18 the time of the Civil War, American Civil War.

19 We would then show -- we're getting near the end of what  
20 we would propose to show -- the financial assistance given by  
21 the Episcopal Church, the national church, throughout history  
22 to the Diocese of South Carolina and its parishes and the  
23 diocese, and it would go -- wind up with how the church has  
24 contributed to the pension fund of the priests and clergy who  
25 worked in this diocese, all based on documentation,

1 historical evidence, primary material as he said that he  
2 used.

3 THE COURT: Hold on one second because I want to hear  
4 your response to that in just a moment, but let me -- go  
5 ahead.

6 MR. TISDALE: Just one other thing. He doesn't plan to  
7 offer expert testimony to interpret what these documents say  
8 but to show the Court these documents.

9 THE COURT: Okay. Hold on one second.

10 (Brief pause.)

11 THE COURT: Anything else that you want to tell me  
12 about? I got what you're doing, and I think --

13 MR. TISDALE: He will show representative samples of  
14 works of history that establish the points that I mentioned.

15 THE COURT: Okay. I'm actually looking at Ms. Golding.

16 MS. GOLDING: Thank you, Your Honor.

17 THE COURT: Because here's the issue, and I'm speaking  
18 to you specifically and I want you to jump in and add  
19 anything you want, but I'm looking to you, and the reason  
20 that I'm looking to you is because the only relevance other  
21 than it would be wonderfully intriguing and I would be a  
22 smarter human being at the conclusion of his testimony, the  
23 only possible relevance to these issues in my mind is to  
24 constructive trust. I don't even think resulting trust.  
25 It's only constructive trust.

1           And so we would be looking at the relationship between  
2   the old garden variety go down that row with regards to a  
3   constructive trust and All Saints. Talk to me.

4           MS. GOLDING: Constructive trust with respect to All  
5   Saints -- the Court established there was no trust, and even  
6   though -- the opinion does not address the words  
7   "constructive trust," however, it was set, it was the  
8   position that there was an existence of a trust, and the  
9   parties used every minutia of trust law to try to establish  
10  there was a trust, but the Court, the Supreme Court, stated  
11  that the 1745 trust deed, because of the statute of uses,  
12  that was it, so in a sense there was no constructive trust  
13  because the Court said the statute of uses transferred the  
14  property into the parish.

15          THE COURT: And Jones versus Wolf talks about property  
16  being held in a trust and it can only exist if ab initio  
17  there is a -- it is created by a legally recognized  
18  instrument.

19          MS. GOLDING: Correct. And there was no legally  
20  recognized instrument other than the 1745 trust deed, which  
21  in actuality was a -- was a deed which created a trust. In  
22  this action, you know, with respect to between the diocese  
23  and the national church, there is no trust document --

24          THE COURT: No.

25          MS. GOLDING: -- between the national church and the

1 plaintiff dioceses, and that's the same with the national  
2 church and the plaintiff trustees; there is no trust  
3 document.

4 THE COURT: And, of course, I think it's fair to say  
5 that in the All Saints decision the Dennis canon, as it's  
6 been --

7 MS. GOLDING: Correct.

8 THE COURT: -- named is -- our South Carolina, our  
9 Supreme Court, metes -- that metes little recognition in our  
10 state.

11 MS. GOLDING: Correct. That was stated, absolutely, as  
12 not creating any type of trust relationship between the  
13 parties, the canon.

14 THE COURT: So the only relevance other than for my  
15 purposes, for the purposes of the Court, is the creation of a  
16 constructive trust, and I guess my question is, is there  
17 relevance in this testimony with regards to that.

18 And I can see from Mr. Tisdale's perspective that he  
19 would argue to me in going through this, Judge, what I'm  
20 showing here through the presentation of this testimony is  
21 that over time there has been the creation of a fiduciary  
22 duty and that these parishes, while they may hold title to  
23 property, that they are subject to an equitable duty to  
24 convey it on the ground that they would be unjustly enriched  
25 if they were permitted to retain it, and that's where I see



1 the relevance of his testimony.

2 MS. KOSTEL: Your Honor, when it's an appropriate time,  
3 could I speak to the issue of relevance too?

4 THE COURT: Absolutely, absolutely.

5 MS. GOLDING: Fiduciary duty, Your Honor, is a legal  
6 claim. It is not an equitable claim, Your Honor, so from  
7 that perspective I do not believe that would be applicable.

8 MR. TISDALE: Your Honor, I think also I'll just  
9 interject one other little thing that I think makes it  
10 relevant, is the use of the name "Episcopal" in a trademark  
11 situation, and this testimony will go to that issue as well.

12 THE COURT: Okay. Yes, I'm with you. I understand  
13 that.

14 MS. KOSTEL: Yes, and actually the control, the degree  
15 of control. I think that's what Mr. Tisdale's saying.

16 MR. TISDALE: Control.

17 THE COURT: That's hierarchical.

18 MR. RUNYAN: That's hierarchical.

19 THE COURT: That concerns me less. That's hierarchical.

20 MS. KOSTEL: I agree that it's relevant to hierarchy,  
21 but I think what Ms. Lott testified was that the entity that  
22 controls the nature of the services and the quality of the  
23 services is the entity whose mark then would be infringed,  
24 and so what some of this evidence that will come in through  
25 Professor Edgar will show is the degree of control, how much

1 is the Episcopal Church controlling the nature of the  
2 services and the quality of the services. That's another  
3 issue.

4 MR. TISDALE: Correct.

5 THE COURT: I gotcha. Yes.

6 MR. RUNYAN: There are completely independent bases for  
7 the objection as well that we haven't gotten to yet, but on  
8 the issue of a constructive trust, in South Carolina a  
9 constructive trust is not a fiduciary relationship. I would  
10 cite for that the case of, well, there are about five of  
11 them.

12 THE COURT: Similarly, constructive trust is not. Did I  
13 say it was? I meant not. I'm sorry.

14 MR. RUNYAN: There is no such thing in South Carolina as  
15 an implied trust independent of the two --

16 THE COURT: Right.

17 MR. RUNYAN: -- resulting trust and constructive trust.  
18 So I don't think it's relevant to that, but I will go on to  
19 tell you what I really stood up to say, and that is that,  
20 first of all, as an expert he has made it clear that the  
21 purpose of his testimony is about the hierarchical nature of  
22 the church, and I'll just read from Paragraph 2 of his  
23 summary.

24 As an example, I will testify about the governance of  
25 the diocese as prescribed by the constitution and canons of

1 the diocese and the Episcopal Church throughout history and I  
2 will testify about the structural nature of the church and  
3 explain its hierarchical nature, the ordering of its  
4 governance.

5 And following that he lists bullet points of factual  
6 information of the type that I would expect him to show on  
7 the screen, but, and here is the reason we did not take his  
8 deposition, at the conclusion of this report which is  
9 supposed to, according to the Court's order of June 9,  
10 contain the expert's opinions and the facts supporting each  
11 opinion. No opinion outside the opinions provided 72 hours  
12 prior to each expert's deposition can be offered at the trial  
13 of this action.

14 His concluding two paragraphs in his 12-page summary say  
15 as follows: I will use my expertise as a professional  
16 historian to give a proper analysis and interpretation of any  
17 of the voluminous documents that are involved in the factual  
18 history I have been asked to present. I will render an  
19 expert opinion whenever necessary to explain the context of  
20 the history of the diocese as it relates to these matters.  
21 It would be impossible for me to list each and every expert  
22 opinion I might be required to render because such will  
23 depend upon issues raised by the Court and counsel in search  
24 of correct interpretations of the documents I am asked to  
25 inspect.

1           In short, he says he's going to testify about the  
2   hierarchical nature, but other than that, he is -- they do  
3   not elicit in this report any opinions because I guess he was  
4   called upon himself to formulate them. He says it's  
5   impossible.

6           And so on that basis we don't think it complies with the  
7   Court's order as well.

8           THE COURT: I got it. Yes.

9           MS. GOLDING: The other final objection is that this  
10   witness does not have any qualifications in the religious  
11   aspect. He is not an expert in any religious area;  
12   therefore, he cannot testify as to what is hierarchical and  
13   what is not, because that's not within his expertise.

14          MR. CAMPBELL: Thank you, Your Honor. For the record,  
15   Pierce Campbell joining with Ms. Golding in that objection on  
16   behalf of my parishes.

17          The list Mr. Tisdale read out, even if that was somehow  
18   able to supplement the lack of a list in his original report,  
19   included many things about canonical law, pension funds and  
20   other things which, even if Dr. Edgar was considered an  
21   expert in historical matters, I do not believe that canonical  
22   law, pension fund, financial affairs goes to that history,  
23   and instead the document speaks for itself, as we've already  
24   said, and so trying to have a historian of some note reading  
25   it gives it some additional credibility to the Court when

1 really that's not an appropriate use of such an expert  
2 witness I don't believe.

3 THE COURT: Yes, sir, and yes, ma'am. I want to hear  
4 what you want to tell me.

5 MR. TISDALE: Your Honor, as I said, his testimony will  
6 be based on documents that he's researched, based on his  
7 expertise as a historian, and the documents do speak for  
8 themselves, and that's what he's going to do, plain and  
9 simple.

10 THE COURT: Got it. And, Ms. Kostel, I want to be sure  
11 I've heard everything you want to tell me.

12 MS. KOSTEL: I probably have more things to say about  
13 relevance, but I'm not sure that Your Honor wants to go  
14 there. We're entertaining a different topic now.

15 THE COURT: Yes, I want to hear it all, whatever you've  
16 got.

17 MS. KOSTEL: Okay. On relevance, obviously we think  
18 it's relevant to hierarchy. Your Honor doesn't think that's  
19 something that necessarily should come into this case. We've  
20 made clear our disagreement with that, respectfully.

21 THE COURT: Absolutely.

22 MS. KOSTEL: And the constructive trust issue which Your  
23 Honor raised.

24 THE COURT: You know what I want to add to that too,  
25 Ms. Kostel, is that I do that on the basis of our Courts'

1 determination, but I would want our record to be very clear  
2 in every way that the defendants have done everything within  
3 their ability to establish the hierarchical nature of this  
4 church, that I accept that, and that our Courts have said we  
5 will not enforce the hierarchical decisions of churches but  
6 we are a neutrality state, and that on appeal I anticipate,  
7 if there is an appeal, assuming there is an appeal, that you  
8 want to be, you, the defendants, would want to be in a  
9 position to argue against precedent in South Carolina.

10 MR. TISDALE: That is correct.

11 THE COURT: And I am mindful of that, and so I would  
12 want our record to be very clear that we are at crossroads in  
13 that regard because you must preserve this record so that in  
14 the event there is an appeal that you place yourself in a  
15 position to argue against precedence, and I'm mindful of  
16 that.

17 MR. TISDALE: Thank you.

18 THE COURT: So I want our record to be very clear that  
19 you all have stood on 14 soapboxes and said, this ought to be  
20 decided with regards to hierarchical determinations as other  
21 states in the United States have done, we want to argue  
22 against precedence, and I want you to be able to preserve  
23 that.

24 I, on the other hand, want to thank you for your share  
25 and tell you that we are a neutrality state and I am very

1 focused on that path.

2 MS. KOSTEL: Okay. Just to be clear -- thank you, Your  
3 Honor, I appreciate that, and, just to be clear, we do  
4 believe that under All Saints and Pearson where there's an  
5 ecclesiastical issue at the heart of the dispute, then there  
6 is deference, but I think we've covered that territory.

7 THE COURT: I think so too.

8 MS. KOSTEL: I'm not trying to reopen it.

9 THE COURT: I know you're not, and I want you to know  
10 that I know that that is part of your argument. I absolutely  
11 get that. And I think that the best statement of that was  
12 with Mr. McWilliams when he said because of the Pearson  
13 decision and because of the constitution and the adoption of  
14 the constitution, that given Pearson, even with All Saints,  
15 was the constitution was acknowledged. That then became the  
16 neutral law.

17 MR. TISDALE: Right.

18 THE COURT: Just to let you all in on a secret, I  
19 disagree with that, but that's in this case, and I absolutely  
20 think that that issue needs to be in this case.

21 MS. KOSTEL: Yes, okay.

22 THE COURT: In all fairness.

23 MS. KOSTEL: Now, if I may tick through a couple more of  
24 the relevance --

25 THE COURT: Yes, because that's what I'm looking for.

1 MS. KOSTEL: Okay.

2 So another issue that we believe makes this historical  
3 evidence relevant under neutral principles is that it goes to  
4 the question of what did the diocese commit to when it  
5 committed to follow the rules of the church, and specifically  
6 did it commit not to leave, did it commit to hold its  
7 property in a particular way.

8 And we believe that, A, the commitments themselves, so  
9 in the organic documents, speak -- are relevant, are  
10 probative of that, but we also believe that the way the  
11 diocese then behaved after having made those commitments  
12 speaks to what the commitments mean. If the organic  
13 documents themselves are not crystal clear on the question,  
14 then those -- the behavior of the parties is probative on  
15 what the documents -- what the commitments meant. So we  
16 believe that's another neutral principles relevance issue.

17 THE COURT: And I want to stop you because I think  
18 you're really talking about the kernel of where we are.

19 MS. KOSTEL: Yes.

20 THE COURT: And I really want to have a discussion about  
21 that because I want to ask this question, and I don't mean to  
22 be -- because I know the passion with which both sides come  
23 to this issue, but I'm going to ask a question that's going  
24 to sound very cavalier, but I'm doing it to push to the  
25 issue. Please hear that. I don't do it to be cavalier. I



1 do it because I've got to make the decision, and these are  
2 the questions that go through my mind. What difference does  
3 it make? And that's what I really want to talk about,  
4 because I want to assume just for purposes of argument at  
5 this point -- oh, gosh, I hope you're comfortable. Would you  
6 rather have a cup of coffee? We've got coffee.

7 THE WITNESS: Yes, Your Honor, I'll take you up on that.

8 THE COURT: Because I really -- this is important to me  
9 because here's where we are. Let's say we have a history. I  
10 got that. We have a history of reference to the  
11 constitution. We have a history of reference to the bylaws.  
12 We have a history of -- in varying degrees. It's kind of  
13 hard for St. Philip's to have done that when St. Philip's was  
14 in existence before the National Episcopal Church was in  
15 existence; however, certainly, as history goes on, if that  
16 comes back around, and there are those references -- you  
17 know, I sort of wondered if the National Episcopal Church  
18 made those kinds of references about St. Philip's because of  
19 the -- it is so ancient, 1680. It's so ancient. So I ponder  
20 that.

21 But even if those were -- and they are. They exist, and  
22 there's, if you will, historically a tip of the hat,  
23 minimally a tip of the hat, minimally, but at the end of the  
24 day -- and I think, Mr. Runyan, it was your cross-examination  
25 with the bishop on Friday when you placed before him the

1 journals and offered him the opportunity to tell me where in  
2 these journals does it say that these parishes cannot change  
3 their mind. So that's really where we get to it. So in my  
4 mind I'm really letting you all see the sausage being made.  
5 I don't know if this is a good thing or a bad thing, but,  
6 alas, this is where we are.

7 I don't know how we get to the ability to keep the  
8 parishes from being able to change their way of doing  
9 business unless we access equitable principles. And there  
10 are two kinds of implied trust when it comes to the  
11 properties. And I kind of want to leave the trademarks just  
12 sort of aside for a moment because they really are a little  
13 bit different I think, just a little bit different, but I  
14 want to begin -- I guess I want to begin by asking the  
15 plaintiffs isn't that really where we are?

16 MS. GOLDING: Your Honor, that is exactly. That's the  
17 core. The core is that if you are in an association, whether  
18 it be parishes with the diocese or the diocese with the  
19 national church, there is no governing document that says  
20 nobody can leave anybody, so there is a voluntary association  
21 coming in. Does this mean that they cannot leave? It's just  
22 like a Country Club, a fraternity. There is no requirement  
23 they cannot leave.

24 THE COURT: Ms. Golding, let me ask you this question,  
25 even if there was --

1 MS. GOLDING: Yes.

2 THE COURT: -- even if there was, is that not a  
3 violation of the first amendment?

4 MS. GOLDING: The right of free association, absolutely.  
5 That's where I was going to next.

6 THE COURT: And let me ask you this question: Even when  
7 you look at the statute, because this statute, I spent all  
8 afternoon looking at the statute and trying to make it make  
9 sense. 180 -- I forget the first two but the 180 where it  
10 talks about religious organization, that is strange language.  
11 That is strange language because it says what is required,  
12 what is required by both the state -- by the US constitution  
13 and the state constitution what is required, not prohibited,  
14 but required, and I'm like what in the world does that mean,  
15 required?

16 And the only way I can make it make sense is what is  
17 required by the state and national constitution and not  
18 prohibited, see, because the government is prohibited from  
19 the establishment of a religion. It's prohibited. But what  
20 is required of the government is that it provide for the free  
21 exercise of religion. It is required. That is what is  
22 required. So I ponder whether or not that is an appropriate  
23 interpretation or not, and that was the only way I could,  
24 with my feeble brain, make it make sense, is the required  
25 part of that.

1           So then -- so then here's where I am. Where I am is if  
2 I don't in those journals have any sort of agreement that  
3 says you cannot leave, and that's clear, does it infringe  
4 upon the first amendment to prohibit a sect or a group from  
5 leaving, and that's almost a separate issue.

6           And then -- then I come back, if you will. Then I come  
7 back around to the equitable principles of constructive trust  
8 as being the -- is that -- we have two kinds of implied  
9 trust. This is not a resulting trust, and then I come back  
10 around, can this be a constructive trust. And it's simple.  
11 It says a constructive trust arises entirely by operation of  
12 law without reference to any actual or supposed intention of  
13 creating a trust and is resorted to by equity to vindicate  
14 rights and justice or to frustrate fraud.

15           And that is, again, in my head -- you're right. It has  
16 nothing to do with a fiduciary duty, but it has to do with  
17 vindicating rights and justice, which then wraps me back  
18 around to there is no requirement, and even if there is a  
19 requirement to remain for all time, is that a violation of  
20 the first amendment, but, even so, can there be a creation of  
21 a constructive trust.

22           MR. RUNYAN: Your Honor, I see this two separate ways,  
23 one, the issue of departure by a parish or the national  
24 church --

25           THE COURT: Assume, arguendo, done.

1           MR. RUNYAN:  -- is unrelated to the issue of the trust,  
2 period.  It has to be.

3           THE COURT:  Right.  So let it be.  Go there.

4           MR. RUNYAN:  So the issue is upon a departure is there  
5 any interest that the national church has in the property of  
6 the parish or the diocese.  The South Carolina Supreme Court  
7 has said implicitly there's no implied interest or they would  
8 have dealt with it.  They had before them an express trust,  
9 and if there was some implied interest there, it certainly  
10 was not asserted as a basis for staying there.

11           But I guess, more fundamentally, the question is going  
12 to come down to a legal question of whether there is some  
13 other type of trust in South Carolina that might apply.  I  
14 don't think on the law -- and I'm not really prepared to  
15 speak to it today --

16           THE COURT:  I'm a real stare decisis kind of girl.  I'm  
17 not going to find one.

18           MR. RUNYAN:  I just don't think constructive trust  
19 applies, but it's an equitable issue, so at a minimum -- and  
20 I don't question his qualifications as a brilliant South  
21 Carolina historian, so this is not addressed to that issue,  
22 but his reading documents, which doesn't add anything to this  
23 case -- perhaps they're admissible.  Perhaps there's a  
24 summary that can be made or something like that, but I just  
25 don't know how that works, how that would work appropriately,

1 and if he's an expert, then we have the issues we've talked  
2 about and we have the relevance issue.

3 THE COURT: Got it. Yes, ma'am.

4 MS. GOLDING: The other final thing I want to say, and  
5 this is just to me a practical thing, is that if you're a  
6 member of a club or a fraternity, you abide by the rules. So  
7 there is no relevancy because the parish followed the canons  
8 and constitution of the diocese or the diocese followed the  
9 constitution and canons of the national church because they  
10 were in association at that time, so they worked together in  
11 that way, so I mean it's just like in -- like I said, if I'm  
12 in a women's book club, you know, and we decide we're going  
13 to read this book. Well, I'm going to read the book because  
14 that's what we're supposed to do. I'm not going to come in  
15 with another book.

16 So there is no significance because a party to this  
17 action followed the rules, because we were members then.

18 THE COURT: Here's where I am with the book analogy.  
19 And I don't know the extent of this. My sense is it's very  
20 minimal, oh, by the way.

21 MS. GOLDING: Yes.

22 THE COURT: But let's say you're in the book club and  
23 you collected -- and the goal of the book club was to have  
24 all of Oprah's books and you have all Oprah's books and then  
25 some of the -- and you had some rules that said we're going

1 to buy Oprah's books and then that group says we don't like  
2 Oprah's books anymore and we now want to buy Dr. Edgar's  
3 books, we like them better.

4 So they have a split, and then you have those that want  
5 to buy Dr. Edgar's books and put them on the coffee table  
6 because they're great coffee table books, and then you have  
7 those with Oprah's books. But they all pooled their money.  
8 Some did a little bit, some did a bunch, the vast majority.  
9 What happens with Oprah's books? Do the people who now want  
10 Dr. Edgar's books, do they have any claim in any sort of way  
11 to like maybe two of Oprah's books, a little bit of Oprah's  
12 books, because they got all these books. That's sort of  
13 where my head is with the constructive trust.

14 MS. GOLDING: Understand. Thank you.

15 THE COURT: Because if there's an issue -- and I'm not  
16 sure what, if any, door was left open in All Saints with  
17 regards to trust, I'm really not, because it absolutely says,  
18 forget about the Dennis canon, and that's real clear because  
19 there wasn't any -- I don't think the fact that -- and maybe  
20 you'll speak to this, and I'll change my mind, but I think  
21 just because you get to go to the convention that you all of  
22 a sudden are clothed with the authority to come home and give  
23 the property away, I don't think that's what happened, and I  
24 think that that's what our Court was saying about the Dennis  
25 canon doesn't apply.

1           So at the end of the day -- so the issue sort of at the  
2   core of where my head is at this point is, is there,  
3   particularly with regards to Dr. Edgar -- the question is, is  
4   there anything that he can offer with regards to an expert  
5   opinion regarding these relationships, and that's sort of  
6   where I am.

7           MS. KOSTEL: Your Honor, if I may.

8           THE COURT: Yes.

9           MS. KOSTEL: A number of different points responding to  
10   Your Honor and to Ms. Golding and maybe Mr. Runyan too.

11          First, just on the All Saints decision and the Dennis  
12   canon decision, in this -- and Your Honor makes the point  
13   that just because you send a delegate and the Dennis canon's  
14   adopted doesn't mean you're bound, but there are facts in  
15   this case where after the adoption of the Dennis canon the  
16   parish -- not all of them, but some of the parishes adopt  
17   rules in their governing documents saying we adhere to the  
18   national church's rules, and there's even maybe a handful  
19   that adopt a governing provision saying we adopt -- we adhere  
20   to the national church's rules governing property,  
21   distinguishable from All Saints.

22          Second point is on the question of whether the diocese  
23   can leave, which, as Your Honor notes, is at the core, at the  
24   crux of this case, first I'd like to point out that in the  
25   All Saints litigation the diocese, the plaintiff diocese,



1 took the position that a parish can't leave, and you know  
2 what? There's nothing in anyone's governing documents that  
3 says a parish can't leave.

4 So arguably the diocese is judicially estopped from  
5 standing on the argument of whether the governing documents,  
6 if the governing documents don't say it, don't prohibit it,  
7 it's not prohibited.

8 The next point is that the national church's canons  
9 actually do speak to whether a particular type of diocese  
10 called a missionary diocese can leave. And a missionary  
11 diocese is a diocese that's outside the jurisdiction of the  
12 United States, so sort of dioceses that the Episcopal Church,  
13 which is essentially a national church, but dioceses outside  
14 the United States that the church is helping to get started,  
15 which then often go off, break away with the consent of the  
16 general convention, and become separate national churches of  
17 their own.

18 It has a canon permitting it, prescribing how it can be  
19 done with the consent of the general convention, so it's very  
20 clear about that. It is true it does not say one way or  
21 another whether a diocese in the territorial jurisdiction of  
22 the US can or cannot, so it's ambiguous, arguably ambiguous  
23 on that point, and the question is what does the Court do in  
24 the face of that ambiguity.

25 One is it can look at the missionary diocese provision

1 and say, well, here's an instance where it's permitted.

2 Perhaps it's not permitted for any other diocese.

3 Another thing the Court can do is look at the course of  
4 conduct that the diocese engaged in with the national church  
5 about its fundamental nature. For example, in 1922 when the  
6 Diocese of South Carolina decides that it wants to divide in  
7 two, it doesn't just go divide in two. It takes elaborate  
8 steps to comply with the general convention canon and goes to  
9 get permission from the general convention before it divides  
10 itself in two. So that's evidence the diocese understood its  
11 fundamental nature to be governed by the general convention.

12 Another type of evidence that is probative on what  
13 that -- whether the diocese was agreeing that it could not  
14 leave is what was the -- what was understood by people with  
15 knowledge of the Episcopal Church around that time in the  
16 19th Century when the diocese adopted its overt accession  
17 clause when it says the Diocese of South Carolina accedes to  
18 the constitution and canons of the Episcopal Church and  
19 acknowledges their authority accordingly, what was the  
20 understanding about whether a diocese could leave.

21 And we will -- we have evidence that what the  
22 understanding was is that whatever level of hierarchy there  
23 was in the church, that there's one thing that was clear,  
24 when a diocese accedes, it gives up the right to secede.

25 THE COURT: Then you come back around to All Saints

1 where it was like, bye, and it was okay. I mean, doesn't All  
2 Saints really answer that?

3 MS. KOSTEL: Well, All Saints was not a diocese case, so  
4 I don't believe there was evidence introduced in that case  
5 about that.

6 THE COURT: I get you.

7 MS. KOSTEL: And then finally on the right of free  
8 association and the right of free exercise, I agree with Your  
9 Honor that the issue here is not an establishment clause  
10 issue, it's a free exercise issue, but free exercise does not  
11 only guarantee the right of an individual to worship where he  
12 or she wants to. It clearly, clearly, protects that, and  
13 there's nothing -- the Episcopal Church is not preventing  
14 individuals from leaving, okay? What it's trying to do is  
15 keep the integrity of its institution. It has nothing to do  
16 with where individuals worship.

17 And so it's our belief, and we believe that Supreme  
18 Court precedence supports this, that the free exercise clause  
19 protects -- when individuals get together and form a  
20 particular kind of religious institution, including its  
21 governance, that the free exercise clause -- and then they go  
22 and obey it and they carry out their lives according to it,  
23 that the free exercise protects that structure from  
24 disintegration by using the courts because that's -- it's not  
25 a question of whether the individuals can worship however

1     they like.  It's a question of what's happening to the church  
2     institution that everyone agreed to join.

3             THE COURT:  Yes.

4             MS. KOSTEL:  So the free exercise clause does not favor  
5     the leaving is my point.

6             MR. TISDALE:  The Oprah book club being an example, if  
7     you leave the Oprah book club, you can't take everything with  
8     you that belongs to everybody else.

9             THE COURT:  Which is the only issue that goes to the  
10    constructive trust.

11            MR. TISDALE:  Right.

12            MR. RUNYAN:  I have an hour's worth to respond to that,  
13    but I won't.  Associations are people for the purpose of the  
14    first amendment, and so saying that people can leave but  
15    associations can't still violates the freedom of association  
16    clause.

17            THE COURT:  And here's what happened.  Here's what  
18    happened, and you can talk about how it happened, it was  
19    fairly remarkable, but within the corporate structure of the  
20    State of South Carolina these folks, and I haven't studied  
21    specifically and I have got to do that specifically, but just  
22    as I was making my notes and we were doing our work and our  
23    charts as they went along, looks like they did it pretty --  
24    it was certainly the corporate nature of these entities it  
25    appears -- it appears, and that's not a decision, I'm not

1 making that decision because I've still got my study yet to  
2 do, but it looks like it was done properly, so if I'm there  
3 for a moment just in my head, then I'm sort of left with  
4 constructive -- this sort of lingering concern regarding  
5 constructive trust and this sort of equitable -- you know,  
6 equity is like whew, and that really is what remains.

7 And I don't know that -- I don't know that All Saints --  
8 and it may answer it and I may get there, but that would be  
9 the only one that sort of maybe in my head remains, which  
10 really does make you critical, you see.

11 Did you get any coffee?

12 THE WITNESS: Yes, ma'am. Thank you.

13 THE COURT: So we will take a little break in just a  
14 moment. I've got another colleague trying to reach me and I  
15 need to respond to that, and we also need to take a break,  
16 but let me tell you how I want to proceed.

17 I don't want -- I don't believe that Dr. Edgar can, as  
18 tempting as it is, just read to me. I don't think that's  
19 appropriate. I do think -- here's what is appropriate,  
20 number one, the journals are in or going in, if they're not  
21 already in, and I think a summary of those is absolutely --  
22 you're entitled to do a summary and you're entitled to do any  
23 number of summaries. You're entitled to do a summary that  
24 says I think this summary indicates this, I think this  
25 summary indicates that. I think you're absolutely entitled

1 to do that.

2 What I don't want -- and if he's being offered for the  
3 proposition of hierarchical, let's play like he did that  
4 because I don't want to hear it because I've got that. You  
5 all know I've got that and where I am about that. I don't  
6 want to hear it. I would just play like we did it.

7 If he wants to talk about why he believes based upon the  
8 information that he has reviewed that a constructive trust  
9 very well may lie, I'm sort of interested in that.

10 MR. TISDALE: Your Honor, what we propose to do is  
11 present the documents --

12 THE COURT: Yes.

13 MR. TISDALE: -- seriatim that he's considered, ask him  
14 how these documents relate to the issue that he's willing to  
15 say they support.

16 THE COURT: Okay. Tell them what it is during the  
17 break, what that issue is, and I don't want to hear it. I  
18 want to go take a break because I've had now a couple of  
19 communications with a colleague, so let me run and do that.  
20 Everybody take a break.

21 (Recess held.)

22 THE COURT: Okay.

23 MR. TISDALE: I will proceed, Your Honor, and I hope I  
24 will be able to do so in accordance with what you indicated  
25 we should do.

1 THE COURT: Okay. And yes.

2 MS. GOLDING: Just for the record, Your Honor, I was  
3 asked by a number of the parish attorneys to make sure the  
4 record reflects that our objections are encompassing of all  
5 the parishes, all the plaintiff parishes.

6 THE COURT: Oh, absolutely, absolutely. Thank you.  
7 Thank you for making that clear.

8 MR. TISDALE: Thank you, Your Honor, and we'll proceed  
9 as expeditiously as possible in light of your instructions.

10 THE COURT: Okay.

11 Q. Dr. Edgar, I first would like to ask you about your  
12 research and study of documents from the journals of the  
13 Diocese of South Carolina that concern and provide evidence  
14 of the historic connection between the diocese and the  
15 national church.

16 And the documents that I intend to ask you to summarize,  
17 for the benefit of the Court, begin in 1841, and the first  
18 one is marked as Exhibit 256, and if we could take a quick  
19 look at that, what is Document 256?

20 MR. RUNYAN: Excuse me. Could I have a copy of that  
21 please? Is it already in evidence?

22 MR. TISDALE: It's not in evidence. I'm getting ready  
23 to move it in evidence.

24 MS. KOSTEL: It's right on your hard drive right in  
25 front of you.

1 THE COURT: Where is it?

2 MR. TISDALE: It's right there. I don't have a hard  
3 copy of it.

4 MR. RUNYAN: We've got 200 years of journals.

5 THE COURT: You have to have it. So just hold --  
6 Ms. Kostel, I know you're the hard drive expert. Can you  
7 just assist them in finding it? Just tell them where it is.

8 MS. KOSTEL: Do you have the hard drive?

9 MR. RUNYAN: No.

10 MS. KOSTEL: Mr. Runyan doesn't have the hard drive with  
11 the exhibits where we gave them their exhibits. I have an  
12 extra.

13 MR. RUNYAN: If we're going to introduce it, then  
14 there's going to have to be a hard copy. How about just show  
15 me the one he's looking at or something so I can see what  
16 you're talking about.

17 MR. TISDALE: He's looking at the screen I think.

18 THE WITNESS: It's the cover to the journal from 1841.

19 MS. GOLDING: If you're going to have exhibits, they  
20 have to have hard copies to be brought to the Court.

21 MR. TISDALE: Your Honor, we'll provide a hard copy.

22 THE COURT: Okay. So let me ask you this question. Let  
23 me just ask, because I don't know: The journals themselves,  
24 they're only going to be excerpts from the journals that are  
25 introduced, yes?



1 MR. TISDALE: Correct.

2 THE COURT: All right.

3 MR. TISDALE: That is correct, just one page probably.

4 MS. KOSTEL: In answer to Your Honor's question, we have  
5 all of the journals in their entirety on the hard drive and  
6 we had intended, since there are no authenticity issues, to  
7 move them all into evidence, but to select out in testimony  
8 so that the other side knows what we're relying on, you know,  
9 the specific pages.

10 So we could just move the specific pages into evidence,  
11 although because Professor Edgar is testifying -- he's saying  
12 these are summaries, so we would lose -- so I'm not quite  
13 sure.

14 THE COURT: Then it's not a summary.

15 MS. GOLDING: Your Honor, I understood, and maybe I was  
16 just confused. I understood in discussing this matter last  
17 week that we would be provided the information as to the  
18 pages or the lines or the excerpts --

19 THE COURT: Yes.

20 MS. GOLDING: -- that they were relying on. I believe  
21 that we were supposed to have been provided that prior to any  
22 testimony.

23 THE COURT: Yes, me too.

24 MS. GOLDING: That's where my confusion is. We don't  
25 have that information.

1 THE COURT: Okay.

2 MS. KOSTEL: Actually, to be clear, I think our  
3 understanding was that we were doing pages for the parish,  
4 and I'm almost done with that list of all the pages in the  
5 journals throughout history that we're relying on that  
6 mention -- make parish-specific references.

7 As to the diocese-specific references, obviously, as  
8 we've said, the constitutions and canons of every -- that are  
9 at the back of most journals.

10 THE COURT: And you mentioned that.

11 MS. KOSTEL: Yes. And then we will take Your Honor,  
12 take the Court through some specific examples in the journals  
13 with Professor Edgar's testimony, but those are again  
14 examples of things that sometimes occur almost every year.  
15 Now, we have not pulled them out for every year. We can, but  
16 we have not.

17 THE COURT: Okay. Now, do you have -- of course you  
18 have a list of that because you've got to be prepared to  
19 examine Dr. Edgar.

20 MS. KOSTEL: Right.

21 THE COURT: So here's what I need: I need for those to  
22 be provided to the plaintiffs, and please accept my apology  
23 because it's my responsibility to run the Court, and if I  
24 wasn't clear about that, it's my responsibility and I  
25 apologize. Because I certainly -- because of the volume of

1 documents -- I was actually looking for another word, but  
2 because of the volume of documents, those excerpts I had  
3 wanted to be provided to the diocese along with the parishes,  
4 and if I wasn't clear about that, my fault, not yours, but I  
5 need for them to have that.

6 Now, having said that, it is impossible for the  
7 plaintiffs to prepare for cross-examination without having an  
8 opportunity to review that.

9 MS. KOSTEL: Okay.

10 THE COURT: So they've got to have it. So how quickly  
11 can we get that to them?

12 MR. TISDALE: For Dr. Edgar's testimony we can give it  
13 to them right now, but orally. I don't have it in writing,  
14 but I can have it in my notes and this is what he's going to  
15 refer to.

16 THE COURT: I know it, but here's the problem: The  
17 problem is that I need -- again, because the volume -- I  
18 think somebody said 20,000 pages. It's huge. What I had  
19 anticipated is that they would have the excerpts, and that  
20 way they could be prepared to meet that evidence just as the  
21 parishes are going to have.

22 Yes?

23 MS. KOSTEL: I have a suggestion. I think that we -- I  
24 can pretty quickly -- we can pretty quickly pull together the  
25 page numbers in the specific journals we're going to be

1 introducing with Professor Edgar, but of course they need  
2 time to review that.

3 THE COURT: Yes.

4 MS. KOSTEL: What we also need time to do is to continue  
5 to work with the parishes --

6 THE COURT: Yes.

7 MS. KOSTEL: -- on the exhibits.

8 THE COURT: Right.

9 MS. KOSTEL: So if we give the diocese those  
10 designations and then take some time to work with parishes, I  
11 don't know if that's adequate time for them to review the  
12 diocese designations, but we could then spend -- not waste  
13 time working and we can use that time when they're reviewing  
14 the documents to work with the parishes on the parish  
15 exhibits.

16 THE COURT: I agree.

17 MR. TISDALE: So it is my understanding then what we  
18 will do is give them the page number of each proposed exhibit  
19 that he plans to refer to in his testimony, and then we  
20 will -- after they have had an opportunity to review that  
21 information which they have, we will then proceed with his  
22 examination.

23 THE COURT: Yes.

24 MR. TISDALE: And the question is the timing for that.

25 THE COURT: That's right. And they can't tell you that

1 until they have it, right?

2 MS. GOLDING: Correct, Your Honor.

3 MR. RUNYAN: That's correct.

4 THE COURT: I mean, they're pretty magical, but they're  
5 not so clairvoyant. Okay. So more coffee.

6 MR. BRYAN: Your Honor, on behalf of the parishes, this  
7 testimony that is from the diocesan journals, is that  
8 relating to the parishes or just to the diocese?

9 THE COURT: I don't know. I don't know because I'm not  
10 offering it.

11 MR. BRYAN: If it is, wouldn't all the parish attorneys  
12 get the same thing?

13 THE COURT: Probably.

14 MS. KOSTEL: Yes, we'll provide that to everyone. Most  
15 of it is diocese specific, but there are, Bill, a few  
16 instances that relate to the parishes too.

17 THE COURT: Okay. Forget Wednesday.

18 MR. RUNYAN: Your Honor, I was going to suggest maybe we  
19 could have another witness, or do we have to go with this?  
20 Whatever. Whatever the Court pleases.

21 THE COURT: I was sort of thinking that too. If we can,  
22 I'm going to give them a moment to sort of meet and confer  
23 about that. That would be terrific, but I'm real focused on  
24 you all getting the information. That's like most important.

25 MR. BEERS: What Ms. Kostel is trying to say is we have

1 a ton of work to do with the individual parish's exhibits, so  
2 we were hoping for a recess while first Ms. Kostel will get  
3 these documents ready to everybody but then continue our  
4 conversations with each of the parishes to try to get the  
5 exhibits ready.

6 THE COURT: Okay.

7 MR. BEERS: In lieu of having another witness right at  
8 the moment.

9 THE COURT: I understand. All right.

10 MS. KOSTEL: Your Honor, just quickly, do you think it  
11 would be useful to pull -- I sent out the revised parish  
12 exhibit lists that we agreed to on Friday just last night,  
13 and I have spoken to a number of the parish counsel, and  
14 we've worked through what we needed to work through. I don't  
15 know if there's anyone else on this side of the gallery who  
16 is ready to talk to us now.

17 MR. PHILLIPS: St. Philip's is ready.

18 THE COURT: Can we make a list? Let's just do this.  
19 Why don't we do that so we can have some organization.  
20 Obviously the dioceses, they need information. And obviously  
21 all of you need the information that predominantly, as I  
22 understand it, the documents that affect the diocese, so  
23 we'll get those in just a moment.

24 If you'll do this for me, if you are ready to have a  
25 conversation with the defendants regarding the documents

1 specific to your parish, stand up.

2 That was you, Mark.

3 MR. PHILLIPS: Yes, ma'am.

4 MS. KOSTEL: I've spoken with maybe 15 or 20 parishes,  
5 so with those parishes we've agreed that no witness needs to  
6 come to put the document in, but they have some relevance  
7 objections.

8 THE COURT: Exactly. And you need to meet and confer  
9 about that.

10 MS. KOSTEL: We have, and I think we're going to need  
11 the Court to resolve those, which I think if we can get  
12 through all of the parishes, the relevance objections sort of  
13 fall into categories so that we probably don't have to do it  
14 parish by parish.

15 THE COURT: Got it. And so, as I understand it,  
16 everybody's sort of on the same sheet of music with regards  
17 to concerns regarding relevancy?

18 I'm getting nods.

19 MR. PHILLIPS: Your Honor, Mark Phillips. At least as  
20 to my parish, it's not authenticity. There are some  
21 admissibility issues --

22 THE COURT: Yes.

23 MR. PHILLIPS: -- that we'll have to take up. Most of  
24 them we're okay with.

25 THE COURT: Got it. And that's true, I gather, with

1 everyone. Does anybody -- did anyone fail to get -- let's  
2 everybody assume your parish, you were the one to receive  
3 documents for your parish. Did anyone fail to receive  
4 documents?

5 Mr. Easterling.

6 MR. EASTERLING: Harry Easterling for St. David's.

7 THE COURT: Mr. Easterling, you didn't get any  
8 information?

9 MR. EASTERLING: No, ma'am. But they promised it. I  
10 just don't have it yet. But, in fairness, they did say at  
11 the time that they did not have the St. David's documents.

12 MS. KOSTEL: Oh, yes.

13 THE COURT: That's right. They're still working on you.

14 MR. EASTERLING: Yes, ma'am.

15 THE COURT: Keep hiding. Yes, and Mr. Campbell.

16 MR. CAMPBELL: I think there are a few left over from  
17 last night. Ms. Kostel indicated she didn't quite get all of  
18 them. One of those was mine too. I don't recall who the  
19 others were. There are a few that were outstanding.

20 THE COURT: Do you know who is yet to be emailed, just  
21 so they can be on notice?

22 MS. KOSTEL: I have emailed all the lists except for St.  
23 Bartholomew's, St. David's, and Holy Trinity, and I can't do  
24 those until tonight probably, but everyone else has gotten a  
25 list. And I have spoken with a lot of people. I can tell



1 Your Honor which parishes I've already talked to, but not  
2 everybody, so it seems to me it doesn't make sense to take up  
3 the relevance objections until we're through all of them  
4 because I think we're all -- I think they're all going to  
5 have categories of the same relevance objections.

6 THE COURT: Got it. My concern is that the meet and  
7 confer has occurred.

8 MS. KOSTEL: Right.

9 THE COURT: Practically that has. That's great. That's  
10 ready for me. That's super.

11 MS. KOSTEL: It hasn't occurred on all of them, but we  
12 will have, yes.

13 THE COURT: More likely than not they're all going to  
14 have similar ones.

15 MS. KOSTEL: Yes.

16 THE COURT: Great. And then the diocese, when it  
17 goes -- I'm most concerned with the diocese getting the  
18 diocese documents, but everybody else wants them too.

19 MS. KOSTEL: I'm going to sit down and type a list right  
20 now.

21 MR. RUNYAN: My question was a timing question, Your  
22 Honor. It's conceivable that once we see the documents it  
23 will not take us very long at all to be able to figure out a  
24 position on them, so the timing question is if that is the  
25 case, does the Court want to resume, or does the Court want

1 to wait and resolve the parish issues as well first?

2 THE COURT: No. Here's what I want to do. I want, for  
3 this reason, because Dr. Edgar's here and he was here on  
4 Friday, and I'm very mindful of the energy that's coming at  
5 me going, oh, and so what I would prefer to do is my  
6 preference, since, as I understand it, his testimony is more  
7 directed with regards to the diocese, I'm sort of concerned  
8 about getting you guys up and ready to go and then call him  
9 back. Although he might really be ready to move to St.  
10 George. I'd be shocked, but you never know. Right?

11 THE WITNESS: It's a beautiful place to visit, ma'am.

12 THE COURT: Okay. Wonderful. So I want you guys to get  
13 it like as soon as possible.

14 It's 12:00, and those of you who are in the audience I  
15 hope that your blood sugar is low because I think we're going  
16 to take a break and now is a good time for you all to get  
17 lunch I think, and, Mr. Platte, I hope you cooked and brought  
18 things over the weekend. In any event, I think we'll take  
19 that break and do that now.

20 MR. TISDALE: Excuse me, Your Honor. Just one question.  
21 So we're certainly going to do that. She's going to provide  
22 the information concerning the designations for his  
23 testimony. Then after lunch perhaps we'll be in the position  
24 to do that.

25 Now, my only question was, with regard to the parish

1 exhibit issues, we will deal with that this afternoon. I'm  
2 just trying to plan when to have the next witness ready.

3 THE COURT: I know you are. I think that, well, I'm  
4 going to ask the parishes to caucus because you all are the  
5 ones waiting on documents, waiting on those issues. Would it  
6 be your preference to receive them in the evening and  
7 continue with witnesses, or would it be your preference to  
8 stop after Dr. Edgar and have you all have an opportunity to  
9 meet with Ms. Kostel? I don't care because at this point I'm  
10 not panicked that we're not going to be able to get things  
11 done with inside the week.

12 MR. CAMPBELL: I believe we would like to continue the  
13 testimony and we'll continue to work on this as time permits.

14 THE COURT: Perfect. All right. We're going to take a  
15 break now. Of course you're at liberty to talk about your  
16 testimony because you haven't started yet, even to the extent  
17 -- even if -- of course, it won't be on the record, but if  
18 you all want to chat, they're going to let you chat with him  
19 if you want to chat. We don't have a court reporter, but if  
20 you would like to talk to Dr. Edgar, I'm going to tell you  
21 that I don't have any problem with it and I'm sure the  
22 defendants don't have any problem with it if you all wish to  
23 do that. It's not a deposition. It would simply be an  
24 unrecorded chat, which you may or may not choose to do.

25 But in any event, here's what I'm going -- I'm here.

1 You all go get lunch. Let's for sure count on an hour and 15  
2 minutes, but I am not pressing you all. You've got to look  
3 at your documents, but Mr. Platte's going to report to me in  
4 an hour and a half just sort of what's going on.

5 Mr. Smith, if you want to come with him, you can come  
6 with him too.

7 MR. SMITH: Thank you, Your Honor.

8 THE COURT: Very well. Then we will be in recess until  
9 then.

10 (Lunch recess held.)

11 THE COURT: Have you seen the documents?

12 MR. RUNYAN: Ready to roll.

13 THE COURT: All right. Me too.

14 MR. TISDALE: While she's getting set up, Your Honor,  
15 I'll ask a few questions.

16 Q. Dr. Edgar, in addition to the historical-related  
17 activities that I asked you about as part of your background,  
18 do you also have a position with the Diocese of Upper South  
19 Carolina?

20 A. Yes, sir, at one point I did. In the 1990s I was the  
21 registrar of the diocese, which is -- there's one in the  
22 diocese of south, but it's a different office. It's  
23 historian/archivist. It's also a constitutional officer. I  
24 had a seat, voice and vote in the state convention.

25 Q. All right. And that was in the 1990s?

1 A. Yes, sir.

2 Q. Dr. Edgar, as we were talking earlier, the questions I  
3 would like to begin asking you to help us understand is what  
4 you have done to research and determine the historic  
5 connection between the Diocese of South Carolina and the  
6 national church, and in order to do that I'm going to ask you  
7 about documents that you have considered and ask you not to  
8 read the documents that we will show but summarize what they  
9 tell us about the connection, if you will.

10 A. Yes, sir.

11 Q. Now, the first we will refer to is Exhibit 256. What is  
12 what's been marked 256?

13 A. This is the cover of the diocesan journal for 1841.

14 MR. TISDALE: Now, Your Honor, we have now given all of  
15 the page references in this and other documents that we will  
16 come to.

17 THE COURT: Okay.

18 MR. TISDALE: And I am reluctant to take the time to  
19 move the admission of each one separately, but should I do  
20 that? I move that this one be admitted into evidence.

21 THE COURT: The question is are the journals in  
22 evidence? Have the journals themselves been offered into  
23 evidence? No. Too many of them.

24 MS. KOSTEL: I think we did offer them en masse, and so  
25 the issues were -- well, one issue is that they -- many of

1    them at the end contain the constitution and canons of the  
2    diocese, and it was our contention that all of those should  
3    come in, but then in the journal of the proceedings I think  
4    what we have just given opposing counsel are the specific  
5    pages.

6           THE COURT:   Excerpts.

7           MS. KOSTEL:   But then we'll also give specific pages for  
8    the parishes hopefully tonight, and then we will have covered  
9    all the other pages that are not in the constitution and  
10   canons.

11          THE COURT:   Okay.

12          And the position of the diocese with regards to the  
13   admission of the journals is?

14          MR. RUNYAN:   Well, I don't know that we want to  
15   introduce every single journal in the record, 20,000 pages.  
16   We have no objection as to authenticity other than -- other  
17   than a relevance issue on the issue of hierarchy, I don't  
18   have any objection to this document and I don't know that I  
19   have any to the excerpts other than, as we've covered before,  
20   I think there may be one or two that I have an issue with,  
21   but I'm aware of what those are, so I don't mind this  
22   procedure if that suits the Court.

23          THE COURT:   Okay.

24          MR. TISDALE:   So should I move them individually?

25          THE COURT:   No, I think you move them in en masse.

1 MR. TISDALE: We can do that.

2 MS. GOLDING: Except as to when he refers to a document  
3 that we have an objection, we will. If we don't, we won't.

4 THE COURT: Very well.

5 MR. TISDALE: I'll just wait until I get to each one of  
6 these little sections for him and move the admission of the  
7 documents he's referred to by exhibit number.

8 THE COURT: I think they were going to -- they know  
9 what -- as I understand it, plaintiffs know what they're  
10 going to object to.

11 MS. GOLDING: Correct.

12 THE COURT: So why don't you keep rolling until they  
13 object.

14 MR. TISDALE: So all of these are admitted subject to  
15 objection?

16 THE COURT: That's correct.

17 MR. TISDALE: Perfect. That saves time.

18 MS. KOSTEL: We're moving them in en masse, but then  
19 we're going to select out certain pages. Is that what I  
20 heard Your Honor say?

21 MR. RUNYAN: I thought our position was the excerpts  
22 that we had looked at we don't have a problem with except for  
23 a few.

24 MR. TISDALE: Those are the only ones we're going to  
25 refer to.

1 MR. RUNYAN: I really don't think we have a big issue  
2 here.

3 MR. TISDALE: I just want them to be in evidence, that's  
4 all.

5 MS. KOSTEL: I think this is just a purely technical  
6 issue, which is that what's scanned onto that hard drive are  
7 the whole things, and we're happy to limit what we're  
8 actually submitting to the specific pages on these lists, but  
9 physically to create that, yes.

10 THE COURT: Let me just say this. In terms of the  
11 record, there are really two issues that I'm concerned about.  
12 I'm not concerned about the excerpts. I'm not concerned  
13 about dealing with the objections. There are two issues.

14 Issue No. 1 is it is the position of the defendants that  
15 there is relevance that the constitution and the canons are  
16 if not each and every journal, mostly each and every journal.  
17 That can either be done by stipulation or it's got to be done  
18 by an exhibit. That's the Issue No. 1. There's nothing that  
19 I can do with regards to that other than admit the journal.

20 The other issue is that there are two journals that are  
21 in, and they went in last week with Bishop -- and forgive me.  
22 I do not recall his --

23 MR. TISDALE: Bishop Daniel probably.

24 THE COURT: Okay. And those were referred to by --  
25 you're telling me it was not.



1 MR. RUNYAN: No. It's exhibited to the witness and the  
2 question was asked, but they didn't go into evidence, we  
3 didn't move them into evidence, and they were the Episcopal  
4 Church constitution and canons.

5 MS. KOSTEL: Right, they were not journals.

6 THE COURT: That's right. Okay. Then I'm not concerned  
7 about that. All right. If you all are good with the  
8 excerpts, I'm good with the excerpts. You're going to have  
9 to resolve the issue what you do about your constitution and  
10 the canons that are in those journals. If you can't work out  
11 a stipulation and it's important to you, then you're going to  
12 have to --

13 MR. TISDALE: For this witness, we're just going to  
14 refer to excerpts, and we've marked this particular one as  
15 Exhibit 256.

16 THE COURT: Okay.

17 Q. Dr. Edgar, what is the document that's on the screen?

18 A. The document is the constitution of the Protestant  
19 Episcopal Church in the Diocese of South Carolina. In 1841  
20 there was a new Article 1. It's entitled "Of acceding to the  
21 constitutions and canons of the general convention."

22 Q. What does that tell us about from this document the  
23 connection between the diocese and the national church?

24 MS. GOLDING: Your Honor, I object. The best evidence  
25 is the document itself, and he can't --

1 MR. TISDALE: He was told to summarize it, was what the  
2 Judge said, not to read it.

3 THE COURT: The question was what does it say. I've got  
4 to read it.

5 Q. Dr. Edgar, would you read this excerpt, please?

6 A. Yes, sir.

7 It is Article 1. The title is "Of acceding to the  
8 constitution and canons of the general convention." The  
9 Protestant Episcopal Church in South Carolina accedes to,  
10 recognizes and adopts the general constitution and canons of  
11 the Protestant Episcopal Church in the United States of  
12 America and acknowledges their authority accordingly.

13 Q. Now, Dr. Edgar, does this document say whether or not  
14 that provision passed the vote of the convention?

15 A. This passed on the floor of the convention unanimously.

16 Q. All right, sir. Let's go now to what's been marked as  
17 Exhibit 259, and I will ask you to tell us what this is?

18 A. This is the cover for the convention of 1844.

19 Q. And have you considered this in your research as to  
20 establishing connection between the diocese and the national  
21 church?

22 A. Would you please repeat that, sir?

23 Q. Have you considered an excerpt from this journal, 1844,  
24 to establish the connection between the national church and  
25 the diocese?

1 A. Yes, sir, I have.

2 Q. And would you refer to the page number and what you  
3 considered and, as they have indicated they wish you to do,  
4 read the excerpt?

5 A. It is Page 39, and it was a proposed resolution which I  
6 think, sir, and, Your Honor, I think it would be better to  
7 read this one.

8 Q. They've asked you to read it I think.

9 A. Okay.

10 Q. Instead of summarizing, as I thought we previously  
11 agreed, read it, please.

12 A. Resolved that while each diocese of the church is wholly  
13 independent of every other and may guide and govern itself  
14 and all things indifferent by its own law its own discretion,  
15 its own will, and is bound even to its union in general  
16 convention only by its own consent.

17 Q. Now, how was that resolution dealt with by the  
18 convention?

19 A. The convention in 1845 defeated the resolution.

20 Q. All right. Now let's go to what's been marked Exhibit  
21 260, and is that the 1845 journal that dealt with the  
22 resolution you just read?

23 A. I'm looking at the cover right now.

24 Q. Okay. What is the cover?

25 A. The cover of the 1845 journal.

1 Q. Now, have you determined by an excerpt in this journal  
2 to determine what happened to the resolution proposed in 1844  
3 that you referred to a minute ago?

4 A. Yes, sir. It's a parliamentary procedure. The motion  
5 was brought back up, and the disposition was so the  
6 indefinite postponement was carried by a majority of both  
7 orders.

8 Q. All right. Now, let's go to Exhibit 286.

9 A. This is the cover for the journal of 1872.

10 Q. And --

11 MS. GOLDING: What exhibit number is that one?

12 MR. TISDALE: 286.

13 MS. GOLDING: Thank you.

14 Q. What does this particular journal of 1872 tell us about  
15 the connection between the diocese and the national church?

16 A. Article 1 is still the accession clause.

17 Q. Explain accession. From what to what?

18 A. The church in this diocese accedes to and adopts the  
19 constitution and canons of the Protestant Episcopal Church in  
20 the United States of America and acknowledges their authority  
21 accordingly.

22 Q. Thank you, Doctor. Now I'll ask that we take a look  
23 at -- skip ahead to 2009, Exhibit 423. And did you look at  
24 all of the journals from 1785 to present?

25 A. 1785 to 2010, sir.

1 Q. To 2010?

2 A. Yes, sir.

3 Q. And was this 2009 journal one that you examined?

4 A. Yes, sir.

5 Q. Tell us along the same lines as we have talked about  
6 just now about what it tells you also about the accession  
7 between the diocese and the national church.

8 A. All right. This is the constitution from the 2009  
9 journal, Article 1. The church in the Diocese of South  
10 Carolina accedes to and adopts the constitutions and canons  
11 of the Protestant Episcopal Church in the United States of  
12 America and acknowledges this authority accordingly.

13 Q. Dr. Edgar, at any time in all of the journals -- I know  
14 you've picked out or selected these that you have testified  
15 to from 1841 to 2009. Did you see any journal between 1841  
16 and 2009 in which the accession clause between the diocese  
17 and national church was different from what you have  
18 explained to us?

19 A. Yes, sir, during the period 1861 to 1865.

20 Q. Well, while we're on that subject, let's talk about it  
21 for a minute.

22 MR. TISDALE: And I'll ask you, Ms. Kostel, to move to  
23 Exhibit 276.

24 A. This is the diocesan journal for 1861.

25 Q. What happened to the connection between the Diocese of

1 South Carolina and the national church during the period of  
2 the American Civil War?

3 A. They were in different territories. The Confederate  
4 States of America was an independent nation, and this  
5 affected the relationship, as Bishop Davis explained in his  
6 address, which is what this excerpt is from.

7 Q. All right. And I think they would like you to read that  
8 rather than summarize it, so can you tell us what it says?  
9 And this is the journal of this diocese in 1861, correct?

10 A. Yes, sir.

11 Q. All right. What does it say about this?

12 A. Thus when the United States were acknowledged as an  
13 independent government, the clergy, who are the subjects of  
14 that government, became necessarily separated from the  
15 English church and excluded from spiritual jurisdiction  
16 therein or subjection thereto -- thereunto, the same  
17 principle lying, I think, deep in the bosoms of those who  
18 originated the constitution of the general convention -- and  
19 that is capitalized, general convention -- was wrought into  
20 that document and the principle is there set forth and is I  
21 think more thoroughly incorporated in it even than expressed  
22 that none but a citizen of the United States shall be a  
23 member of the Protestant Episcopal Church in the United  
24 States.

25 We are, of course, so no longer, not entitled to

1 spiritual jurisdiction therein nor subject to the government  
2 thereof, but this is the precise and only aspect of the  
3 subject presented to us. There is no principle of spiritual  
4 life involved. There is no article of the faith at issue.  
5 It is simply a question of constitutional confederation, and  
6 our conclusion is that the condition of confederation being  
7 broken, the confederation exists no longer, parentheses, I am  
8 speaking of constitutional -- excuse me. I am speaking of  
9 constitutions and constitutional relations and this is the  
10 subject before us, closed parentheses.

11 It has been broken also by actions without ourselves as  
12 a church. The course of divine providence in the entire  
13 change of the government, of which we are subjects, has  
14 determined this for us. We are, therefore, a free and  
15 independent diocese. We are so to without sin or schism, and  
16 our way is open before us to do what we deem best for  
17 ourselves and promoting the glory of God.

18 Q. All right. Now, what happened based upon your study and  
19 research at the general convention roll call in 1862  
20 concerning this matter?

21 A. The roll was called at the general convention and the  
22 States of the Confederacy were called as if to answer, and of  
23 course there was no one present to answer. The roll call  
24 began in 1862, as it always had, with Alabama.

25 Q. All right. The name of the Diocese of South Carolina

1 was called?

2 A. The diocese, that was part of the roll call, yes, sir.

3 Q. What exhibit do you have next?

4 A. It's the proceedings of 1866.

5 Q. And what is this, Dr. Edgar?

6 A. This is the journal of the proceedings of the Diocese of  
7 South Carolina in 1866.

8 Q. And --

9 A. And as part of that, actually facing the title page of  
10 the document is a resolution that was passed. It's called  
11 preamble and resolutions of the general council of Protestant  
12 Episcopal Church in the, parentheses, late, closed  
13 parentheses, Confederate States that was then ordered to be  
14 printed in this journal of the Diocese of South Carolina.

15 Q. And what are the pertinent parts that you considered?

16 A. The opening sentence, whereas, the several dioceses  
17 which we as bishops and deputies represent at this council  
18 were impaled by political events to separate in a legislative  
19 capacity from the Protestant Episcopal Church in the United  
20 States and there follow several resolutions, and the second  
21 resolution is that it be recommended that wherever the word  
22 confederate occurs in the standards of this church, the word  
23 united be substituted there for.

24 Q. Now, Dr. Edgar, after the war in 1866 did the Diocese of  
25 South Carolina reapply to become a part of the Episcopal



1 Church, or were they accepted without such application?

2 A. There is no record of their having made an application.

3 Q. And did their role as a diocese in the Episcopal Church  
4 continue?

5 MS. GOLDING: Your Honor, I'm going to make an  
6 objection. The record speaks for itself.

7 Q. Would you read the excerpt concerning this matter that  
8 is before you?

9 THE COURT: I would sustain the objection and I  
10 understand it's being rectified.

11 MR. TISDALE: I'm sorry.

12 THE COURT: Okay.

13 Q. Doctor?

14 A. This is still from the 1866 journal?

15 Q. Right.

16 THE WITNESS: Your Honor, did you want me to read the  
17 resolution or not?

18 THE COURT: I can read it. Just hold on a second.

19 Okay. I have read it.

20 THE WITNESS: All right. And the resolution was  
21 adopted.

22 Q. Thank you, Dr. Edgar.

23 Now, I think I asked you this before, but from 1841,  
24 except for the Civil War period you've just discussed,  
25 through 2009, was the accession clause ever changed and

1 accepted as modified during the period of the Civil War?

2 A. There was always an accession clause. I think at one  
3 time "this" was changed to "thee," but there was no change in  
4 accession.

5 Q. And that goes through 2009?

6 A. Through 2009, yes, sir.

7 Q. Now I would like to move to another subject and ask you,  
8 please, to review some documents to tell us something about  
9 how the diocese has related to the rules of the national  
10 church and how they have conformed to such rules in history.  
11 First we will turn to Exhibit 227.

12 A. All right. This is the journal from the 1812  
13 convention.

14 Q. And how does it relate to giving us an understanding of  
15 the dioceses of South Carolina relating to and conforming to  
16 the rules of the national church?

17 A. At the 1812 convention the Diocese of South Carolina  
18 elected the Reverend Theodore Dehon as the second bishop of  
19 South Carolina, and this excerpt is his response to the  
20 convention.

21 Q. Read it, please.

22 A. I will now give you my consent. He consents to being  
23 elected bishop, and then he adds, In order to carry your  
24 wishes into effect, it will be necessary that the  
25 testimonials from the convention of the state required in

1 this case by the third canon of the general convention should  
2 be prepared and signed before you adjourn and that the  
3 standing committee shall be -- excuse me -- that the standing  
4 committee should be directed by the convention to take the  
5 necessary steps for convening a college of bishops at such  
6 time as will be found proper.

7 The original I saw was -- I think it's an "as" in there.

8 Q. Is there anything else in this particular document, 1812  
9 journal, related --

10 A. Yes, there's one thing, I think. The secretary prepared  
11 the testimonial required by the canons in the case of the  
12 bishop elect, and it was signed by the members of the  
13 convention.

14 Q. Now, when it used the word "canons" there, is it  
15 referring to the canons of the diocese or the national  
16 church?

17 MS. GOLDING: Your Honor, I will make an objection. I  
18 think the document speaks for itself as to what canons are  
19 referred to.

20 THE COURT: Sustained.

21 Q. All right. Did Bishop Dehon become second bishop of the  
22 diocese?

23 A. Yes, sir, he was consecrated.

24 Q. All right. Let's look at Exhibit 258.

25 A. This is the title page from the 1843 journal.

1 Q. How does it relate to the issue we've talked about,  
2 conformity with the rules?

3 A. I'm sorry, sir?

4 Q. How does this document help us understand whether or not  
5 the diocese conformed to the rules of the national church?

6 A. This is from the standing committee report, and among  
7 the business that the standing committee reported to the  
8 diocesan convention, they have also given their consent to  
9 the consecration of the Reverend Dr. John Johns to be  
10 assistant bishop of Virginia and of the Reverend Dr. Manton  
11 Eastburn to be assistant bishop of Massachusetts.

12 Q. Now, why were these consents being given, do you know?

13 A. The standing committee operates according to the  
14 diocesan canons. Their duties are laid out by the canons of  
15 the national church.

16 Q. Canons of the national church?

17 A. Yes, sir.

18 Q. All right. And was this action that you read from this  
19 1843 journal in conformity with the standards set by the  
20 national church?

21 A. Yes, sir.

22 Q. All right. Let's go to Exhibit 265, please.

23 A. This is the 1850 journal title page?

24 Q. Yes, sir. And still on the issue of conformity with the  
25 rules of the national church, can you give us an example by

1 any excerpt that you've noted in this journal, 1850?

2 A. Again we're dealing with the standing committee report.

3 Also consent was given by them to the consecration of the

4 Reverend William M. Green, D.D., as bishop of the diocese of

5 Mississippi.

6 Q. Now, without going into any of the other journals along

7 this period of time, are there other examples that you read

8 in your research in reading all the journals of where the

9 diocese standing committee gave consent to elections of

10 bishops?

11 A. Yes, sir. It gave its consent. Sometimes it withheld

12 its consent.

13 Q. We're going to look at one of those right now, Exhibit

14 289. What year is this?

15 A. It's labeled 85th convention. I have to look at my

16 Roman numerals.

17 Q. I think I can save a little time. We have down that

18 it's 1875. Do you think that's correct?

19 A. 1875 convention, yes, sir. There are two Xs. I see

20 that.

21 Q. Now, what happened in this based upon -- and you've

22 marked some excerpt there, and so I think they will want you

23 to read it.

24 A. This is an appendix to the journal and it's the annual

25 communication of the standing committee. The committee

1 refused to consent to the consecration of the Reverend Dr.

2 DeKoven as bishop of Illinois.

3 Q. Was this, again, an obligation imposed by the national

4 church for the standing committees of the Diocese?

5 A. Yes, sir. The standing committee is asked to consent or

6 nonconsent to bishops.

7 Q. Ordinations?

8 A. Ordinations.

9 Q. And in this case it declined?

10 A. It was declined.

11 Q. Now, go to 321 if we can. What year is this journal

12 from?

13 A. This is 1907.

14 Q. What does this particular journal deal with along the

15 lines of the issue we're talking about?

16 A. This is dealing with the discussion of the possible

17 division of the diocese.

18 Q. Let me go back from that a little bit. This is 2007.

19 A. All right. Excuse me.

20 Q. Excuse me. Not 2007; 1907.

21 A. Excuse me. All right.

22 Q. And does it deal with the election of a bishop of some

23 sort?

24 A. Yes, sir. It deals with the election of a bishop

25 coadjutor, and it says, Whereas it's necessary under the

1 general canons of the church that certain testimonials, etc.,  
2 shall be signed by this body and its officers.

3 Q. Now, was a testimonial signed in this case having to do  
4 with the election of a bishop coadjutor for South Carolina?

5 A. Yes, sir, it was. It was election of the Reverend W.  
6 Alexander Guerry as bishop coadjutor of the Diocese of South  
7 Carolina.

8 Q. And is this testimonial necessary to go with a consent  
9 to the ordination?

10 A. Yes, sir.

11 Q. All right. So let's look at 393.

12 A. This is the 1979 convention.

13 Q. And what does it have to do with the conformity of the  
14 diocese to rules of the general convention, national church?

15 A. These are resolutions passed at convention, R-7,  
16 resolution offered by the committee on the bishop's address.  
17 Subject: Memorialize general convention requesting general  
18 convention's consent for election of bishop coadjutor.

19 Q. '79, 1979?

20 A. 1979.

21 Q. Was that consent granted or not?

22 A. Yes, it was.

23 Q. And if we look at Exhibit 394?

24 A. Yes, sir, that's the conclusion of that resolution.

25 Q. What is this, 394?

1 A. This is --

2 Q. 1980?

3 A. Yes, sir, this is September 1980.

4 Q. And what does it concern. The last one was '79 that we  
5 looked at. It's 394.

6 A. This is actually a special convention. Those special  
7 convention proceedings were included in the journal of that  
8 year.

9 Q. Right.

10 A. The voting proceeded as above until the seventh ballot,  
11 which resulted in the election of the Reverend Dr.  
12 Christopher FitzSimons Allison.

13 Q. An election to what?

14 A. As bishop coadjutor.

15 And the last business of the special convention  
16 following the signing of the required testimonials of the  
17 clergy and lay deputies, the convention was recessed.

18 Q. And were these testimonials after the election to comply  
19 with the rules of the national church?

20 A. Rules of the national church, yes, sir.

21 Q. Okay. Now, we've been over a few examples of the  
22 compliance with the rules that you've explained. Has this  
23 action been consistent with that indicated in the other  
24 journals you reviewed over the period of the history of the  
25 diocese?



1 A. Yes, sir. In terms of elections in South Carolina?

2 Q. Yes.

3 A. There were two journals when I did not actually see  
4 references to testimonials, but since the individuals  
5 concerned were consecrated, the testimonials had to have been  
6 submitted. That could not have happened without them being  
7 submitted.

8 Q. All right. Now, the next exhibit is 422 that we'll look  
9 at briefly. What journal is this?

10 A. This is the journal of the 2008 convention.

11 Q. 2008?

12 A. Yes, sir.

13 Q. And along the lines of conformity with the rules, what  
14 does this indicate that --

15 A. This is a continuation of a recessed convention, and  
16 from the journal on September the 16th, 2006, we, referring  
17 to the diocese, elected Mark Lawrence at a special electing  
18 convention. His election was judged null and void, as a few  
19 of the needed standing committee consents were not submitted  
20 properly.

21 Q. Okay. So what happened?

22 A. They had another election.

23 Q. All right. Now I want to turn to a subject you  
24 mentioned a few minutes ago, and that is the role or the  
25 interaction between the national church and the diocese when

1 it comes to a plan to divide the Diocese of South Carolina.  
2 And to do that, to talk about it, I would like to, by  
3 referring to the examples we're going to look at, ask you to  
4 tell us, if you can, how the national church figured in the  
5 plan to divide South Carolina, the whole state, into the two  
6 dioceses that it now is; that is, Upper South Carolina and  
7 South Carolina, and to begin this we look at Exhibit 324.

8 A. This is a report of the committee on division of the  
9 diocese.

10 Q. What year?

11 A. I didn't see the title page. I think it's 1910.

12 Q. It is.

13 A. At the meeting held in November the former subcommittee  
14 reported that they found no legal or canonical difficulties  
15 in the way of division and that they were prepared to furnish  
16 all the documents necessary in case the matter of division  
17 was to be presented to the next general convention.

18 Q. And what happened to this particular resolution or  
19 proposal?

20 A. They chose not to divide at this point.

21 Q. What year did you say it was, 1910?

22 A. 1910.

23 Q. Move forward to Exhibit 334.

24 A. This is 1920.

25 Q. Yes, sir. And what, if anything, was considered in 1920

1 in that journal of the convention of the diocese concerning  
2 the proposal to divide the state into two?

3 A. The bishop in his address --

4 Q. What bishop was that?

5 A. This is Bishop William Alexander Guerry in his address  
6 to the convention.

7 I would remind you, however, that division under our  
8 church law would not be possible until the next general  
9 convention, or nearly three years from date.

10 Q. All right. So let's go to 336, which I think is the  
11 1922 journal. What is the journal?

12 A. This is the journal for the 1922 convention.

13 Q. All right. I think they want you to read the excerpt,  
14 if you will, if it relates to this proposal to divide the  
15 state into two.

16 A. Yes, sir, this is for the division of the diocese.

17 Resolved, that the consent of the council of the Diocese  
18 of South Carolina be and is hereby given to the erection and  
19 establishment within the limits of this diocese of a new  
20 diocese to be composed of the territory embraced within the  
21 following counties.

22 THE WITNESS: Do you want me to read the counties, Your  
23 Honor?

24 THE COURT: You don't need to.

25 Q. Skip the counties.

1 A. And that this council requests the bishop of the diocese  
2 and its duly elected deputies to present to the general  
3 convention at its next ensuing session a memorial setting  
4 forth all necessary canonical information accompanied by the  
5 proper documents and evidence and praying that the said  
6 division of this diocese be sanctioned and confirmed.

7 Q. Dr. Edgar, as a matter of history, were the two  
8 dioceses -- was the diocese of Upper South Carolina created?

9 A. It was. At the national convention in Portland in 1923  
10 the general convention acceded to the division of the  
11 diocese.

12 (Attorneys confer.)

13 MR. TISDALE: I'm going to show you -- this document is  
14 not scanned. It's been marked as Exhibit 17, and we're  
15 giving copies to everybody. Have you got one for the Judge?  
16 I'll pass it up, if I may. 1923 journal. It has to do with  
17 the same subject of the division of the diocese.

18 (Defendant's Exhibit 17 marked for identification.)

19 Q. Can you tell us whether the general convention -- you  
20 said 1923. Could it have been 1922?

21 A. Yes, sir. What page are you referring?

22 Q. Look at Page 115.

23 A. Yes, sir, it was 1922. I misspoke.

24 Q. And just to clear that up, in 1922 did the general  
25 convention give consent for the division?

1 A. Yes, sir, it did.

2 Q. Okay. And that's shown by the exhibit you're looking at  
3 now, which I think is -- what's the number on the front?

4 A. No. 17.

5 Q. 17. Thank you, Doctor.

6 Now let's move to another topic briefly. I am going to  
7 point to an exhibit or two and ask you to consider what we  
8 looked at in light of the question or to view the question of  
9 how the relationship between the diocese and the national  
10 church involves the control over geographic boundaries of the  
11 various dioceses, and I'll show you a couple documents to  
12 look at. The first one is 414. What is that?

13 A. It's the journal for 2000.

14 Q. And what can you derive from it to talk about the  
15 control of the general convention over the diocesan  
16 boundaries? And there's an excerpt I think.

17 A. Okay. I've got to lean close with my trifocals.

18 THE COURT: Sure.

19 A. This is a report of the standing committee.

20 Consented to the ceding of that part of the territory of  
21 the Episcopal Diocese of Minnesota consisting of Clay County,  
22 Minnesota, to the Episcopal Diocese of North Dakota in  
23 March -- on March 22, excuse me, March 22, 1999.

24 Q. Have you seen other examples of this same issue in other  
25 journals?

1 A. Yes, sir, involving other dioceses.

2 Q. Other dioceses. And is there a requirement for consent  
3 of the church?

4 A. This is report of the standing committee of the Diocese  
5 of South Carolina.

6 MR. RUNYAN: Your Honor, Dr. Edgar, please excuse me. I  
7 have an objection.

8 THE COURT: Okay.

9 MR. RUNYAN: I think the document speaks for itself. He  
10 asked if there was a requirement of consent for the church.  
11 I don't know which church he's talking about. If it's the  
12 national church, then I would object to it as lack of  
13 foundation.

14 MR. TISDALE: Thank you. I'll address the matter  
15 another way.

16 THE COURT: All right.

17 Q. In your study and research on all the journals that you  
18 testified you've looked at, are there other examples where  
19 consent has been required from the general convention to  
20 change the territories of dioceses?

21 THE WITNESS: Yes, sir.

22 MR. RUNYAN: That is inconsistent with what was just  
23 read. The document speaks for itself. Consent is required  
24 from the standing committees of the dioceses, not the general  
25 convention.

1 MR. TISDALE: With that correction, I will -- I will  
2 accept that.

3 THE COURT: Okay.

4 Q. Now, has your research indicated throughout the history  
5 of the Episcopal Church, the national church, that consents  
6 have been given or declined for the ordination of bishops in  
7 the various dioceses by standing committees and the bishops  
8 of the dioceses?

9 A. Yes, sir.

10 MR. RUNYAN: Lack of foundation.

11 THE COURT: Say what?

12 MR. RUNYAN: Lack of foundation.

13 THE COURT: Oh, you had an objection?

14 MR. RUNYAN: I did. He said throughout the entire  
15 Episcopal Church. Lack of foundation.

16 MR. TISDALE: Well, throughout the national church.

17 MR. RUNYAN: Lack of foundation.

18 THE COURT: Sustained.

19 Q. Has the general convention of the Episcopal Church  
20 required, the constitution and canons of the Episcopal Church  
21 required, that parishes in the respective dioceses of the  
22 Episcopal Church, the national church, obtain consent of  
23 their own standing committees for the encumbrance of  
24 property?

25 MS. GOLDING: Again, Your Honor, it's the same.

1 THE COURT: Sustained.

2 MS. GOLDING: Thank you, Your Honor.

3 MR. TISDALE: Okay.

4 Q. Let's look at Exhibit 415. What is this, Dr. Edgar?

5 A. This is the 211 convention, which would have been in  
6 2001.

7 Q. 2001?

8 A. Yes, sir.

9 Q. And look at the excerpt, if there is one. And this has  
10 to do with the cession of territory, and I'm simply asking  
11 you to refer to the excerpt and see if it's another example  
12 of the consent of this diocese?

13 A. The standing committee consented to the ceding of a  
14 portion of the territory of the diocese of Arizona consisting  
15 of Page, Arizona, to the diocese of Utah, November 14th,  
16 2000.

17 Q. Moving to another topic in our examination of this issue  
18 of the relationship and the connection between the diocese  
19 and the national church, I would like to ask you a series of  
20 questions by reference to journals you have considered having  
21 to do with the governance of parishes in the respective  
22 dioceses.

23 A. Yes, sir.

24 Q. Exhibit 237?

25 A. This is the 1822 journal.



1 Q. And would you look at the excerpts that are marked there  
2 to see and read to us what relates to this issue in that  
3 particular journal of 1822?

4 A. This is from the bishop's address.

5 Q. Who's the bishop?

6 A. 1822 it's going to be Bishop Gadsden.

7 Q. Could it possibly be Dehon?

8 A. I'm trying to remember when Bishop Dehon died.

9 Q. It doesn't matter. Just go ahead.

10 A. It's from the bishop's address, sir.

11 Q. All right.

12 A. The receiving of the new congregation of Manchester into  
13 the convention by their delegates reminds me again to suggest  
14 for your consideration the importance of instituting some  
15 regular uniform mode of receiving churches newly organized  
16 into our diocesan association.

17 Q. Okay. Now can we look at Page 39 of that journal? Is  
18 it this same journal, I believe, in 1822?

19 A. Yes, sir, and at that particular convention.

20 MR. TISDALE: Page 39, just for the record.

21 Q. Go ahead, sir.

22 A. They passed Canon 1. The title of that canon is "Of the  
23 admission of churches or parishes into the convention."

24 Q. This is Diocese of South Carolina convention?

25 A. Yes, sir.

1 Q. Would you read that, please?

2 A. Whenever a church or parish not now entitled to a  
3 representation shall be desirous of uniting with the  
4 convention of the church in this diocese, they shall apply by  
5 letter to the bishop, or, when there is no bishop, to the  
6 standing committee stating the due organization of their  
7 church, the election of their vestrymen and church wardens,  
8 their means or prospects for the support of a minister, and  
9 their willingness to conform to the constitution and canons  
10 of the general convention and the constitution and canons of  
11 the convention of this diocese which are now or hereafter may  
12 be enacted by authority of the same.

13 Q. This was what year?

14 A. 1822.

15 Q. Okay. Let's go to 238, Exhibit 238.

16 A. This is the journal of 1823.

17 Q. What does it do with regard to parish -- requirements of  
18 a parish to conform with whatever it is?

19 A. They replaced Canon 1 with what would become initially  
20 the fourth article, and it goes as follows: That the canon  
21 adopted at the present convention, 1822, regulating the  
22 admission of churches newly organized into conventions be  
23 made an article of the constitution. The question being  
24 taken, agreeing on the article of the report, it carried  
25 unanimously.

1 Q. And did it become a part of the constitution?

2 A. Yes, sir.

3 Q. All right. Exhibit 247, what journal is this?

4 A. This is 1832.

5 Q. Diocese of South Carolina?

6 A. Yes, sir.

7 Q. And what does it relate to regarding parish and its  
8 relationship to the diocese?

9 A. This is in the business meeting of the convention.

10 Q. 1832?

11 A. Yes, sir.

12 A letter was read addressed to the bishop by Mr. John  
13 Rivers, chairman of the vestry of St. James Church, James  
14 Island, expressing their desire to be admitted into union  
15 with the conventions of the churches -- of the church in this  
16 diocese. And it goes through the different -- they further  
17 state they are willing and do hereby conform to the  
18 constitution and canons of the general convention and the  
19 constitution and canons of the convention of this diocese  
20 which are now or may hereafter be enacted by authority of the  
21 same.

22 Q. All right. Let's turn to Exhibit 269. What year  
23 journal is this?

24 A. This is the journal for 1854.

25 Q. And does this have to do with a parish's relationship

1 with the diocese?

2 A. Yes, sir.

3 Q. And what parish is it?

4 A. It is the parish of St. Thaddeus Aiken.

5 Q. That's not in this Diocese of South Carolina right now,  
6 is it?

7 A. No, sir, but it was then.

8 Q. In 1854, before the division, right?

9 A. Yes, sir. This is the resolution that was adopted by  
10 general convention.

11 Q. All right.

12 A. Resolved that a committee of two clergymen and two  
13 laymen be appointed to examine the charter of St. Thaddeus'  
14 Church, Aiken, and report to the convention at its next  
15 session whether the same is in conformity to the constitution  
16 of the Episcopal Church of this state and of the United  
17 States.

18 Q. Was this issue dealt with at next convention?

19 A. Yes, sir.

20 Q. How?

21 A. It was accepted into union.

22 Q. St. Thaddeus Aiken?

23 A. Yes, sir.

24 Q. Exhibit 271, please. Along the same lines that we've  
25 been talking, parish's relationship to the diocese, and the

1 national church's involvement.

2 A. This is the journal of 1856.

3 Q. What happened then?

4 A. There was a committee on reception of churches.

5 Sometimes it's called committee on admissions. It varies  
6 from journal to journal.

7 The committee on reception of churches reported in favor  
8 of St. Jude's Church Walterboro, which was on motion received  
9 into union with the convention. They also reported that the  
10 application of Christ Church Mars Bluff was canonical except  
11 in not stating their means for the support of a minister.  
12 This defect being supplied verbally on motion, Christ Church  
13 Mars Bluff was received into the union with the convention.  
14 Trinity Church Black Oak, not having complied with all the  
15 canonical requisites, the application of this church was laid  
16 on the table in order to give time for supplying its  
17 deficiencies.

18 Q. Now, was Trinity Church Black Oak subsequently brought  
19 in?

20 A. Yes, sir, it was.

21 MR. RUNYAN: Your Honor, before you get to the -- are  
22 you going to the next exhibit, Tom? I'm sorry.

23 MR. TISDALE: Go ahead.

24 MR. RUNYAN: There's a portion of the next exhibit that  
25 I have no problem with, but R-3 I don't think is relevant.

1 MR. TISDALE: You're referring to what we have as  
2 Exhibit 415?

3 MR. RUNYAN: 2001.

4 MR. TISDALE: 2001, yes.

5 MR. RUNYAN: I believe the top part, but not R-3.

6 MR. TISDALE: Let's go to 415 and get it cleared up  
7 right now. I'm not going to go into it. If you don't want  
8 him to read it, he won't read it.

9 MS. KOSTEL: I'll go to the part we're talking about.

10 MR. TISDALE: I won't go into it if you object to it.  
11 Go to the section that they don't object to --

12 MS. KOSTEL: Right.

13 MR. TISDALE: -- of 415.

14 (Attorneys confer.)

15 Q. Now, we are referring to an excerpt from the 2001  
16 convention, which is Exhibit 415. Now, is this section on  
17 the screen not objected to? Okay. Tell us what this relates  
18 to, Dr. Edgar?

19 A. This is under resolutions adopted by the convention. It  
20 was called R-2, whereas -- and the subject is seating for All  
21 Saints Waccamaw.

22 Q. What does it say about that?

23 A. Whereas the constitution of Episcopal Diocese, Article  
24 VIII, Section 2, provides that every parish and mission,  
25 quote, must state its willingness to conform with the

1 constitution of the general convention and the constitution  
2 and canons of this diocese, close quote, and whereas All  
3 Saints Parish Waccamaw currently finds itself unwilling to  
4 conform with Article VIII, Section 2, and -- and there's  
5 several -- the final part of the resolution, all the  
6 whereases now down to the resolved, to give them seat and  
7 voice in convention.

8 Q. All right, sir. Now, has this canon requiring the  
9 accession that you've testified about remained the same over  
10 time in the journals and in the history you've considered?

11 A. Yes, sir.

12 Q. And if we look at Exhibit 422 from the 2008  
13 convention --

14 A. Yes, sir.

15 Q. 2008?

16 A. Yes, sir.

17 Q. My question to you is, is the canon on the admission of  
18 parishes still in the constitution in 2008? We'll look at  
19 Article Roman Numeral VIII. There it is.

20 A. Yes, sir, Article VIII under of admitting parishes and  
21 missions into the convention.

22 Q. Go ahead and read that.

23 A. Parishes must have been organized, as provided by canon,  
24 for not less than one year may apply for and be admitted into  
25 union with the convention by vote of the convention provided

1 that the requirements hereinafter set forth have been met.

2 Q. All right. And go on down. And now we're looking at  
3 subsection what?

4 A. I believe it's 2-E.

5 Q. 2-E, what does it say?

6 A. Its willingness to conform to the constitution and  
7 canons of the general convention and the constitution and  
8 canons of the diocese, of this diocese, which are or  
9 thereafter may be enacted by the authority of the same.

10 Q. Was that the constitution of the Diocese of South  
11 Carolina in 2008?

12 A. Yes, sir.

13 Q. Okay. Now I have a few questions to relate some more to  
14 the relationship of the diocese in the national church, and  
15 I'm asking us to look at 220. Exhibit 220, what journal is  
16 this?

17 A. 1804.

18 Q. What does it say concerning the issue of the mutual  
19 relationship?

20 A. It says at a meeting of clerical and lay deputies --  
21 and, Your Honor, where it has abbreviations, do you want me  
22 to say Protestant Episcopal Church, or do you want me --

23 THE COURT: Doesn't make a bit of difference. Doesn't  
24 matter.

25 A. At a meeting of clerical and lay deputies of the



1 Protestant Episcopal Church --

2 THE COURT: That says delegates, doesn't it?

3 THE WITNESS: I'm sorry, delegates. They changed terms.

4 THE COURT: I understand.

5 A. At a meeting of clerical and lay delegates of the  
6 Protestant Episcopal Churches of South Carolina in  
7 convention, and then it goes down as to why they were  
8 meeting, for the particular and express purposes, excuse me,  
9 purpose of appointing a standing committee conformable to the  
10 constitution of the Protestant Episcopal Churches of the  
11 United States of America.

12 Q. Okay. Let's look a little later, 225, 1809 journal.

13 A. Yes, sir. 1809 title page.

14 Q. Right. And is there anything in here related to the  
15 requirements of the diocese vis-à-vis the national church  
16 1809?

17 A. Okay. Yes, sir. The following resolutions were moved  
18 and passed without opposition, resolved, that no person  
19 residing in this state as a candidate for deacons orders  
20 shall be recommended as such to any bishop unless his  
21 intention to apply, excuse me, unless his intention to apply  
22 for holy orders had been made known to the standing committee  
23 at least one year prior to the time at which he makes  
24 application to them for testimonials, nor unless he has been  
25 examined by a majority of the clerical members of the

1 standing committee agreeably to the requisitions of the tenth  
2 canon of the general convention.

3 Q. All right, sir. Let's move to Exhibit 228, please.  
4 1813 journal.

5 A. Yes, sir.

6 Q. And is there anything in here regarding the requirement  
7 of parochial reports by each parish?

8 A. The following parochial reports required by the 45th  
9 canon of the general convention were presented by the clergy  
10 and read.

11 Q. Exhibit 234, 1819?

12 A. 1819 title page.

13 Q. And then do we see anything concerning the requirement?

14 A. The following parochial reports required by the 45th  
15 canon of the general convention were presented by the clergy  
16 and read.

17 Q. Now, Dr. Edgar, without going into any more detail on  
18 this matter, have the journals of the diocese that you've  
19 examined generally dealt with the requirement of parochial  
20 reports?

21 A. Parochial reports have been --

22 Q. Submitted?

23 A. Submitted. In one or two years, sir, they consolidated.  
24 With one of those two exceptions, a parochial report for each  
25 parish was submitted.

1 Q. Pursuant to requirements of the general convention?

2 A. Yes, sir.

3 Q. All right. 239, please, exhibit. Journal 1824, Dr.

4 Edgar?

5 A. Yes, sir, this is the 1824 title page.

6 Q. And what requirement is in here with respect to the  
7 relationship between the diocese and the general convention  
8 and the requirements of the bishop -- for the bishop?

9 A. This concerns -- yes, the resolution is that every  
10 bishop in the Protestant Episcopal Church ought to be able to  
11 visit and examine into the state of all the churches in its  
12 diocese to inspect the conduct of the clergy, to ordain to  
13 the ministry, and to administer the holy rite of  
14 confirmation, duties not only required by the canons of the  
15 Protestant Episcopal Church of the United States, but in the  
16 opinion of the convention, absolutely indispensable to the  
17 well-being of every church in the diocese.

18 Q. Was that resolution declined or passed?

19 A. It passed, sir.

20 Q. Okay. And that was 1824, I believe.

21 Exhibit 255?

22 A. Title page 1840.

23 Q. 1840. And this again has to do with the application of  
24 the general convention as contained in the journal of the  
25 Diocese of South Carolina. What does this deal with?

1 A. The Reverend Dr. Gadsden in behalf of the standing  
2 committee presented a statement of their official acts since  
3 the last convention. Mr. Alsop, A-L-S-O-P, Woodward was  
4 recommended to the bishop for deacons orders, and after the  
5 diocese of our esteemed diocesan, Mr. John B. Campbell, was  
6 recommended for deacons orders to the Right Reverend Benjamin  
7 T. Onderdonk, bishop of New York, under the fourth section of  
8 Canon 15 of 1832.

9 Q. Now, is that a canon of general convention or South  
10 Carolina?

11 A. The general convention, sir.

12 Q. All right.

13 A. Title page 1855.

14 Q. Exhibit 270.

15 A. I'm sorry?

16 Q. Exhibit No. 270 --

17 A. Excuse me.

18 Q. -- just for the record.

19 What does this concern along the matters we've been  
20 discussing recently?

21 A. This is Canon 5, and it's the title of persons wishing  
22 to be received as candidates for holy orders. Every person  
23 who desires to become a candidate for orders in this diocese  
24 shall make application in writing to the standing committee  
25 stating his age and previous occupation. We will also be

1 expected to furnish the committee with the testimonials  
2 required by the seventh canon of the general convention of  
3 1853 and give them evidence that he has informed the bishop  
4 of his intention according to the requisitions of the same  
5 canon.

6 Q. Now we move to Exhibit 331, 1917 journal.

7 A. Title page 1917.

8 Q. And what does this tell us about required compliance  
9 with general convention canons by the diocese?

10 A. Okay. The committee calls attention to the fact that  
11 the general convention of 1916 adopted a new canon numbered  
12 Canon 50 in the digest entitled, quote, Of Business Methods  
13 in Church Affairs, close quote. This canon of necessity  
14 supersedes and abrogates any and all diocesan canons relating  
15 to the same subject whereby the date of our fiscal year  
16 terminates April 30, see Canon 13, Section 6, does now  
17 terminate December 31, thereby bringing into conformity in  
18 point of time all statistical data relating to the church  
19 wherever the same exists.

20 We, and that's the committee, therefore recommend that  
21 Canon 49 and Section 1 of Canon 50 be substituted in place of  
22 our diocesan Canon 13, Sections 4, 5 and 6.

23 We further recommend the adoption of the following  
24 resolution; viz, that the secretary of this council be  
25 directed to send a copy of diocesan Canon 13 as amended and

1 also of Sections 1 and 2 of Canon 50 of the general canons to  
2 the treasurer of each parish and mission in the diocese and  
3 that their attention be called to the same that they may  
4 conform to the changes rendered necessary thereby.

5 Q. Do those refer to compliance with the general convention  
6 canons?

7 A. Yes, sir.

8 Q. Exhibit 346.

9 MS. GOLDING: He didn't finish reading that.

10 MR. TISDALE: I'm sorry.

11 Q. Can you go back to 331?

12 MR. TISDALE: I'm sorry. I thought he had. He didn't  
13 finish reading it, apparently. I'm sorry.

14 A. And they recommended the adoption of the following canon  
15 of the church pension fund, Section 1, in conformity with the  
16 legislation adopted by the general convention setting forth  
17 the principles upon which a pension system for the clergy of  
18 the church and their dependents should be constructed  
19 pursuant to which the corporation, the church pension fund --  
20 and those are italicized, ma'am -- has been created to carry  
21 these principles into effect, the Diocese of South Carolina  
22 adopts the system of the church pension fund.

23 Q. All right. Going now to 346.

24 A. This is the journal from 1932.

25 Q. And how does it relate to the topic we've been talking

1 about, requirements of the general convention on the diocese?

2 A. An ecclesiastical court in marital relations shall be  
3 established in this diocese to hear and adjudge all matters  
4 that may be brought before it in accordance with the  
5 provisions of Sections Roman Numeral V, Roman Numeral VI, and  
6 Roman Numeral VII of canons -- of canon -- I think that's 43  
7 of the general convention.

8 Q. Of the general convention, right?

9 A. Yes, sir.

10 Q. All right. Let's look at Exhibit 349.

11 A. This is 1935?

12 Q. Yes, sir. There we go.

13 A. This is the annual communication of the standing  
14 committee of the Diocese of South Carolina.

15 Q. What do they say in 1935?

16 A. At its meeting held at diocesan headquarters,  
17 Charleston, on April 4, 1935, the standing committee, sitting  
18 as a council of advice with the bishop under the provisions  
19 of Canon 40 of the general church adopted recommendations to  
20 the bishop for the dissolution of the pastoral relationship  
21 between the Reverend Conrad H. Goodwin and the parish of St.  
22 Michael's Church, Charleston, South Carolina.

23 Q. Let's take a look at Exhibit 358, please.

24 A. Title page 1944.

25 Q. What occurred? What section of the journal is this in?

1 A. It's the standing committee report.

2 Q. Okay. Go ahead.

3 A. At its meeting held at diocesan headquarters on October  
4 27, 1943 the committee conferred with Bishop Thomas, who gave  
5 official notice of the acceptance by the house of bishops of  
6 his resignation as bishop of the diocese effective December  
7 31, 1943.

8 Q. Now, that was Bishop Albert S. Thomas?

9 A. I'm sorry?

10 Q. Albert Sidney Thomas?

11 A. Yes, sir.

12 Q. Let's turn, please, to Exhibit 372.

13 A. 1958?

14 Q. '58. What is this in 1958 affecting the adherence to  
15 the general convention canons by the diocese?

16 A. This is the report of the standing committee, and before  
17 it gives its reports there is this: A number of questions  
18 have been asked during the year regarding nature and purpose  
19 of the standing committee. There have been a number of  
20 requests to undertake outside of our province. What is the  
21 standing committee, question mark, what is its function,  
22 question mark, who are members of the committee, question  
23 mark? Since there may be many others who would like to have  
24 this information, we submit these preliminary statements as  
25 an introduction to our annual report.



1 Q. And have you noted relevant portions of that report?

2 A. Yes, sir.

3 Q. Read it, please.

4 A. Article 4 of the constitution of the Episcopal Church in  
5 the United States of America states, quote, in every diocese  
6 a standing committee shall be appointed by the convention  
7 thereof. When there is a bishop in charge of the diocese,  
8 the standing committee shall be his council of advice. If  
9 there be no bishop or bishop coadjutor or suffragan bishop  
10 canonically authorized to act, the standing committee shall  
11 be the ecclesiastical authority of the diocese for all  
12 purposes declared by the general convention. The standing  
13 committee gives or refuses to give consent for the election  
14 and consecration of bishops, recommend postulates, and that I  
15 believe is an error, but for admission as candidates  
16 recommends ordinations to the diaconate and priesthood.  
17 Canon 11 of the national church states in every diocese the  
18 standing committee shall elect from their own body a  
19 president and a secretary.

20 Q. All right. Now moving on and getting not too far from  
21 the end, I want to talk to you about what you've discovered  
22 in the examination of your work, your study, about the issue  
23 of some, but not all, of the financial aid to the diocese  
24 from the national church?

25 MR. RUNYAN: Your Honor, this is not a document. It's a

1 creation of the witness and it's filled with opinion and not  
2 a record document that I know of.

3 MR. TISDALE: It's going to be a document prepared by  
4 him that he's going to use to testify by.

5 THE COURT: Okay. Well, then he can use it to testify  
6 by it, but it wouldn't be an exhibit because that would be  
7 cumulative.

8 MR. TISDALE: That will be fine.

9 THE COURT: Okay.

10 Q. It's not an exhibit, but let's look at what's been  
11 marked --

12 THE COURT: That's for him, not for me.

13 MR. TISDALE: That's correct.

14 THE COURT: So take it off the screen.

15 MR. TISDALE: Get it off the screen.

16 Q. Do you have a copy of it?

17 A. No, sir, I do not.

18 MR. TISDALE: Do we have a copy of it?

19 THE WITNESS: I think there's a copy in my folder right  
20 there.

21 MR. TISDALE: Can I hand him his folder, Your Honor?

22 THE COURT: Of course, absolutely, and his briefcase.

23 Q. I'm going to try to cut this short if I can. What is  
24 the document that you now have that I handed to you, Dr.  
25 Edgar?

1 A. It is a document entitled "Financial Assistance to the  
2 Diocese of South Carolina 1866 to 1991."

3 Q. Now, what is the sum of what this document was prepared  
4 for by you?

5 A. This was prepared for me after looking at diocesan  
6 documents and documents from the national archives at the  
7 Episcopal Church in Austin, Texas concerning financial  
8 assistance to the Diocese of South Carolina.

9 Q. From by who?

10 A. From the national church or agencies of the national  
11 church to the Diocese of South Carolina and or individual  
12 parishes.

13 Q. All right. Now, what I would like to ask you to do, if  
14 possible, instead of reading the entire document, can you go  
15 through the document as you sit there and give us the  
16 highlights of what you found was financial aid from the  
17 national church or an agency of it to the diocese and its  
18 parishes?

19 MS. GOLDING: Your Honor, I'm going to make an  
20 objection. Number one, it's not in evidence, the document,  
21 and his testifying on that question is improper. He's got to  
22 lay a foundation as to when he says agencies of the church,  
23 for instance, you know. There's no foundation as to that.

24 Q. What do you mean when you refer to an agency of the  
25 church?

1 A. It could be the Freedmen's Aid Commission, the American  
2 Church Missionary Society, the Episcopal Church Building  
3 Fund.

4 Q. Are they all organizations controlled and used by the  
5 national church to distribute aid to dioceses and parishes?

6 A. Yes, sir, along with the Presiding Bishops Emergency  
7 Relief Fund, which is very important in this diocese.

8 MR. TISDALE: Submit, Your Honor, he's using this to  
9 refresh his memory of his work.

10 THE COURT: First of all, let me be clear. I don't have  
11 a problem with him having his own document that he created to  
12 help him testify. There's nothing inappropriate about that  
13 at all.

14 MR. TISDALE: Yes.

15 THE COURT: Obviously to put it on the screen is a  
16 problem because it's testimony.

17 Secondly, the expertise is an expertise with regards to  
18 history.

19 MR. TISDALE: Yes.

20 THE COURT: Not with regards to governance, not with  
21 regards to corporate structure.

22 MR. TISDALE: Right.

23 THE COURT: So I have concern regarding the testimony as  
24 it relates to the financial matters. Now, you can clear that  
25 up. I mean, the journal may say that -- and he's read the

1 journal that says that the National Episcopal Church loaned  
2 \$500 to St. Philip's in Charleston to help pay the legal  
3 bills of one, and that would certainly be helpful to me, but  
4 I want to be clear, because there isn't any foundation  
5 laid -- I'm not saying it couldn't be because it very well  
6 may be where Dr. Edgar has got the sufficient background and  
7 information to talk about the financial structure,  
8 particularly the corporate relationships between the  
9 different entities, because that's pretty important and I  
10 want to know who they are.

11 MR. TISDALE: Your Honor, I think we can resolve this.

12 THE COURT: Sure.

13 Q. Just lay your work aside for a minute, and I'm going to  
14 ask that we turn to Exhibit 281, which is the 18 --

15 MS. KOSTEL: No.

16 MR. TISDALE: No. Wrong one.

17 MS. KOSTEL: 504.

18 MR. TISDALE: Wrong one. I have 281 here as the 1867  
19 journal.

20 MS. KOSTEL: We can do that first, but I think we need  
21 to -- okay.

22 (Attorneys confer.)

23 Q. Dr. Edgar, I'm going to ask you a question about the  
24 scope of your research regarding financial aid to the  
25 diocese.

1 I first ask you to look at what's been marked as Exhibit  
2 504. What is this?

3 A. The extract of the annual report for the board of  
4 missions, 1866 to 1919.

5 Q. Is this a document that you reviewed and researched as  
6 you did the journal of the diocese?

7 A. Yes, sir, I did.

8 Q. And look at 505. What is this?

9 A. Extracts from the annual reports of the national  
10 council, 1920 to 1938.

11 Q. Is this a document you reviewed and researched as you  
12 did the journals of the diocese?

13 A. Yes, sir.

14 Q. Exhibit 506, what is this?

15 A. Extracts from the minutes of the national council, 1911  
16 to 1965.

17 Q. Is that National Council of the Episcopal Church?

18 A. Yes, sir.

19 Q. Did you research, study that document?

20 A. Yes, sir, I did.

21 Q. Exhibit 507?

22 A. Extracts from the audit reports of the American Church  
23 Institute for Negroes.

24 Q. Is that an institute of the Episcopal Church?

25 A. Yes, sir.

1 Q. The national church?

2 A. Yes, sir.

3 Q. Did you research and study that, the information in  
4 that?

5 A. Yes, sir.

6 Q. 508, please.

7 A. Extracts from the minutes of the American Church  
8 Missionary Society, 1867 to 1899.

9 Q. Is that American Church Missionary Society, based on  
10 your research and study, a branch or unit of the national  
11 church?

12 A. Yes, sir. This record, like all of these others, are in  
13 the national archives.

14 Q. National archives?

15 A. Of the Episcopal Church, of the national church.

16 Q. 509 Exhibit, what's this Dr. Edgar?

17 A. Loans from the Episcopal Church Building Fund, 1880 to  
18 1991.

19 Q. Is the Episcopal Church Building Fund a part of the  
20 national church?

21 A. Yes, sir.

22 Q. And did you study and research the contents of this  
23 document?

24 A. Yes, sir, I did.

25 Q. Exhibit 510, please. What is the United Thank Offering.

1 A. The United Thank Offering, 1971 to 2012.

2 Q. What's the United Thank Offering?

3 A. United Thank Offerings are taken up generally from the  
4 women of the church, of the national church.

5 Q. Did you study it?

6 A. Yes. The United Thank Offering is something that's done  
7 nationwide through the Episcopal Church --

8 Q. All right.

9 A. -- the national church.

10 Q. And did you study, research the contents of this  
11 document?

12 A. Yes, sir.

13 Q. 511, what is this document, Dr. Edgar?

14 A. Miscellaneous, 1866 to 1919.

15 Q. Yes, sir. What is it?

16 A. That's the domestic committee of the board of missions  
17 of the national church.

18 Q. Is that a part of the national church?

19 A. Yes, sir.

20 Q. Now let's turn to Exhibit 281.

21 A. This is the journal for the South Carolina Convention in  
22 1867.

23 Q. Is this a journal that you studied?

24 A. Yes, sir.

25 Q. And does it have an excerpt that's related to financial



1 aid?

2 A. Yes, sir. This is from the report of the Diocesan  
3 Theological Seminary. There was an Episcopal seminary in  
4 South Carolina.

5 The salaries of the professors have been paid up to the  
6 present time, but this has been accomplished only through the  
7 generous aid afforded in response to the appeal of the board  
8 and other dioceses through their earnest and indefatigable  
9 agent, the Reverend A. T. Porter, to whom the other members  
10 of the board return their thanks for his untiring efforts in  
11 behalf of the seminary, which, at great sacrifice to himself  
12 and his parish, he solicited the north at our request, but  
13 for the measure of success which through God's blessing  
14 crowned his labor, the seminary would not be in existence at  
15 all.

16 Q. Now, Dr. Edgar, I have shown you a series of documents  
17 that you've studied from the various church agencies.

18 A. Yes, sir.

19 Q. And I would like to, using the report that you have  
20 before you that we talked about earlier -- is that your notes  
21 and report based upon your study of the documents we've  
22 identified that you've said you've studied the contents of?

23 A. Yes, sir.

24 Q. All right. Can you go through it?

25 MS. GOLDING: Your Honor, that's improper. Mr. Tisdale

1 can ask him a question. He can refer to the document to  
2 refresh his memory, but he cannot publish the document.

3 THE COURT: I didn't take that that's where we were  
4 going.

5 MR. TISDALE: No. I'm going to ask him can he tell us  
6 what aid the Episcopal Church, the national church or any of  
7 its units, have provided to the Diocese of South Carolina  
8 based upon his study of this subject as he's testified.

9 MS. GOLDING: A different question.

10 THE COURT: Yes, ma'am.

11 Q. Can you do that, Dr. Edgar?

12 A. Would you like a specific example that I can document to  
13 give a footnote to prove that what I'm saying is not just  
14 something off the top of my head?

15 Q. Why not?

16 A. Okay. In 1866 18 clergy in the Diocese of South  
17 Carolina received stipends from the domestic committee, and I  
18 cite not only the minutes of the domestic committee of May  
19 the 7th, 1866, I referred to the diocesan journal 1866, Pages  
20 5 through 7, because that put where the individuals were,  
21 which parish or church was theirs, and all throughout Bishop  
22 Thomas' history he mentioned this aid from the national  
23 church. Of specific reference, the congregation of St.  
24 Helena's, as it was called then, and I quote from the most  
25 recent history of the parish of St. Helena by Ms. Payne, Ms.

1 Barbara Payne --

2 MR. RUNYAN: I believe the document speaks for itself.  
3 He's quoting from a document.

4 MR. TISDALE: Just tell us what it says without reading  
5 it.

6 THE WITNESS: It said that Mr. Walker had been put on  
7 the list of missionaries from the board, domestic board of  
8 missions, and that enabled him to resume his ministry at St.  
9 Helena.

10 Q. What year was that?

11 A. That was 1866. Actually he, if you look at the domestic  
12 minutes of May 7th, 1866; February 3rd, 1868; January 7th,  
13 1869; January 3rd, 1870, those are the minutes of the  
14 domestic committee. Also look at the minutes of the American  
15 Church Missionary Society, December 9, 1867, and Mr. Walker's  
16 name is listed in all of those cases.

17 Q. As receiving aid?

18 A. Same name, yes, sir.

19 Q. Dr. Edgar, by referring to your notes, have you prepared  
20 a chart to help you refresh your memory as to what you  
21 gleaned from your study of the documents and the  
22 organizations we talked about?

23 MS. GOLDING: Your Honor, I believe that if a document  
24 is used to refresh memory, the witness has to say in response  
25 to a specific question that he needs to refer to a document

1 or he needs to say that he doesn't recall, can he refer. I  
2 don't believe it's proper that a lawyer tells a witness to go  
3 to a document, as Mr. Tisdale's trying to phrase the  
4 questions.

5 Q. Dr. Edgar, by whatever resources --

6 THE COURT: Sustained.

7 Q. -- you have, can you give us an overview of the aid  
8 received by the Diocese of South Carolina --

9 A. Yes, sir. What I would like to --

10 Q. -- from the national church and its bodies?

11 A. Yes, sir.

12 THE WITNESS: And, Your Honor, what I'd like to do is  
13 there are different forms of aid and I'd like to break those  
14 up into categories.

15 THE COURT: Sure, that's appropriate.

16 THE WITNESS: We have already talked about the aid to  
17 specific clergy from the domestic committee and the American  
18 Church Missionary Society. Aid was then furnished between  
19 1911 and 1961 by the national council, and this was for  
20 missionary work, and it was broken down into support for  
21 white work and colored work to dioceses around the country.

22 And one of the source of the moneys for this national  
23 council work came from the United Thank Offering. In Bishop  
24 Thomas' 1930 address to the convention of South Carolina he  
25 noted it is striking -- may I quote from the convention?

1 THE COURT: Sure.

2 THE WITNESS: He said it is a striking fact that the  
3 increase in the membership of our colored churches in the  
4 past five years has been 50 percent more rapid than among the  
5 white, and he's referring to the aid given by the national  
6 council.

7 In 1928 Bishop Thomas reported, and again I quote,  
8 storms, poor crops and dozens of bank failures have created  
9 in some respects a difficult situation; however, we may say  
10 that the church's activities have gone forward normally and  
11 the work in the diocese helped by the national council has  
12 suffered no setback.

13 Q. Go ahead, sir.

14 A. In 1929 Bishop Thomas in his report to the convention,  
15 and I quote, for a long time there has been a feeling in this  
16 diocese that there should be no appropriation for the  
17 national council for our white work. Provision has now been  
18 made from diocesan funds to supply the needs which have  
19 heretofore been made by this appropriation, and formal notice  
20 has been forwarded on authority of the executive council  
21 releasing the national council from this appropriation, but I  
22 will note that in 19 -- through 1933 there were some small  
23 appropriations.

24 Q. From the national council?

25 A. From the national council, and the annual reports of the

1 national council for 1930, Page 175; 1931, Page 73; 1932,  
2 Page 67; 1933, Page 65; 1934, Page 64. And then from 1947 to  
3 1949 the Diocese of South Carolina received national support  
4 from the national council for white work, as it was called,  
5 and that's in quotes, white work, in the Navy yard, North  
6 Charleston area, and that reference is minutes of the  
7 national council, February 11 through 13, 1947; February 17  
8 through 19, 1948; February 8 through 10, 1949; April 25  
9 through 27, 1950, and it's also referred to in Bishop Thomas  
10 and his History of the Episcopal Church, Page 266.

11 Q. Anything else on aid up until recently from the  
12 Episcopal Church, the national church, to the diocese? How  
13 about 1989 when Hugo hit?

14 A. Oh, actually there are two disaster reliefs I'd like to  
15 refer to, sir.

16 Q. Please.

17 A. The first is after the aftermath of the great earthquake  
18 of 1886, disastrous earthquake in Charleston, Bishop Howe  
19 reported that he had received, the diocese had received,  
20 \$40,588.07 from 48 dioceses and 12 missionary districts in  
21 the Episcopal Church in the United States and from England  
22 and Japan, and he noted that except for one-tenths of the  
23 fund going to personal relief, the remainder went to repair  
24 churches and institutions.

25 Q. Of the diocese?

1 A. Of the diocese.

2 And the churches which received these funds, and it  
3 references the diocesan journal 1894, Page 54, were St.  
4 Michael's, St. Philip's, St. Paul's, St. Luke's, Grace, Holy  
5 Communion, Calvary and St. Mark's; Christ Church,  
6 Shepherdsboro; St. John's Chapel, Hampstead; Christ Church  
7 Parish, Mount Pleasant; St. Paul's Summerville; and  
8 Strawberry Chapel. The Laurens Street Church Home, St.  
9 Philip's Church Home and the House of Rest also received  
10 funds.

11 THE COURT: Why don't we stop right there because I want  
12 to be sure that I heard correctly. The beginning of that  
13 passage, read that to me again, please.

14 THE WITNESS: In the aftermath?

15 THE COURT: Yes.

16 THE WITNESS: In the aftermath of the great earthquake  
17 of August 31st, Bishop Howe reported that he had received  
18 \$40,588.07 from 48 dioceses and 12 missionary districts in  
19 the Episcopal Church.

20 There's a reason as to how that happened.

21 MR. PHILLIPS: Your Honor, based on that testimony, I  
22 was going to raise the objection it's not relevant.

23 THE COURT: I concur. It's from other dioceses. It's  
24 not from the national church.

25 MR. TISDALE: It's part of the church.

1 THE WITNESS: In response to an appeal from the house of  
2 bishops.

3 THE COURT: Okay. Then for what it's worth.

4 MR. TISDALE: Thank you, Your Honor --

5 THE WITNESS: Bishop Howe.

6 MR. TISDALE: -- for clearing that up.

7 THE WITNESS: Bishop Howe said -- and the reference is  
8 diocesan journal, 1894, Page 33 -- I put forth no circulars  
9 and sent out no advocates but confine myself to a simple  
10 statement of the disaster which had befallen us between the  
11 Associated Press and some of the principal churches. The  
12 house of bishops and a pastoral kindly seconded my statement.  
13 What I have received has come mainly from church offerings.

14 Q. Is that the house of bishops of the general convention?

15 A. Yes, sir.

16 Q. Now moving forward, you said there were two. Was the  
17 other one Hugo?

18 A. Hurricane Hugo.

19 Q. 1989?

20 A. 1989.

21 Q. What happened then, if you know?

22 A. The Presiding Bishops Fund for World Relief sent the  
23 Diocese of South Carolina \$100,000.

24 Q. All right, sir. Dr. Edgar --

25 THE WITNESS: Excuse me. Would you like a specific



1 reference for that, Your Honor?

2 Q. Go ahead and do it.

3 A. The reference is a letter from the Right Reverend Furman

4 C. S-T-O-U-G-H --

5 Q. Stough.

6 A. -- to the Right Reverend Edward L. Salmon, November 8,

7 1990, the topic, and those records are in the Presiding

8 Bishop's Fund For World Relief.

9 Q. Thank you. Dr. Edgar, has there been any recent -- and

10 I'm going to ask you to refer to Exhibit 510 -- aid from the

11 United Thank Offering, which you said was a part of the

12 national church, to this diocese?

13 A. Yes, sir. On January, 3rd, 2012, the Right Reverend

14 Mark J. Lawrence sent a letter to the United Thank Offering

15 grant submissions. He submitted a grant, and the address is

16 815 Second Avenue, New York, New York. Dear UTO grant

17 coordinator: I write in support for St. John's Episcopal

18 Church, a mission of the Episcopal Diocese of South Carolina,

19 in its application for a UTO grant.

20 Q. Was one granted?

21 A. Yes, it was.

22 Q. How much?

23 A. \$15,000.

24 Q. Okay. And is that in the letter we see as part of this

25 on June 27, 2012?

1 A. Yes, sir, grant number and the amount, Dear Bishop  
2 Lawrence.

3 Q. Anything else about financial aid to the diocese that  
4 you think significant that came out in your study?

5 A. No, sir.

6 Q. All right. Let's turn now and talk about briefly the  
7 pension fund, church pension fund, Exhibit 371. Is this a  
8 journal of the diocese of 1957?

9 A. Yes, sir.

10 Q. What can you tell us about what the church pension fund  
11 contributed to the clergy in the --

12 A. There was a report of --

13 MS. GOLDING: Your Honor, I'm going to make an  
14 objection. We've already established the church pension fund  
15 is a completely separate entity. Certainly there is a  
16 managing board with members from the national church, but it  
17 is a Delaware corporation. It is a completely separate legal  
18 entity from the defendant national church.

19 MR. TISDALE: It's part of the national church as are  
20 other units we've talked about I believe. It just happens to  
21 have its own structure.

22 MS. KOSTEL: I think we established through a witness,  
23 Your Honor, that the trustees of that entity are elected by  
24 the general convention, which means the general convention  
25 controls who's on the board.

1 MS. GOLDING: It's still a completely separate legal  
2 entity.

3 MR. TISDALE: Of course it's separate. It's a pension  
4 fund.

5 THE COURT: Here's my concern: My concern is that --  
6 and correct me if I'm wrong, but based on everything that I  
7 have heard, the pension fund is no freebie for the diocese or  
8 for the parishes. There's money that's paid in for the  
9 clergy. In other words, it's contributed to, it exists, it's  
10 a corporation, but it isn't charter, it isn't a gift. It is  
11 a pension fund just like many other pension funds. Am I  
12 incorrect about that?

13 MR. TISDALE: Your Honor, it's sponsored by the church  
14 for the benefit of the clergy of the church.

15 THE COURT: Right.

16 MR. TISDALE: And of course they contribute to it.

17 THE COURT: Okay.

18 MR. TISDALE: But that's not all that is paid out.

19 THE COURT: Well, it depends, doesn't it? Doesn't it  
20 depend on the market and the investments?

21 MR. TISDALE: Pensions are set.

22 THE COURT: Kind of like mine, you know, if I ever get  
23 there, but by the same token sort, if you use actuarial  
24 tables -- I guess this is my concern, particularly with --  
25 and I hear the testimony, but it isn't like -- I guess my

1 concern is that they kind of pay for it, you know.

2 MR. TISDALE: They do contribute to it.

3 MS. KOSTEL: Not to the management of it.

4 MR. TISDALE: But not to the management of it.

5 MS. KOSTEL: Which is what you pay for when you invest  
6 in an ordinary pension fund.

7 THE COURT: Sure, they did. Sure, they did.

8 MR. TISDALE: It's operated by the general convention of  
9 the Episcopal Church.

10 THE COURT: Of course. Here's the problem with having  
11 Dr. Edgar testify to that, because here's what's going to  
12 happen to Dr. Edgar: "Dr. Edgar, you looked at the balance  
13 sheet like for 1990 for the pension fund." What concerns me  
14 is he's going to say, "What? I'm an historian." And they  
15 ought to be able to ask him how much of the amounts that were  
16 contributed and invested by these different parishes went  
17 towards the salaries and the incomes and the benefits for the  
18 management of the pension fund. I think it's unfair to ask  
19 him that, and it's going to give me incomplete information,  
20 and I'm going to resist.

21 MR. TISDALE: Your Honor, I don't think he can provide  
22 that information. What I intended to ask him in four  
23 instances is how much the clergy of this Diocese of South  
24 Carolina in four years, in each of those years, received in  
25 benefits in total.

1           THE COURT: But it's not of any help to me. Let me tell  
2 you why, because here's what I know -- I don't know -- I  
3 don't know who made the money, because I don't know that  
4 given the actuarial tables, given the amounts of money  
5 obviously invested within the pension fund -- you know, South  
6 Carolina might have been a good deal because maybe some of  
7 the clergy folk before they hit the pension, maybe they died  
8 or they didn't vest. To me that's such an unfair question to  
9 ask him.

10          MR. TISDALE: All right. Your Honor, we don't have  
11 information beyond the amount of benefits, so what I would  
12 like to do is just, if you will allow me, just simply read in  
13 these exhibit numbers that relate to this for the record.

14          THE COURT: Okay. That will be fine, but I've got to  
15 tell you, in terms -- and let me be as clear as I know how to  
16 be. When you're looking -- when the Court is looking at what  
17 is fair and what is just, as we were talking about earlier in  
18 these matters, it's kind of hard to take what's a business  
19 deal that I know is a business deal and to tell me it's  
20 something other than a business deal, and that's what a  
21 pension -- that would be where I have to put the pension.  
22 Some years it's a good deal. Some years it's not such a good  
23 deal depending what happens with the market, depending how  
24 wise the investors are, and depending on a myriad of things,  
25 but if you want to offer that so that a number is in the

1 record, go right ahead, but I can tell you that --

2 MR. TISDALE: Your Honor, I can cut it short this way:  
3 If you'll allow me to identify the four exhibits and simply  
4 to say what his testimony would be in one sentence for each  
5 year, or I can ask him, whichever you prefer.

6 THE COURT: I understand. Here's what I'm going to do.  
7 If you want to proffer that, I want you to proffer it.

8 MR. TISDALE: It's going to be real quick.

9 THE COURT: But it would be inadmissible because it's  
10 not what it purports to be. Those are not gifts to the  
11 diocese.

12 MR. TISDALE: Your Honor, we'll proffer it quickly.

13 THE COURT: Go right ahead.

14 MR. TISDALE: Thank you.

15 Exhibit 371.

16 Q. Dr. Edgar, what is this journal the year for?

17 A. 1957.

18 Q. Does it indicate the amount of pension funds delivered  
19 to the clergy of South Carolina in the previous year?

20 A. \$24,659.40.

21 Q. Now let's look at Exhibit 401. Reported that year how  
22 much?

23 A. 1987.

24 Q. How much to clergy of the diocese from the pension fund?

25 A. It's broken down by categories, but the grand total is

1     \$246,165.80.

2     Q.     Let's look at Exhibit 408. This is 1994?

3     A.     Yes, sir. Same question: Does that exhibit indicate  
4     the amount of pension funds that were delivered to the parish  
5     of this diocese by the church pension fund, if we can find it  
6     on the exhibit.

7           MS. KOSTEL: Sorry. I've written down an incorrect page  
8     number. Let's just move on. Move on.

9     Q.     Let's then go to Exhibit 416.

10    A.     2002.

11    Q.     2002. Does it indicate the amount of pension funds in  
12    total delivered by the church pension fund to the clergy of  
13    the Diocese of South Carolina.

14    A.     It does not. It goes by category. It does not deliver  
15    a total.

16    Q.     Can you give us the categories and the amounts?

17    A.     Yes, sir. For clergy retired by age, \$519,831.60; to  
18    surviving spouses, \$142,156.80; early retirement or  
19    disability, \$347,103.60; 30-year retirement or disability,  
20    \$129,793.20.

21    Q.     The amount is not totaled?

22    A.     No, sir, there's no total listed.

23    Q.     All right. Okay. Dr. Edgar, I appreciate the time  
24    you've given us, and I would like you to answer any questions  
25    that opposing counsel have of you.

1 MR. TISDALE: Thank you very much, Your Honor.

2 THE COURT: Thank you so much.

3 National church, any questions?

4 MR. BEERS: No, Your Honor.

5 MS. KOSTEL: No. Thank you.

6 THE COURT: All right. From the plaintiffs?

7 MS. GOLDING: Thank you, Your Honor.

8 THE COURT: Yes.

9 CROSS-EXAMINATION BY MS. GOLDING:

10 Q. Mr. Edgar, if I understand it correctly, you were  
11 retained in early, what, January 2013 by Mr. Tisdale?

12 A. I was, yes, sir -- yes, ma'am. Excuse me.

13 Q. And you were retained to search church history; is that  
14 correct?

15 A. To search the records of the church, yes.

16 Q. Okay. And since that time, since early 2013, to the  
17 present you've been in frequent contact with Mr. Tisdale and  
18 Ms. Kostel; is that correct?

19 A. I have been in contact, not necessarily, but I've been  
20 in contact, yes, ma'am.

21 Q. And you've also had occasional contact with Mr. Beers;  
22 is that correct?

23 A. Ma'am, I am hard of hearing. When you turn away, I  
24 can't hear you.

25 Q. I apologize.



1           You've had occasional contact over the last year and a  
2 half with Mr. Beers as well?

3     A.    Yes, ma'am.

4     Q.    And you were retained I guess in -- I think you told me  
5 in the calendar year 2013 you received about \$27,000 for your  
6 research work?

7     A.    Yes, ma'am.

8     Q.    And in this year, 2014, before, of course, your  
9 testimony today, you've received about \$17,000?

10    A.    Actually I have only received half of that, but I billed  
11 for \$17,000.

12    Q.    I gotcha. Okay.

13           And, now, as I understand with respect to your  
14 expertise, you are not a sociologist or a psychologist; is  
15 that correct?

16    A.    That is correct.

17    Q.    You are not an accountant, you are not a bookkeeper; is  
18 that correct?

19    A.    That is correct.

20    Q.    And generally you are not a religious historian; is that  
21 correct?

22    A.    Not as a specified subcategory, but in the history of  
23 South Carolina and in American history, religion is part of  
24 the general culture.

25    Q.    Right, but you don't hold yourself out to this Court and

1 say I'm a religious historian, do you?

2 A. No, ma'am.

3 Q. Let's go right to the finances that you were just  
4 talking about a few minutes ago.

5 You did not put together or make an effort to summarize  
6 the contributions made by St. Philip's to the plaintiff  
7 diocese, did you?

8 A. It was not in the report.

9 Q. But did you make any effort to gain information as to  
10 the contributions made by St. Philip's to the plaintiff  
11 diocese?

12 A. No, ma'am.

13 Q. Did you make any effort to obtain any information about  
14 any of the contributions made by these 36 parishes to the  
15 plaintiff diocese in this lawsuit?

16 A. No, ma'am.

17 Q. Wouldn't you agree that contributions by third parties  
18 such as the 36 plaintiffs to the plaintiff diocese is a  
19 significant factor that should be taken into consideration?

20 MS. KOSTEL: Objection, Your Honor. This witness did  
21 not purport to weigh intake or output. He just testified as  
22 to what came from the national church, and so what  
23 Ms. Golding is asking him to talk about is not just beyond  
24 the scope of direct; it has nothing to do with what he  
25 testified about.

1           THE COURT: In other words, the objection -- let me just  
2 be clear. The objection is that the testimony wasn't offered  
3 by this witness for the purpose of showing to the Court  
4 moneys that had been -- let me not say moneys -- value that  
5 had been given to the diocese for this reason.

6           MS. KOSTEL: From the parishes.

7           THE COURT: To the parishes, to the diocese; in other  
8 words -- see, that's a little bit -- that's what I was  
9 getting at with regards to the pension fund, is that that  
10 testimony looks as though it is being offered for the purpose  
11 of saying, you know, there's a whole lot of money that the  
12 national church has given to this diocese and given these  
13 parishes, a lot of money, and, Judge, in order for you to be  
14 just, you've got to take that into consideration, how much  
15 money has been given. And I thought that was the reason that  
16 that question was asked, was for the purpose of depicting  
17 that, so if, in fact, that's the reason that information was  
18 offered, well then this is absolutely fair.

19          MS. KOSTEL: Okay.

20          THE COURT: Because, I mean, if I'm giving you a million  
21 dollars and you give me \$25,000, you're doing a lot better  
22 than I am, and so I got one part of the story, but what I  
23 don't have is the other part. I have nothing to assess if  
24 that was a good thing or not. So if that's what it was  
25 offered for, then this is absolutely fair cross-examination.

1 If it was just offered as, I don't know, sort of irrelevant  
2 information --

3 MS. KOSTEL: It's fair, I think, if Ms. Golding has a  
4 foundation for insinuating that money came the other way.

5 THE COURT: I understand. I think you've got it.

6 MS. GOLDING: Thank you, Your Honor.

7 Q. So, Mr. Edgar, if I'm understanding what you're telling  
8 me, is that you weren't instructed to go out and research and  
9 to determine the contributions made by any one of these  
10 plaintiff parishes to the plaintiff diocese, were you?

11 A. No.

12 Q. No, you were not, or is it no to my question?

13 A. Would you repeat the question, please, ma'am?

14 Q. Thank you.

15 If I understand what your testimony and your role in  
16 this case is, you were not instructed by any of the  
17 defendant's counsel or anyone on behalf of the defendant to  
18 determine the contributions or value made by any one of these  
19 plaintiff parishes to the plaintiff diocese?

20 A. Strictly with regard to the pension fund?

21 Q. No, sir, with regard to any contributions made by a  
22 plaintiff parish to the plaintiff diocese.

23 A. The plaintiff parish, okay. The annual financial  
24 contributions to the diocese, I did look at that, yes.

25 Q. And so tell me, how much did St. Philip's contribute to

1 the diocese in the year 1907?

2 A. I have no idea.

3 Q. Okay. Any year?

4 A. I did not take down that information.

5 Q. Did you obtain that information for any plaintiff parish  
6 for any year?

7 A. No, ma'am.

8 Q. Well, you just said that you did see that there were  
9 numbers, dollars, given by plaintiff parishes to the  
10 plaintiff diocese; is that correct?

11 A. That's part of parochial reports, yes, ma'am.

12 Q. And it would be fair to state that those numbers that  
13 you saw were substantially more than the numbers that you saw  
14 from the national church; wouldn't that be correct?

15 A. In what year, ma'am?

16 Q. In any year.

17 A. It depends upon the year.

18 Q. Okay.

19 A. If you're referring to the 1860s, the payment of clergy,  
20 up to a third or a half of the clergy salaries in 1866, '67  
21 were paid for by the national church.

22 Q. So we've got 1866 and 1867. You say that the national  
23 church paid?

24 A. They paid stipends to clergy, and I mentioned those  
25 references.

1 Q. Would you agree that in 1866 and 1867 there were  
2 expenses of the plaintiff diocese that were in addition to  
3 salaries to clergy?

4 A. Explain, ma'am. I don't understand your question.

5 Q. Well, do you think the plaintiff diocese had employees  
6 that it had to pay that were not clergy?

7 A. Not very many.

8 Q. Okay. But do you recall any contribution by the  
9 national church to pay for the plaintiff diocese's employees?

10 A. Actually, ma'am, for school teachers and Mr. Toomer, Mr.  
11 Porter's school, absolutely. They paid for school teachers  
12 and --

13 Q. I didn't mean to interrupt you. I'm sorry.

14 A. That's okay.

15 Q. Let's go pull out those journals then for 1866 and 1867.  
16 Do you have those?

17 MS. GOLDING: We didn't get any hard copies of their  
18 exhibits, Your Honor, so that's why Ms. Kostel had it on --

19 THE COURT: Right.

20 MS. GOLDING: So can I get them?

21 THE COURT: What do you want?

22 MS. GOLDING: 1866 and 1867, the journals.

23 MS. KOSTEL: Of the diocese?

24 MS. GOLDING: Yes, which you --

25 MS. KOSTEL: Yes.

1 MS. GOLDING: Thank you.

2 MS. KOSTEL: What page?

3 MS. GOLDING: I don't have any idea. You have as an  
4 exhibit some references to the 1866 and 1867 journals that  
5 this gentleman is talking about.

6 MS. KOSTEL: But the diocese has the journals, all of  
7 them, Your Honor, because you have all the documents. So you  
8 want the whole journals?

9 MS. GOLDING: Yes. And if we could go to the finance  
10 sections.

11 MS. KOSTEL: Is that it?

12 Q. It appears that this is page -- I'm sorry -- 33. Do you  
13 have that in front of you, Mr. Edgar?

14 A. Yes, ma'am, but I can't read it.

15 Q. On page 33 you see a list of contributions from all the  
16 parishes; is that correct?

17 A. Yes, ma'am. Ma'am, I'm having a very hard time reading  
18 this.

19 MS. KOSTEL: Let me blow it up.

20 THE WITNESS: Okay.

21 Q. So those contributions from all of these parishes, you  
22 will agree that those contributions far outweigh -- are  
23 significantly more than any contribution by the national  
24 church, would you not?

25 A. I would have to see the total before I could answer that

1 question.

2 Q. Okay. Let's see if we can scroll down.

3 A. No, ma'am.

4 Q. Or go to the next page. Now we have to bend or head  
5 sideways?

6 MR. KOSTEL: Yes. I'm sorry.

7 A. The total there is \$1,402.53.

8 Q. Let's go to the next page. And these look like  
9 additional contributions.

10 A. \$120.

11 Q. Okay. And so let's go to the next page.

12 MS. KOSTEL: I think that's it.

13 Q. Okay. Do you recall the amount of money that the  
14 national church gave in 1866?

15 A. Yes, ma'am; more than \$6,000.

16 Q. Okay. And where did you get that?

17 A. From the records of the national -- of the American  
18 Church Missionary Fund. It's also referenced in the good  
19 Reverend Porter's autobiography. He mentions the sum. It's  
20 also --

21 Q. Let's go find your copy then. You've got your file  
22 here. Let's go get that, the \$6,000 in 1866.

23 A. Okay.

24 Q. Thank you.

25 A. That is going to be the minutes of the domestic



1 committee, 1866, and we're going to need to also -- I'd also  
2 like to look at -- the specific sum, 6,000, is also mentioned  
3 in Mr. Porter's autobiography, but I don't have a copy of  
4 that. It's also mentioned in Bishop Thomas' history of the  
5 church. I did not bring a copy of that.

6 Q. Well, you looked at the national church's records.  
7 That's what I'm interested in.

8 A. Yes, ma'am.

9 Q. That's what I need.

10 A. Yes, ma'am.

11 Q. You can go get it, if Your Honor would permit.

12 THE COURT: Absolutely.

13 MS. KOSTEL: What is it you're asking him to get?

14 MR. TISDALE: The records of the national church.

15 THE COURT: We'll take a break while we try to regroup  
16 and find your document. We'll take 15 minutes. Thank you.

17 THE WITNESS: Yes, ma'am.

18 (Recess held.)

19 THE COURT: All right, folks. Let's see if we can come  
20 back to order, please. Thank you so much everyone.

21 And, oh, good, you got the document. You got the  
22 report?

23 MS. GOLDING: I have not gotten it. Have you found the  
24 report?

25 THE COURT: He did and we printed it.

1 MS. GOLDING: Is this it? Okay. Here you go.

2 THE WITNESS: Yes, ma'am.

3 Q. Now, the document that you have I have as Page 12. Is  
4 that correct?

5 A. Yes, ma'am.

6 Q. And this appears to be your summary that you put  
7 together?

8 A. Yes, ma'am.

9 Q. Okay. And in your summary, from my review of it, it  
10 appears that with respect to the seminary, the school, the  
11 center -- and I believe that was located in Columbia; is that  
12 correct?

13 A. No, ma'am, it was located in Spartanburg. That's where  
14 Converse is now.

15 Q. Very good. And at that point in 1886 the national  
16 church paid \$6,000 to some of the teachers at the seminary?

17 A. Yes, ma'am.

18 Q. Okay. So that's the \$6,000 you're referring to?

19 A. No, ma'am, it is not.

20 Q. Okay.

21 A. If you'll go to Page 15, May the 7th, and this was a  
22 quotation from the meeting of the domestic committee.

23 Q. Do you have a copy of the minutes?

24 A. They're online. I don't have my copy. I don't have a  
25 copy with me.

1 Q. Okay.

2 MS. GOLDING: Do you mind if I approach? May I approach  
3 the witness so he can show me?

4 THE COURT: You may.

5 Q. Okay. I don't see any quotes.

6 A. Right here, ma'am (indicating).

7 Q. I'm just blind. I apologize. Very good.

8 A. South Carolina, very interesting letters from Bishop  
9 Davis containing nominations were read. The Reverend A.  
10 Toomer Porter, agent of Bishop Davis, came before the  
11 committee at their request and made very interesting  
12 statements in relation to the condition, and I couldn't read  
13 that word. It's all in -- I thought it was accounts of the  
14 diocese. ACCTS is an older abbreviation for the term  
15 "account."

16 Ordered that \$6,000 be appropriated to the Diocese of  
17 South Carolina and that the nominations of Bishop Davis be  
18 confirmed, the stipend named by him to date from April the  
19 1st, 1866 and for the present to be paid quarterly in  
20 advance.

21 There were 18 clergy who received -- this is out of the  
22 quote now. This is from the record. There were 18 clergy  
23 who received stipends from the domestic committee. W. O.  
24 Prentiss -- and I have in brackets where he was from. I got  
25 his particular church from the diocesan journal -- received

1 \$600, Jay Maxwell Pringle of Christ Church, Columbia, \$600;  
2 John D. McCullough, who served Advent, Spartanburg and  
3 Nativity, Unionville, \$400; William Johnson, Edisto Island,  
4 \$400; J. R. Walker, D.D., St. Helena, Beaufort, \$350; Edward  
5 T. Walker, officially listed in the diocesan journals as  
6 being from St. Helena but was officiating at Trinity,  
7 Edgefield, 250; Andrew H. Cornish, St. Paul's, Pendleton,  
8 250; Le Grand F. Guerry, who was rector of Zion, Richland  
9 County, but the missionary funding was for Holy Comforter,  
10 Sumter; and St. Philip's, Bradford Springs, \$300.

11 Q. Unless you want to, it's not necessary that you read.

12 MR. TISDALE: Please let him finish.

13 THE WITNESS: Le Grand F. Guerry, who was rector of  
14 Zion, Richland County, but the missionary funding was for  
15 Holy Comforter, Sumter, and St. Philip's Bradford Springs,  
16 \$300; Robert P. Johnson, rector St. Stephen's and Upper St.  
17 John's, the funding for his work at Upper St. John's, 250;  
18 Alexander W. Marshall, D.D., St. John's Chapel, Charleston.  
19 Stiles Mellichamp, M-E-L-L-I-C-H-A-M-P, officially was the  
20 rector of St. James, James Island, but the funding was for  
21 his missionary work at Redeemer, Orangeburg, \$250; Barnwell  
22 B. Sams, Holy Apostles, Barnwell, \$250; Julius J. Sams, St.  
23 Mark's, Chesterville, Good Shepherd, Yorkville, \$250; William  
24 P. DuBose, missionary at Winnsboro, \$250; Thomas F. Gadsden,  
25 missionary in Christ Church Parish, \$250; Clement F. Jones,

1 Calvary, Glenn Springs, \$200; P. F. Stevens, Black Oak,  
2 Middle St. John's Parish, \$200; John H. Cornish, St. Thaddeus  
3 Aiken, \$250. Later in the year more clergy stipends were  
4 provided, James A. Stoney, Bluffton, \$200; Lucien,  
5 L-U-C-I-E-N, C. Lance, All Saints, Waccamaw, \$200.

6 Q. Now, next I want you to look at -- let's go into the  
7 journal, the plaintiff diocese journal, for 1968, and I'm  
8 going to present for you, before you, Pages 95 and 96, and  
9 since you like to read, I'm going to ask you to read it to  
10 the Court, those two entries.

11 MS. KOSTEL: What year was that, Henrietta?

12 MS. GOLDING: 1868, Page 95.

13 THE WITNESS: 1868 or 1968.

14 MS. GOLDING: 1868.

15 MS. KOSTEL: I assume you said 19.

16 MS. GOLDING: 1868. Page 95 and 96. Do you have that  
17 in front of you?

18 THE WITNESS: Mm-hmm.

19 Q. Can you read that into the record --

20 A. Yes.

21 Q. -- starting with Page 95.

22 A. Okay. I can't read it.

23 Q. Would you rather have the written version -- I mean the  
24 hard copy version?

25 A. The evidence submitted to your committee is too partial

1 to arrive at a satisfactory conclusion, nor have the funds of  
2 the several parishes and individuals alone suffered in the  
3 general ruin in which as a church we are involved. The  
4 treasurer of the society for the advancement of Christianity  
5 reports that whereas before the war its permanent funds  
6 amounted to \$89,108, its income 7,443, it is at present  
7 reduced to \$33,485. Its income is \$2,096. The treasurer of  
8 the bishops fund reports before the war, \$70,186; income,  
9 \$4,200, now, \$59,995; income, \$1,605.

10 Q. You can continue to read, please.

11 A. The treasurer of the theological seminary reports its  
12 entire funds is lost, its supporters too impoverished to  
13 continue their subscriptions. The testimony is pitifully  
14 uniform, showing heavy, in many instances total loss of  
15 church funds and of private means among the members of our  
16 household of faith. Like causes have wrought like effects in  
17 greater or less degree in every section of the diocese with  
18 scarcely an exception. The financial resources of our parish  
19 are more straightened than at the close of the war, which  
20 itself left them on the verge of bankruptcy. Two years of  
21 unsuccessful planting have brought them only more deeply into  
22 debt.

23 The answers handed in exhibit the following facts in  
24 regard to the funds of the parish: In six the receipts have  
25 depreciated in value from 50 to 75 percent. In all others

1 reported, the loss has been total. In this connection one of  
2 the most depressing features to us is that these losses have  
3 fallen most heavily upon the class, parentheses, that of  
4 planters, closed parentheses, and in the section of the  
5 state, parentheses, the low country, closed parentheses,  
6 where our church was strongest, where the parishes were not  
7 only self-sustaining but contributed of their abundance by  
8 far the major part of our available funds for diocesan  
9 purposes.

10 The churches in the up country, with one or two  
11 exceptions, were never and are not now, as appears from the  
12 answers before us, in a condition to dispense with pecuniary  
13 aid. As the natural, if not wholly unavoidable result of  
14 such financial prostration, your committee have piteous  
15 exhibit to make of salaries. Ministers -- shall I --

16 Q. It's not necessary to read any further unless your  
17 attorneys want you to. I wanted you to read the sections you  
18 just read.

19 A. Okay.

20 Q. Thank you.

21 Next I would like for you -- I would like to pull up --  
22 let's go to 1925, the journal for 1925. That's the diocese  
23 plaintiff's exhibit. The last page that I want is 10693.

24 MS. KOSTEL: I'm sorry. Could you clarify what journal  
25 that is?

1 MS. GOLDING: That is the 1925 journal, and it's Page  
2 102 in that journal.

3 Q. Can you see Page 102 in that journal?

4 A. Yes, ma'am. I'm sorry. I've got trifocals, ma'am.

5 Q. Please take your time. At the bottom it has total  
6 amount expended by the diocese and it has \$146,453.04.

7 A. Yes, ma'am.

8 Q. Did I read that correctly?

9 A. You read that correctly.

10 Q. How much of that amount was contributed by the national  
11 church?

12 A. I do not know off the top of my head.

13 Q. Let's now go to 1945. The 1945, this would be Page 129,  
14 diocesan exhibit. The last is 11934. I'm sorry, the next  
15 page is 131. Page 131, the last column, it's 130 and 131,  
16 and the last column has total receipts and it has a grand  
17 total at the bottom. Can you see that?

18 MS. KOSTEL: I'm not sure this is an objection, but is  
19 this in evidence?

20 MS. GOLDING: No, I didn't offer these in evidence. He  
21 just said that he -- Your Honor, he reviewed all of these,  
22 and so I was asking him a question from the document.

23 MS. KOSTEL: Okay. I thought you gave an exhibit  
24 number. I'm sorry.

25 MS. GOLDING: No, I didn't.



1 MS. KOSTEL: Okay.

2 THE WITNESS: \$254,712.86.

3 Q. Out of that amount, how much did the defendant, national  
4 church, contribute?

5 A. I don't know, but that's an incomplete record of what  
6 the national church did in gifts, loans and grants and  
7 mortgages. That's not included in that report.

8 Q. Now let's go to 1965. And I'd ask if you could look at  
9 Page 130. At 130 it has a total summary of dollar amount.  
10 Can you read that dollar amount in that?

11 A. \$826,623.42.

12 Q. And how much of that amount did the national church  
13 contribute?

14 A. I do not know.

15 Q. Now let's look at 1985, the 1985 journal, and  
16 specifically Page 152.

17 MS. KOSTEL: Objection, Your Honor. Is this -- are you  
18 trying to get evidence in about those numbers? Because  
19 that's not -- that's not a proper way to get evidence in,  
20 having him read from a document that's not in evidence.

21 MS. GOLDING: Page 152.

22 THE COURT: These documents are from the journals,  
23 right?

24 MS. GOLDING: Yes, every one of them is in a journal.

25 THE COURT: As I understand it, the purpose of this

1 information is for impeachment; is that correct?

2 MS. GOLDING: Absolutely.

3 THE COURT: Very well, thank you.

4 Overruled.

5 MS. KOSTEL: But the fact -- excuse me. The fact of the  
6 number is not a piece of evidence, correct?

7 THE COURT: Well, here's what it is: The question  
8 simply is here's a number. In this number, do you know which  
9 portion of this number was contributed by whomever and the  
10 answer is no.

11 MS. KOSTEL: Yes.

12 THE COURT: It really goes to impeachment. I can't  
13 discern from that contributions.

14 Q. 152, Page 152 from the 1985 journal, do you see that in  
15 front of you?

16 A. Yes, ma'am.

17 Q. Total receipts, it has a summary of several years. In  
18 the year 1979 there were receipts of \$4,221,679?

19 A. Yes, ma'am.

20 Q. How much of that came from the defendant the national  
21 church?

22 A. I do not know.

23 Q. In 1980 there were receipts of \$4,792,202. How much of  
24 that came from the defendant the national church?

25 A. I do not know.

1 Q. 1981, total receipts of \$5,490,012. How much from the  
2 national church?

3 A. I do not know.

4 Q. 1982, \$5,776,687. How much from the defendant the  
5 national church?

6 A. I do not know.

7 Q. 1983, \$6,564,081. How much from the national church?

8 A. I do not know.

9 Q. 1984, 7 million --

10 A. I do not know.

11 Q. 1984, \$7,365,805. How much of that came from the  
12 defendant the national church?

13 A. I do not know.

14 Q. Okay. Let's now go to the year 1995.

15 MS. KOSTEL: Your Honor, I'm going to object if this is  
16 just for impeachment.

17 THE COURT: Yes.

18 MS. KOSTEL: It seems like it's cumulative at this  
19 point.

20 THE COURT: I understand.

21 MS. KOSTEL: Yes.

22 Q. I'd ask you to look at Page 89 in the 1995 journal.

23 A. Again, it's very small.

24 Q. Okay. Here, I'll be glad to give you this.

25 MS. KOSTEL: I'll renew my objection, Your Honor.

1 THE COURT: All right. Overruled.

2 Q. Can you see it has the Diocese of South Carolina?

3 A. Yes.

4 Q. The actual income for 1994?

5 A. Yes, ma'am.

6 Q. It has \$1,626,046 as actual income?

7 A. Yes, ma'am.

8 Q. How much of that came from the national church?

9 A. I do not know.

10 Q. Do you know how much of the contributions in the  
11 calendar year 2005 came from the national church --

12 A. No, ma'am.

13 Q. -- to the plaintiff?

14 Okay. Now, there were several exhibits. There was  
15 Defendant's Exhibit 415 which was an excerpt of the 2001  
16 journal. In fact, do you recall that you testified that the  
17 All Saints Parish at Pawleys Island there was a resolution  
18 that stated that this parish was in violation of the  
19 constitution and canons of the diocese and the national  
20 church; is that correct?

21 A. That is what I read from the journal, yes, ma'am.

22 Q. But you did not read that that resolution to permit All  
23 Saints Parish a voice and vote had passed, did you?

24 A. Yes, I did.

25 Q. Oh, I apologize. So was All Saints Parish in 2001 given

1 a voice and vote?

2 A. I'm sorry. I'm sorry. Was given a seat and voice, not  
3 vote.

4 Q. So it was given seat and voice but not vote?

5 A. That's what the journal said.

6 Q. Okay. And even though it was deemed that All Saints was  
7 not, was not in union with the national church, nor the  
8 plaintiff diocese; is that correct?

9 A. That is correct.

10 Q. Okay. Also in Defendant's Exhibit 331, which was a 1917  
11 journal, there was a change of the fiscal year, but you did  
12 not, or if I did not hear you correctly, you did not read  
13 that it had gone to vote and that the vote had passed to  
14 change the fiscal year; is that correct?

15 A. I don't recall.

16 Q. Okay. And adopting the pension fund, there was a  
17 resolution, but you did not read the vote. Do you recall  
18 that?

19 A. I don't recall.

20 Q. Now, you'll agree that it's normal for nonprofit  
21 corporations to receive -- to attempt to seek and receive  
22 grants; is that correct?

23 A. Yes.

24 Q. Okay. And requesting a grant is a voluntary act; is  
25 that correct?

1 A. Correct.

2 Q. And the body that gives the grant, that's a voluntary  
3 act; is that correct?

4 A. I think it would depend upon the situation.

5 Q. Okay. Well, do you have any knowledge that any of the  
6 grants that may have been given by the national church in  
7 this case were not voluntary?

8 A. All of the grants had certain criteria. You'd have to  
9 come to a very specific grant, specific program, whether it's  
10 this or any other nonprofit, and I have sat on a number of  
11 nonprofit boards.

12 Q. I guess then you can't answer my question. You don't  
13 know if any of the grants given by the defendant national  
14 church were voluntary or not, do you?

15 A. If they met criteria, they did.

16 Q. You need to answer my question. I'm asking you, is  
17 there a grant given by the defendant national church that was  
18 not voluntary --

19 A. No.

20 Q. -- to the plaintiff diocese?

21 A. No.

22 Q. Okay. The word "accession," you referenced the word  
23 "accession" because that's referenced in the constitution and  
24 canons of the plaintiff diocese; is that correct?

25 A. Yes, ma'am.

1 Q. And the word "accession" comes from the word accede; is  
2 that correct?

3 A. I'm not a linguistic specialist, ma'am.

4 Q. Well, would you agree with me that the word "accede"  
5 means to agree?

6 A. Yes.

7 Q. And it would be fair to state that the definition of  
8 that word has not changed for the last 200 years?

9 A. I could not -- again, I am not a linguistic specialist.

10 Q. Now, in your review of the constitutions and canons of  
11 the plaintiff diocese, you saw that there were provisions for  
12 at least the last 100 years that permitted its canons and  
13 constitutions to be amended?

14 A. Correct.

15 Q. And that provision in the constitution of the plaintiff  
16 diocese didn't make any exception as to which article in the  
17 constitution could or not be amended, did it?

18 A. No.

19 Q. And that's the same thing, true for the canons, that  
20 provision in the canons that permitted amendment didn't say,  
21 well, you can't amend Canon 1 but you can amend the others.  
22 It didn't have a pick and choose, did it?

23 A. No, ma'am.

24 MS. GOLDING: I have no further questions. Thank you,  
25 Your Honor.

1 THE COURT: All right. Yes. Anyone else on behalf of  
2 plaintiffs? Yes, sir.

3 CROSS-EXAMINATION BY MR. RUNYAN:

4 Q. Good afternoon, Dr. Edgar.

5 A. Good afternoon. Sir, could you please speak up. Again,  
6 I am very hard of hearing.

7 Q. I will do my best. I am routinely accused appropriately  
8 of not speaking loud enough, so I will yell.

9 All right. Better?

10 A. Yes. Thank you very much.

11 Q. Good. Thank you.

12 Just a couple things. What Ms. Golding was asking you  
13 about, in terms of contributions or grants, in your studies  
14 you did not learn the interrelationships of all these  
15 organizations in terms of their boards and their board  
16 memberships and the control of them; is that correct?

17 A. No, sir, I did not.

18 Q. And you're not an expert in canon law?

19 A. No, sir.

20 Q. Okay. And I guess you recognize that as a rule the  
21 money that the diocese has and for the most part the money  
22 that the national church has comes from the person in the  
23 pew?

24 A. That I do not know.

25 Q. Okay. And I guess you understand, do you, that giving,



1 whether it's the person in the pew or the parish to the  
2 diocese or the diocese to the national church, is a voluntary  
3 thing, do you not?

4 A. Tithing is biblical, yes, sir.

5 Q. Well, it's not voluntary if it's a biblical issue, but  
6 there isn't any way to compel it?

7 A. No, there's no way to compel it.

8 Q. And you don't know whether the Southern Baptist  
9 Convention grants or lends money at a low interest rate to  
10 its Baptist churches, do you?

11 A. I do not.

12 Q. Or the United Methodist Church?

13 A. No, I do not.

14 Q. Okay. I just want to ask you to look at a couple of  
15 these journals, and we're going to read just a few things on  
16 the relationship if we could?

17 A. All right, sir.

18 Q. I ask you to bring up the 1849 diocese journals. If you  
19 would turn to Page 22, tiny script, if you would please blow  
20 up the top part of that first full paragraph.

21 A. If I knew who was saying this, whether it's his report  
22 or a bishop's address -- I have no idea who, what's the  
23 source of this.

24 Q. Well, you can look at the whole thing if you want. This  
25 is bishop's address. Do you feel uncomfortable reading it?

1 A. No, I don't feel un -- I just need to know whether it  
2 was a committee report or the bishop. I can't say -- or the  
3 standing committee. It makes a difference, but if you say  
4 this is the bishop's report, I will take your word for it.

5 Q. If you would like to see the whole thing, I'll be happy  
6 to give it to you.

7 A. I would like to see it, yes, sir.

8 Q. While they're doing that, would you just please read  
9 that into the record?

10 A. There are some principles at the foundation of our  
11 ecclesiastical polity to which for the important inferences  
12 to be deduced from them I now ask your consideration. The  
13 Protestant Episcopal Church is a confederacy, not a  
14 consolidation. Each diocese in some respects is independent  
15 of the confederacy, in all respects of each other -- of each  
16 of the sister -- okay. Wait a minute. Each diocese in some  
17 respects is independent of the confederacy and in all reports  
18 of each of the other sister dioceses. Any measure which is  
19 beyond the limits of the delegated or constitutional powers  
20 of the confederacy is of course not an enactment but a  
21 recommendation. It is not authoritative but merely advisory.  
22 This is too plain to be denied. It is theoretically admitted  
23 by all, but I submit it's practically regarded by all.

24 Q. Thank you, sir.

25 MS. GOLDING: Your Honor, he made a misstatement in

1 that, in reading that.

2 THE COURT: All right.

3 MS. GOLDING: He said each diocese in some respects, I  
4 believe he said in some reports but it should be in some  
5 respects.

6 THE WITNESS: Excuse me.

7 THE COURT: All right.

8 MS. KOSTEL: Is he going to be allowed to see the whole  
9 document?

10 MR. RUNYAN: You can show it to him on redirect. I  
11 don't have a question.

12 Q. You want to verify that it's the bishop's address,  
13 Doctor, I'll be happy to give it to you. You did read all  
14 these, right?

15 A. Yes, sir, I did.

16 Q. Okay.

17 A. Thank you, sir.

18 Q. Tell us, please, sir, who said those words.

19 A. Yes, Bishop Gadsden's address.

20 Q. Thank you, sir. I really don't want to spend a whole  
21 lot of time reading, so I'm just going to ask you a few  
22 questions, if you don't mind.

23 Do you remember reading anything to the effect that a  
24 lot of the dioceses in the United States had not paid what  
25 the Episcopal Church had asked them in some years?

1 A. I'm sorry. Please repeat that.

2 Q. Do you remember reading anything to the effect in one of  
3 the bishops' addresses that a lot of dioceses in the country  
4 had just not paid what the Episcopal Church had asked them to  
5 pay?

6 A. I do not recall that, no, sir.

7 Q. All right. And do you remember reading anything to the  
8 effect that the Diocese of South Carolina was going to  
9 withhold money because the national convention was in serious  
10 need of reform and streamlining?

11 A. Which year, sir?

12 Q. It would have been --

13 A. The rhetoric sounds very familiar, but I don't know what  
14 year.

15 Q. 1997.

16 A. Nineteen what?

17 Q. '97.

18 Sound unusual to you or not unusual?

19 A. No, sir, it does not sound unusual to me at all.

20 Q. Okay. Dr. Edgar, you made a couple of comments or read  
21 some things about standing committee consents?

22 A. Yes, sir.

23 Q. Do you recall those? Do you know the difference between  
24 a consent to an ordination and a consent to an election?

25 A. Yes.

1 Q. Okay. And a standing committee, when they provide their  
2 consents, what are they consenting to?

3 A. I'm sorry?

4 Q. When a standing committee consents to a bishop or bishop  
5 suffragan that is before them for their consents, what are  
6 they doing?

7 A. There are two different ways of consent. If it is not a  
8 diocesan, the standing committee must give consent for bishop  
9 coadjutors and suffragan bishops to the election, and then  
10 after the election they must give consent to the -- to the --  
11 for that person becoming a bishop.

12 Q. What is a testimonial?

13 A. It is a signed document that they approve.

14 Q. And why are they asked to give a testimonial?

15 A. The national canon requires the standing committees and  
16 bishops give their canonical consent to a person's election.

17 Q. You don't really know what a testimonial is, do you,  
18 Doctor?

19 A. I've seen them, but other than that, no, sir.

20 Q. Okay. And you know before a bishop can be ordained to  
21 be a bishop with jurisdiction that he has to get the consents  
22 of the standing committees of the diocese and the bishops  
23 with jurisdiction?

24 A. That I do know, yes, sir.

25 Q. And that's consent to ordination; is that correct?

1 A. You're talking about elections or?

2 Q. I'm talking about what they give consent to. Is that  
3 consent to ordination?

4 A. Yes.

5 MR. RUNYAN: Thank you.

6 Thank you, sir.

7 THE COURT: That's it. Very well. Anyone else? Very  
8 well. Redirect?

9 REDIRECT EXAMINATION BY MS. KOSTEL:

10 Q. Just a couple of things, Professor Edgar. I just want  
11 to clarify. Ms. Golding asked you about what happened with  
12 All Saints, and I think I've forgotten the year when it would  
13 not -- was not willing to conform as required by the canon.  
14 To be clear, it was allowed to have seat and voice but not  
15 vote, correct?

16 A. Correct.

17 Q. And that ordinarily would have had vote, correct?

18 A. Correct.

19 Q. Okay. The second question is Mr. Runyan pointed out to  
20 you I guess at some point in the late '90s the diocese --  
21 there was some rhetoric in the diocese about not providing  
22 funds to the national church, right?

23 A. Correct.

24 Q. And your said that was familiar rhetoric?

25 A. Yes, ma'am.

1 Q. And familiar because you've been reading the journals  
2 into this century, correct?

3 A. Correct.

4 Q. And yet we saw an example in 2012 where the diocese was  
5 still asking for aid from the national church, correct?

6 MS. GOLDING: Your Honor --

7 MR. RUNYAN: Your Honor, she's leading a bit.

8 MS. KOSTEL: Fair enough. I'll withdraw it. I'll  
9 withdraw it.

10 Q. Mr. Runyan asked you the question about the flow of  
11 funds from the diocese to the church in the current times  
12 starting in I think he said the late 1990s. What evidence  
13 did you see in your review of the documents of aid about flow  
14 of funds between the diocese and the national church?

15 A. Of course he mentioned 1997, nineteen ninety -- no. I'm  
16 sorry. There were loans, grants, mortgage to different  
17 congregations in the diocese of -- to the Diocese of South  
18 Carolina, churches in the Diocese of South Carolina, but I  
19 think that's what you're asking, Ms. Kostel.

20 Q. From entities of the national church, correct?

21 A. Okay. Again, sorry.

22 Q. I'm asking about moneys flowing from the national church  
23 to the diocese during this period.

24 A. Yes.

25 Q. There were still moneys flowing from the national

1 church?

2 A. Yes.

3 MS. KOSTEL: Okay. That's all. Thank you.

4 THE COURT: All right.

5 MR. TISDALE: Nothing from us, Your Honor.

6 THE COURT: Very well. Recross.

7 RECROSS-EXAMINATION BY MR. RUNYAN:

8 Q. One quick point on that, Doctor: As far as you can  
9 tell, when moneys flow down from the Episcopal Church, they  
10 go through the diocese, don't they?

11 A. In terms of a mortgage, yes.

12 Q. In terms of the way they go, they go to the diocese and  
13 then they go wherever they go?

14 A. It depends upon, again, the particular fund.

15 Q. You have seen checks cut to parishes directly?

16 A. In terms of -- I have not actually seen a check cut. I  
17 have seen checks cut to the diocese.

18 Q. I guess that was my question, wasn't it?

19 One final question: For all you know during this period  
20 of time you looked at this, the finances flowing down, there  
21 could have been as much as 900 percent going the other way,  
22 couldn't there?

23 A. I'm sorry, sir. Again?

24 Q. There could have been as much as 900 percent of that  
25 amount going the other way, couldn't there?



1 A. I'm sorry. I still cannot -- you're saying there could  
2 have been 900 percent going the other way?

3 Q. That is exactly what I'm saying.

4 A. Okay.

5 Q. You didn't look at that, did you?

6 A. No, sir.

7 Q. You didn't ask to look at it and no one asked you to  
8 look at it?

9 A. No, sir.

10 MR. RUNYAN: Thank you.

11 THE COURT: All right. Anything further? Cross?  
12 Recross rather?

13 Okay. Thank you, sir. You may come down. All right.  
14 It's 5:00. So I do believe that there is the remaining issue  
15 of the documents with regards to the parishes.

16 MS. KOSTEL: Yes.

17 THE COURT: Is there anything that we need to talk about  
18 to be sure that that is facilitated so that it can occur?

19 MS. KOSTEL: I think I have spoken with at this point 19  
20 or 20 parishes and we've managed to get to the point we don't  
21 need a witness for the documents. We're going to have some  
22 relevancy issues. I'm ready whenever the other folks are  
23 ready to approach me, and time is of the essence because if  
24 we do need a witness, obviously I need to know very quickly.

25 THE COURT: With regards to authenticity?

1 MS. KOSTEL: Yes.

2 THE COURT: Got it. Okay. Great.

3 So, you know, if there are -- if there are issues with  
4 regards to authenticity vis-à-vis any of the documents for  
5 the parishes -- let me say that again because I don't want to  
6 mislead anybody. I'm talking about authenticity, not  
7 relevance, not -- I'm trying to think of anything else, any  
8 other issue but authenticity which could be interposed as an  
9 objection, authenticity can be fixed, and so the request of  
10 the defendants is that if there is an objection regarding  
11 authenticity, please let them know because that's one that  
12 they can fix.

13 If at this point there is a parish who has their  
14 documents, who has their documents, and you have concerns  
15 regarding authenticity, speak now or forever hold your peace.

16 MR. CAMPBELL: Your Honor, I do have one or two. I'm  
17 happy to work with Ms. Kostel as soon as we finish and I  
18 think if we can probably resolve it after we speak.

19 THE COURT: Great.

20 MS. DURANT: Your Honor, Bess Durant for Holy Comforter.  
21 Same issue; I think it will be very easily resolvable with  
22 Ms. Kostel.

23 THE COURT: You'll speak with her this evening, just so  
24 if she needs to get somebody down here, she can do that.

25 MS. DURANT: Yes, Your Honor, be happy to.

1 THE COURT: Yes, sir?

2 MR. ORR: Your Honor, Larry Orr. I spoke with  
3 Ms. Kostel about Frank Mack and St. Matthew Ft. Motte. He's  
4 been unavailable, but he'll be here tomorrow, and I think  
5 he's going to talk with her in the morning about his  
6 documents. Whether he's got any objections, I don't know,  
7 but I think they'll be able to work that it out.

8 MS. KOSTEL: To be clear, we have three more lists we'll  
9 get out tonight, and then we will have to confer.

10 THE COURT: Three more lists. Three parishes?

11 MS. KOSTEL: Yes, just that I haven't finished.

12 THE COURT: Do those parishes know?

13 MS. KOSTEL: Yes. Do they know that they're getting --

14 THE COURT: That it is coming.

15 MS. KOSTEL: Oh, yes; St. Bartholomew's, Holy Trinity  
16 and St. David's.

17 THE COURT: Wonderful, wonderful, wonderful. And what I  
18 would be so grateful is if you could -- those three parishes,  
19 if they could just please let Ms. Kostel know in the morning  
20 if there is an objection, regarding authenticity now, not any  
21 other grounds, but authenticity, please let her know in the  
22 morning again. Again, that gives her an opportunity to fix  
23 that one.

24 All right. Anything else for the good of the order, so  
25 to speak, from the plaintiffs?

1 MS. GOLDING: Nothing.

2 MR. RUNYAN: No, Your Honor.

3 THE COURT: From the defendants?

4 MR. TISDALE: No, Your Honor.

5 All right. Let me mention this to you: We do not as of  
6 this point -- and that may change in a couple years, but as  
7 of this point in South Carolina we do not have the ability to  
8 accept as part of the record electronic filings and  
9 electronic exhibits. We're working on it, but we do not have  
10 it as of yet. So with regards to exhibits, if there are  
11 exhibits that either party or any party wishes to make part  
12 of the record, unfortunately, I'm going to have to request  
13 that there be hard copies simply because we do not at this  
14 point have the ability to accept electronic filings. We will  
15 in a couple of years, but we don't as of this point.

16 So I just share that with you. We've been dealing with  
17 the electronic forms, but if you need them to be part of the  
18 record, we're going to have to have hard copies. Thank you.

19 MR. PHILLIPS: One other thing: We'd like to know about  
20 the witnesses for tomorrow.

21 MS. KOSTEL: We'll let you know soon. We have to figure  
22 it out.

23 THE COURT: Very soon. All right. Thanks.

24 (Trial of the case adjourned for the day.)

25 - - -

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the First Judicial Circuit Court for Dorchester County,  
11 South Carolina, on the 21st of July, 2014.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 September 9, 2014

16

17 /S/ Ruth L. Mott

18 Official Court Reporter

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## VOLUME XI

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL )  
CHURCH IN THE DIOCESE OF )  
SOUTH CAROLINA, THE )  
TRUSTEES OF THE PROTESTANT )  
EPISCOPAL CHURCH IN SOUTH )  
CAROLINA, A SOUTH CAROLINA )  
CORPORATE BODY, ET AL., )

TRANSCRIPT OF RECORD

vs.

JULY 22, 2014  
ST. GEORGE, SC

THE EPISCOPAL CHURCH, )  
(A/K/A THE PROTESTANT )  
EPISCOPAL CHURCH IN THE )  
UNITED STATES OF AMERICA); )  
THE EPISCOPAL CHURCH IN )  
SOUTH CAROLINA, )

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR  
Official Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 MARK DUFFY

5 MR. BEERS 1921, 2036, 2037  
1962,  
2023

6 MR. RUNYAN 1953, 2036, 2037  
2026

7 MS. GOLDING 1957

8 MR. HOLMES 2022,  
2025

9 THOMAS RICKENBACKER

10 MR. TISDALE 2042

MS. GOLDING 2064

11 CERTIFICATE OF REPORTER 2135

12

E X H I B I T S

13

14 NO. DESCRIPTION ID EVD

15 DSC-68 JOURNAL - GENERAL CONVENTION 2031 2036  
1789

16 D-22 RECORD OF THE DISCIPLINARY 2019  
BOARD FOR BISHOPS

17 D-143 NATIONAL CHURCH CONSTITUTION 1920 1926  
AND CANONS 1823

18 D-203 NATIONAL CHURCH CONSTITUTION 1920 1928  
AND CANONS 2009

19 D-425 NATIONAL CHURCH CONSTITUTION 1920 1929  
AND CANONS 1789

20 D-431 THE BLUE BOOK (EXCERPT) 1920

D-434 3/30/99 MEMORANDUM 1920 1977

21 D-435 5/28/99 LETTER WITH ATTACHMENT 1920 1978

D-436 4/4/01 LETTER 1920 1980

22 D-437 5/10/01 LETTER 1920

D-442 FAX COVER SHEET AND 11/2/04 1920 1983

23 LETTER

D-446 EXCERPTS FROM THE JOURNAL OF 1920

24 THE DIOCESE OF MARYLAND

D-447 EXCERPTS FROM THE JOURNAL OF 1920

25 THE DIOCESE OF MASSACHUSETTS

| 1  | NO.   | DESCRIPTION                                                                                           | ID   | EVD  |
|----|-------|-------------------------------------------------------------------------------------------------------|------|------|
| 2  | D-448 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW HAMPSHIRE                                             | 1920 |      |
| 3  | D-449 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW JERSEY                                                | 1920 |      |
| 4  | D-450 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF NEW YORK                                                  | 1920 |      |
| 5  | D-451 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF PENNSYLVANIA                                              | 1920 |      |
| 6  | D-452 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF RHODE ISLAND                                              | 1920 |      |
| 7  | D-454 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF VERMONT                                                   | 1920 |      |
| 8  | D-455 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF VIRGINIA                                                  | 1920 |      |
| 9  | D-463 | EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 1964                                               | 1920 |      |
| 10 | D-464 | EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 2009                                               | 1920 |      |
| 11 | D-465 | EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 2009                                               | 1920 |      |
| 12 | D-466 | 6/25/07 LETTER                                                                                        | 1920 |      |
| 13 | D-477 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF CONNECTICUT                                               | 1920 |      |
| 14 | D-478 | EXCERPTS FROM THE JOURNAL OF THE DIOCESE OF DELAWARE                                                  | 1920 |      |
| 15 | D-479 | EXCERPT FROM THE JOURNAL OF THE GENERAL CONVENTION 1964                                               | 1920 | 2019 |
| 16 | D-503 | EXCERPTS FROM THE JOURNAL OF THE GENERAL CONVENTION 1922                                              | 1920 | 2019 |
| 17 | D-504 | EXTRACTS FROM THE ANNUAL REPORTS OF THE EPISCOPAL CHURCH BOARD OF MISSIONS 1866-1919                  | 1920 | 1962 |
| 18 | D-505 | EXTRACTS FROM THE ANNUAL REPORTS OF THE EPISCOPAL CHURCH NATIONAL COUNCIL 1920-1938                   | 1920 | 1963 |
| 19 | D-506 | EXTRACTS FROM THE MINUTES OF THE EPISCOPAL CHURCH NATIONAL COUNCIL 1911-1965                          | 1920 | 1963 |
| 20 | D-507 | EXTRACTS FROM THE AUDIT REPORTS OF THE ACIN OF THE EPISCOPAL CHURCH 1934-1956                         | 1920 | 1964 |
| 21 | D-508 | EXTRACTS FROM THE MINUTES OF THE AMERICAN CHURCH MISSIONARY SOCIETY OF THE EPISCOPAL CHURCH 1867-1899 | 1920 | 1965 |
| 22 | D-509 | RECORDS OF LOANS FROM THE EPISCOPAL CHURCH BUILDING FUND 1880-1991                                    | 1920 | 1966 |
| 23 |       |                                                                                                       |      |      |
| 24 |       |                                                                                                       |      |      |
| 25 |       |                                                                                                       |      |      |





1           (Defendant's Exhibits 143-512 premarked for  
2     identification.)

3           THE COURT: All right. So how was our document-do  
4     yesterday? That bad? Come on, Mark.

5           MR. PHILLIPS: Mine was great. We got along fine.  
6     We've got one or two to talk to you about, but that's it.

7           MS. KOSTEL: So I've circulated the last three lists.  
8     I've not heard back about any authenticity objections.

9           THE COURT: Yay.

10          MS. KOSTEL: We have different groups of relevance  
11     objections, and then with a couple of parishes there are some  
12     other objections that are very specific to them that are not  
13     relevance. I'd like to try to work that out with them during  
14     the course of today.

15          THE COURT: Okay.

16          MS. KOSTEL: And I still have not done a final list for  
17     each of them based on all of our conversations, and I won't  
18     do a list until we go over the general relevance objections.  
19     But at some point today, hopefully not right now, Your Honor  
20     will hear argument on the general relevance objections.

21          THE COURT: Sounds good. Maybe we'll stop around 4:00  
22     and do that.

23          MS. KOSTEL: Okay. All right. Are you ready to call  
24     your next witness?

25          MR. TISDALE: I believe they have a witness they would

1     like to call, Your Honor.

2           THE COURT:   Wonderful, Mr. Tisdale.

3           MR. TISDALE:   Good morning.

4           THE COURT:   Good morning.

5           MR. BEERS:    Thank you, Your Honor.

6           THE COURT:    Yes.

7           MR. BEERS:    We're going to call Mark Duffy to the stand.

8           THE COURT:    Okay.

9                           MARK DUFFY,

10   being first duly sworn, testified as follows:

11           THE COURT:   If you will state your full name for the  
12   record please and spell your last name.

13           THE WITNESS:   My name is Mark Duffy, D-U-F-F-Y.

14           THE COURT:    Thank you so much.   Your witness.

15   DIRECT EXAMINATION BY MR. BEERS:

16   Q.   Mr. Duffy, where do you live?

17   A.   I live in Austin, Texas.

18   Q.   What do you do for a living?

19   A.   I'm the canonical archivist and director of archives for  
20   the Episcopal Church.

21   Q.   Tell us what the archives of the Episcopal Church is --  
22   or are?

23   A.   The archives is the central repository for the records  
24   of the national church and for national church bodies and for  
25   those entities that report to and interact with the

1 national -- what's thought of as the general convention, and  
2 Domestic and Foreign Missionary Society of the Protestant  
3 Episcopal Church in the United States.

4 Q. And what entities, generally, report to the archives --  
5 or report to the church whose documents end up in the  
6 archives?

7 A. Right. All the bodies, and agencies, boards, committees  
8 of general convention report to the church; the dioceses  
9 report to the church; the -- and several of the official  
10 bodies that operate sort of on the periphery of the general  
11 convention.

12 Q. When were the archives first established?

13 A. The archives were first established in 1835. I believe  
14 the first Protestant denomination to establish an archives  
15 was when they created the office of conservator of the  
16 general convention's records.

17 Q. And where are the archives?

18 A. The archives are right now located in two locations, two  
19 cities, at least, Austin where we have a number of  
20 facilities, and in New York City where our records management  
21 program operates the more current -- oversees the current  
22 materials, current records.

23 Q. And how do you get materials, archival materials from  
24 the operation of the church in its -- either in its  
25 headquarters or one of its satellite offices?

1 A. Well, there are a couple of different ways in which that  
2 happens. The materials that are maintained by the corporate  
3 offices come to us with records retention schedules. We run  
4 the records management program, as I say, and so things are  
5 designated as coming to the archives for perhaps a temporary  
6 period of time or for permanently, for permanent retention.

7 In other cases, where we aren't located physically with  
8 the offices, that is with some of these committees and  
9 commissions or with the dioceses, we have to -- some of them  
10 routinely send us materials, and sometimes we have to go  
11 seeking them out and reminding folks to forward things to the  
12 archives.

13 Q. How frequently, say, does the presiding bishop's office  
14 turn over documents for the archives?

15 A. Regularly. I would say several times a year.

16 Q. And how long have you been the archivist?

17 A. I've been the archivist since June of 1992, so 22 years.

18 Q. And do you have any other duties for the church that are  
19 related in any way to the archives or to documents?

20 A. Well, I have -- yes, I suppose we have one large duty in  
21 support of the general convention, which is our main concern  
22 in terms of the documentation.

23 We edit the constitution and canons for the church, and  
24 we provide editorial assistance for the other major  
25 publications that come out of the general convention office.

1 Q. Do you have any role in the publication of the journals  
2 of the general convention?

3 A. Yes, a significant amount of help is given to that  
4 office. Indeed, we partially oversee the staff that edits  
5 that volume.

6 Q. All right. I think that's all the background I need.  
7 I'd like to turn your attention to Exhibit 143.

8 Ms. Kostel?

9 MS. KOSTEL: Yes.

10 MR. RUNYAN: Your Honor, could we have a copy of that or  
11 be told what it is?

12 MS. KOSTEL: It's on your list.

13 MR. RUNYAN: What is it?

14 MS. KOSTEL: 1823 constitution and canons.

15 MS. GOLDING: When you say "list," what list are you  
16 referring to?

17 MS. KOSTEL: The exhibit list that we gave you with the  
18 hard drive.

19 MR. BEERS: Your Honor, we have these on hard drive.  
20 These are -- I don't mean to testify, but these are documents  
21 that we are -- that are voluminous, and we are going to have  
22 hard copies in the courtroom tomorrow.

23 THE COURT: Okay.

24 MS. GOLDING: Can you identify -- what, again, is  
25 exhibit -- the list we have, Your Honor, doesn't have exhibit

1 numbers.

2 MS. KOSTEL: No, it's the -- I'm sorry, I wasn't clear.  
3 It's the hard drive exhibit list. Andrew has it.

4 MR. BEERS: We'll give you a chance to look at it before  
5 we ask any questions.

6 MS. KOSTEL: No. 143, Andrew, on that list.

7 Q. Mr. Duffy, do you see 143?

8 A. Yes.

9 Q. Have you ever seen that document before?

10 A. Yes.

11 THE COURT: Hold on one second. Plaintiffs are still  
12 putting their hands on it.

13 MR. BEERS: Okay.

14 THE COURT: We'll just have a moment.

15 MS. GOLDING: Thank you, Your Honor.

16 THE COURT: Everybody got it? All right. I know you  
17 don't have hard copies, but have you got -- have you had time  
18 to pop it up on the computer?

19 MR. PLATTE: Yes, Your Honor.

20 THE COURT: Okay. Thank you, Mr. Platte. All right.  
21 Got it.

22 Q. What is that document, Mr. Duffy?

23 A. That is the canons of the general convention, 1823.

24 Q. And what is the publication?

25 A. This publication is in those years the church, general

1 convention, requested publication regularly of the canons of  
2 the church for distribution to the body. And it was  
3 published in a couple of different ways. It was published as  
4 a separate pamphlet but it was also distributed alongside --  
5 with the journal of the general convention.

6 So I'm not sure exactly which excerpt this is but...

7 Q. And how far back do you have copies of the constitution  
8 and canons of the Episcopal Church?

9 A. Well, back to the first -- we have a complete set back  
10 to 1789.

11 Q. All right. Now I'd like to ask you to turn to  
12 Exhibit 1 --

13 MS. KOSTEL: David.

14 MR. BEERS: Excuse me.

15 (Attorneys confer.)

16 MR. BEERS: We offer this one in evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. RUNYAN: None.

19 THE COURT: Very well.

20 (Defendant's Exhibit 143 admitted into evidence.)

21 Q. Would you turn to Exhibit 203.

22 MR. RUNYAN: What is that?

23 MR. BEERS: That is the 2009. Got it, Andrew?

24 MR. PLATTE: My list from the hard drive stops in 1961.

25 MS. KOSTEL: No, no, they're not in order, sadly.



1 MR. PLATTE: Oh, there it is.

2 MS. KOSTEL: Yeah, there.

3 MR. PLATTE: I see it.

4 MS. KOSTEL: Not '03, '09.

5 MR. PLATTE: I found it. Thank you.

6 Q. Have you seen that document before, Mr. Duffy?

7 A. Yes, sir.

8 Q. What is it?

9 A. This is the constitution and canons for the Episcopal  
10 Church from the general convention, 2009.

11 Q. And was that attached to the journal or printed as a  
12 separate pamphlet?

13 A. This is printed as a separate document, although it is  
14 considered actually part of the journal proceedings of the  
15 general convention.

16 Q. Now, do we have on the hard drive and can we produce  
17 tomorrow hard copies of all of Exhibits 143 to 203; namely,  
18 the constitution and canons from 1823 to 2009?

19 A. I believe so, I could.

20 MR. BEERS: Okay. We move those into evidence, Your  
21 Honor.

22 MR. RUNYAN: Your Honor, we have a problem with 2009 for  
23 sure. That constitution and canons was expressly disavowed  
24 by the constitution and the canons of the Diocese of South  
25 Carolina at its convention in 2010, so we have a problem with

1 its admissibility because of relevance.

2 Don't have any problem with authenticity at all on any  
3 of this.

4 MR. BEERS: Well, they --

5 MR. RUNYAN: I guess there's a lack of foundation that  
6 2009 canons are applicable to the issues in this case through  
7 this witness.

8 MR. BEERS: But that has nothing to do with  
9 admissibility, Your Honor, that's argument.

10 THE COURT: Overruled. That's for the Court to make a  
11 determination. I think that goes to the heart of the issue  
12 before the Court, and I think that it's been authenticated.  
13 The question is, with regards to relevancy, is there a fact  
14 which is in issue that this document would make more probable  
15 or less probable. I think the answer is it probably does.  
16 And I think that clearly this goes to the heart of one of  
17 these issues, minimally.

18 MR. BEERS: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 (Defendant's Exhibit 203 admitted into evidence.)

21 Q. Now, Mr. Duffy, would you turn to Exhibit No. 425.

22 MS. KOSTEL: I have a better copy. May I approach the  
23 witness, Your Honor?

24 THE COURT: Yes, of course.

25 Q. Do you have 425?

1 A. Yes, sir.

2 MR. BEERS: Do you have it?

3 MS. KOSTEL: No, it's not electronic.

4 THE COURT: You can pop it on the ELMO.

5 MS. KOSTEL: I can pop it on the ELMO.

6 Q. Have you seen that document before, Mr. Duffy?

7 A. Yes, sir.

8 Q. Tell us what it is.

9 A. This is the copy of the journal of the general  
10 convention 1789, which we have a couple of wonderful copies  
11 of, which contains the first constitution and canons of the  
12 Episcopal Church.

13 MR. BEERS: We offer that in evidence, Your Honor.

14 MR. RUNYAN: No objection.

15 THE COURT: No objection. Very well.

16 (Defendant's Exhibit 425 admitted into evidence.)

17 THE COURT: Let me see the front of it again. That's a  
18 document I'd like to hold.

19 MR. BEERS: Your Honor, we have hard copies for some but  
20 not all, and the ones for which we do not, we'll have them by  
21 tomorrow.

22 THE COURT: Sure.

23 MR. BEERS: So I'd like to turn to Exhibit 504 --

24 THE COURT: May I note for the record and inquire that  
25 this says "Journal of a convention" which is, obviously, the

1 cover sheet and then it has a list of members of the  
2 convention, which is the next page. And then the following  
3 page begins in the middle of a sentence at page 57, so talk  
4 to me about this document because I don't know if there's an  
5 objection, but it doesn't appear to be a complete one.

6 MS. KOSTEL: I can help, Your Honor. At the bottom of  
7 page 57 -- the first two pages are just to describe what the  
8 document is. At the bottom it says that the canons were  
9 adopted and they are as follows. The very, very last line.  
10 That's why it's there, just to show the adoption.

11 And so when Your Honor turns to the next page, then the  
12 canons are set out on page 58.

13 THE COURT: Well, a couple of things, just -- and I  
14 understand there's not an objection to the admissibility of  
15 it, but I might have an objection, so let me put down what it  
16 is. First of all, this witness testified that this was the  
17 first canon and constitution of the Episcopal Church. Now,  
18 in the prior document that I reviewed it said, "Protestant  
19 Episcopal Church for the United States, also known as the  
20 Episcopal Church." That came from my memory.

21 MR. BEERS: I can explain that, Your Honor.

22 THE COURT: Hold on. Let me finish.

23 MR. BEERS: Okay. Sorry.

24 THE COURT: All right. This document says, "Journal of  
25 a convention of the Protestant Episcopal Church in the states

1 of New York, New Jersey, Pennsylvania, Delaware, Maryland,  
2 Virginia, and South Carolina." So this is something  
3 different. This is not the first canon and constitution of a  
4 national Episcopal Church. It just is what it is.

5 MS. KOSTEL: Your Honor's correct, that's the name of  
6 the journal, but if you look on page 58 -- and probably the  
7 front matter made things more confusing.

8 THE COURT: Yes.

9 MS. KOSTEL: But if Your Honor turns to page 58, it says  
10 "Canons for the Government of the Protestant Episcopal Church  
11 in the United States of America." So that's really what  
12 we're entering in into evidence, and perhaps it would be  
13 easier to get rid of the first three pages.

14 And then on page 61, Your Honor will see a general  
15 constitution of the Protestant Episcopal Church in the United  
16 States of America. It's really just the organic governing  
17 documents that we're entering in, and we don't need the first  
18 few pages.

19 MR. RUNYAN: Your Honor, I mean, the exhibit's in  
20 evidence. I would object to removing pages from it.

21 MS. KOSTEL: That's fine.

22 MR. RUNYAN: We will introduce the entire document at  
23 some appropriate time.

24 THE COURT: Okay.

25 MR. RUNYAN: They have picked this out and have

1 testified to what it is and --

2 THE COURT: Okay. In other words, just hush and hold  
3 on. I got it.

4 MR. BEERS: Your Honor, the record should make clear  
5 that it was Mr. Runyan that said that, not me.

6 MR. RUNYAN: I understood this to be testimony by the  
7 witness that this is the first constitution and canons of the  
8 Episcopal Church. It's not the first journal.

9 MS. KOSTEL: Correct.

10 THE COURT: That's what he said.

11 MS. KOSTEL: Yes.

12 MR. RUNYAN: Okay.

13 THE COURT: Okay. And it's dated 1789.

14 MS. KOSTEL: Correct.

15 Q. Is that right, Mr. Duffy?

16 A. Yes, sir.

17 THE COURT: All right.

18 Q. Let's turn to 504, and would you just tell us what that  
19 document is.

20 A. Well, this appears to be the cover page to something  
21 called the, "Annual Reports of the Board of Missions, 1866 to  
22 1919."

23 Q. Mr. Duffy, did we ask you to search the archives for  
24 documents that would reflect financial assistance by the  
25 national church or one of its affiliates to parishes and

1 clergy in the Diocese of South Carolina?

2 A. Yes.

3 Q. And how did you go about doing that?

4 A. We looked at the entire collection. We identified,  
5 through our catalogs, which bodies in the church would be  
6 grant-making or money-distributing entities, and we isolated  
7 those in a map of the collection, so to speak, and started  
8 with each entity and went through, from the beginning to the  
9 end, you know, from the start of the organization to when the  
10 organization ceased, page by page and identified, wherever we  
11 could, reference to funds leaving that entity and going to  
12 some person or organization or the diocese or church in South  
13 Carolina.

14 Q. And under what circumstances would a document such as  
15 504 arrive at the -- get to the archives?

16 A. Well, in this case --

17 MS. GOLDING: Your Honor, I'm going to have to make an  
18 objection. 504 appears to be an accumulation of reports, so  
19 it's not an existing document in and of itself that went to  
20 the archives. It was something put together by the witness.

21 MR. BEERS: Fair enough. Fair enough, Ms. Golding.

22 Q. How did the diocese, do you believe, receive the  
23 information that is now put together in 504, that is, the raw  
24 data?

25 MS. GOLDING: Your Honor, I'm going to object. This

1 witness can't testify how the diocese received information.

2 MR. BEERS: No, no, how the archives received it. How  
3 the archives received the information that is contained in  
4 504.

5 THE WITNESS: These records of the Board of Missions  
6 were essentially the corporate -- official corporate records  
7 of the Domestic and Foreign Missionary Society, the central  
8 governing body of the -- or executive of the Episcopal  
9 Church. And they form the core of the archives, essentially,  
10 along with the journals of general convention. The Board of  
11 Missions was the -- today's executive council.

12 Q. And what does Exhibit 504 contain? What does it  
13 include?

14 A. It includes minutes, report, you know, sort of  
15 manuscript and written report -- printed reports,  
16 correspondence, accounts, account books, letter books,  
17 receipts, a variety of those kinds of business records.

18 Q. All right. Fine. Thank you.

19 MR. BEERS: We offer in evidence 504, Your Honor.

20 MR. RUNYAN: Object to this document on the grounds that  
21 the document was created by an entity that is not a party to  
22 this lawsuit. The Domestic and Foreign Missionary Society is  
23 a New York incorporated entity, and they're not a party to  
24 this lawsuit. Lack of foundation.

25 THE COURT: Well --



1 MR. BEERS: May I make a representation to the Court  
2 that might be helpful?

3 THE COURT: Sure.

4 MR. BEERS: The Domestic and Foreign Missionary Society  
5 of the Protestant Episcopal Church in the United States of  
6 America is a corporate body that manages property, financial  
7 affairs for the church, and has since the 1830s.

8 THE COURT: All right.

9 MR. BEERS: It's the check-writing arm of the church.

10 THE COURT: And is this witness a custodian of those  
11 records for that entity?

12 MR. BEERS: Yes, indeed.

13 Q. Excuse me. Mr. Duffy?

14 A. Yes.

15 THE WITNESS: Sorry, Your Honor.

16 THE COURT: Okay. And this is a summary. Summaries are  
17 certainly admissible, so long as the underlying documents are  
18 made a part of the record; in other words, you have to have  
19 the underlying documents and then you can have a summary. So  
20 this says extracts from the annual reports of the national  
21 council, 1920, whatever the other date was. And so where are  
22 those documents?

23 MS. KOSTEL: They're attached. They're following.  
24 That's just a cover page, so let me -- these were produced in  
25 discovery.

1 THE COURT: Okay. In other words, the extracts are  
2 fine, but the underlying supportive full documents must be  
3 attached to the summary and --

4 MS. KOSTEL: I'm confused, Your Honor, because we are --  
5 for example, with the journals of the diocese, we're being --  
6 we were going to offer the full diocesan journals in, but we  
7 are now -- as a result of a variety of things, we're now  
8 going to be putting in excerpts from the diocesan journals  
9 instead of the full journals. And these are excerpts from  
10 reports of other church bodies. They're not the whole -- I  
11 mean, the whole report that we're talking about, massive,  
12 massive amounts of pages. I'm not -- and these are excerpts  
13 from those reports in the same way that the diocesan journal  
14 excerpts, I'm not --

15 THE COURT: I'm with you. I got that. So there are a  
16 couple things going on. There are really three things going  
17 on. Number one, we have something called the business  
18 records exception act, and so I'm sort of curious about that.  
19 And I'm curious about that for my own edification. And while  
20 I understand he's a custodian of records, there's some other  
21 information that I'm curious about with regards to that.

22 Secondly, secondly, this is a summary, and I have to  
23 hear from the plaintiffs that the plaintiffs do not object to  
24 the excerpts coming in without the underlying source  
25 documents.

1           And thirdly, it's been represented to the Court that  
2   this body for which these documents are being shown to the  
3   Court, which is now known as the executive council, is the  
4   check-writing arm, as I understand, of the National Episcopal  
5   Church, national church.

6           MR. BEERS: That's not quite right, Your Honor.

7           THE COURT: Well, that's what I was just told, so those  
8   are -- I've got a number of incoming fire that I'm trying to  
9   handle with these documents so...

10          Mr. Runyan?

11          MR. RUNYAN: Yes, Your Honor.

12          THE COURT: Talk to me about the pieces of this that you  
13   have no problem with and then I'm not going to worry about  
14   it.

15          MR. RUNYAN: Okay. Well, that's hard to do. I think  
16   the pieces of this that, to go to the flip side, that I have  
17   problems with are that it is a summary of information that is  
18   not here and it must be made available. It must also be  
19   independently admissible, and that's not been determined yet.  
20   So it doesn't meet my understanding of the rule for a  
21   summary.

22          I guess the fundamental problem, in addition to that, is  
23   this reference to these are bodies of the church. The  
24   Episcopal Church is the defendant here. The Domestic and  
25   Foreign Missionary Society is not. And there is no -- that I

1 see, no foundation that says that that entity is controlled  
2 by the Episcopal Church or owned by the Episcopal Church; and  
3 there's, likewise, no foundation that all of these other  
4 entities that we've talked about are "the church" have a  
5 connection to this defendant, and I think that's the  
6 foundational concern that I have in addition to the summary  
7 problem.

8 MR. BEERS: Could I be heard on that?

9 THE COURT: Oh, absolutely.

10 MR. BEERS: Well, the source of data for the summary is  
11 attached; is that right, Ms. Kostel?

12 THE COURT: No.

13 MS. KOSTEL: The excerpts are attached.

14 MR. BEERS: That is the -- what is attached forms the  
15 basis of the summary. We understand that they're excerpts,  
16 but the whole document is not in. The whole document deals  
17 with other things. But the material from which the summary  
18 was made is attached.

19 MS. KOSTEL: It is a summary. It's a collection that is  
20 a summary.

21 MR. BEERS: All right. Now, this document was published  
22 by the national council. That's --

23 THE COURT: I don't know what that means, the collection  
24 is a summary. Tell me what that means, the collection is a  
25 summary.

1 MR. BEERS: Okay.

2 THE COURT: I don't know what that means, the collection  
3 is a summary.

4 MS. KOSTEL: In other words, these are extracts. We  
5 haven't created an independent page that summarizes, that's  
6 all I'm trying to be clear with, Your Honor. There's not an  
7 independent page where we, you know, summarized it. This  
8 collection is -- are pages that are extracts from larger  
9 journals.

10 THE COURT: Got it.

11 MR. BEERS: Secondly, I'm going to ask Mr. Duffy a  
12 couple questions that might be helpful.

13 THE COURT: Yes.

14 Q. What was the -- what is or was the national council?

15 A. The national council was the successor body to the Board  
16 of Missions organized in 1919 to bring together all the  
17 disparate arms and legs of the mission body of the Episcopal  
18 Church, national church. That's the national council.

19 Q. And is the national council still in existence?

20 A. It was renamed in 1964 as the executive council, yes.

21 Q. And what is the role of the executive council?

22 A. Executive council acts between general conventions to  
23 carry out the work of general convention.

24 Q. And once again, what is the Domestic and Foreign  
25 Missionary Society?

1 A. Domestic and Foreign Missionary Society is a  
2 corporation, New York, governed by the canons of the  
3 Episcopal Church that are set out by general convention.

4 MR. BEERS: The national council and the Board of  
5 Missions and the and executive council and the Domestic and  
6 Foreign Missionary Society are not independent bodies. The  
7 Domestic and Foreign Missionary Society has a corporate form,  
8 but it is not separate from the church. And the national  
9 council and the Board of Missions and the executive council  
10 are not separate entities. They are entities within the  
11 church that act when the general convention's not in session.  
12 It would be like any other nonprofit which had a division or  
13 an office of grant-making.

14 THE COURT: Let me ask you this question, Mr. Beers: Can  
15 this witness explain to me in terms of a knowledge of  
16 corporate structure the relationship between these entities?  
17 What he's just told me is that it was an attempt to bring  
18 together arms and legs. That's not a legal term that helps  
19 me, arms and -- to bring together arms and legs. I don't  
20 know what that means. I do understand what it means to be a  
21 wholly-owned subsidiary. I do know what it means to be an  
22 entity that owns the stock in. That, I understand. I don't  
23 know what it means to intend to bring together arms and legs.  
24 That doesn't help me. See what I'm saying?

25 Q. First of all, do you know what the corporate -- do you

1 know what the legal entity of the Episcopal Church is?

2 A. Yes.

3 Q. What is it?

4 A. Domestic and Foreign Missionary Society.

5 Q. No. What is the forum --

6 MR. BRYAN: Your Honor, he's interrupting his own  
7 witness.

8 MR. BEERS: I didn't mean to interrupt. I apologize.

9 Q. Please finish your answer.

10 MS. KOSTEL: Just a second. Can we have a pause,  
11 please?

12 THE COURT: Sure. Pausing.

13 (Brief pause.)

14 MR. BEERS: Ms. Kostel, why don't we let Mr. Duffy  
15 finish that answer because he was interrupted.

16 MS. KOSTEL: Okay.

17 THE WITNESS: Could you ask the question again, please?

18 MR. BEERS: Let's start again when Ms. Kostel's ready.

19 THE COURT: Let me ask it. Do you understand the  
20 corporate makeup of all of the entities associated  
21 corporately with the national church?

22 THE WITNESS: No, Your Honor.

23 THE COURT: Okay. Take it from there.

24 MR. BEERS: I'm sorry, I didn't hear the answer.

25 THE WITNESS: No.

1 THE COURT: No.

2 Q. Let's take this one at a time. What did you mean by --  
3 give me an example of an arm and a leg. Give the Court an  
4 example of an arm and a leg.

5 A. Well, some of the documents that are in this set of  
6 extracts are arms and legs; for example, the American Church  
7 Building Fund is a body that is officially recognized and  
8 reports to general convention and established through general  
9 convention, but which, like many boards and committees and  
10 commissions, is made up of volunteers who go about the  
11 mission and work of the church and who report and who are  
12 Episcopalians and --

13 THE COURT: That are what now?

14 THE WITNESS: Episcopalians. And understand their role  
15 as being part of that larger body.

16 Knowing something about American church history, I mean,  
17 this was not -- this is not unusual, particularly for  
18 Protestant denominations, and there was a period, then, in  
19 the -- for many of them, in the early 20th Century, late  
20 19th.

21 MR. RUNYAN: Your Honor, Your Honor, I don't believe  
22 he's qualified him as a historian. I would object to this  
23 discussion about history.

24 THE COURT: Well, he's an archivist, so he probably  
25 could be.



1 MR. RUNYAN: He could be.

2 THE COURT: But that's not where we are at this moment.

3 MR. BEERS: Let me try again.

4 THE COURT: Yes, go for it.

5 Q. Mr. Duffy, the so-called arms and legs that contributed  
6 to the data that has been compiled in Exhibit 504, were they  
7 all parts of the Episcopal Church?

8 A. Yes.

9 THE COURT: Mr. Beers, that doesn't help me.

10 MR. BEERS: Okay.

11 THE COURT: The question -- that's too general; in other  
12 words, I'm trying to assess the relationship, the corporate  
13 relationship between the national church and these other  
14 entities.

15 My sense is that at some point in time, whatever these  
16 entities or however they existed, maybe as an unincorporated  
17 association, that they incorporated and somebody owns the  
18 stock. It very well may be that the national Episcopal  
19 Church owns the stock. That's what I'm looking for. That's  
20 helpful to me. That's the information that I'm looking for.

21 MR. BEERS: Okay. First of all, the Episcopal Church  
22 does not have stock. These entities don't have stock. The  
23 Episcopal Church is an unincorporated association.

24 THE COURT: The national Episcopal Church --

25 MR. BEERS: Yes.

1 THE COURT: -- is an unincorporated --

2 MR. BEERS: Yes. And it has a corporate subsidiary  
3 called the Domestic and Foreign Missionary Society. And the  
4 boards of -- now I'm representing to the Court things that  
5 are, I think, quite undisputed.

6 THE COURT: Okay.

7 MR. BEERS: Under our canons, the canons of the church  
8 created the Domestic and Foreign Missionary Society. Its  
9 board of directors is the board of directors of the executive  
10 council. Executive council's like the board of directors.  
11 It's not a separate entity. The board of directors of the --  
12 executive council, the board of directors, is the same board  
13 of directors as the Domestic and Foreign Missionary Society.  
14 The Domestic and Foreign Missionary Society is a  
15 check-writing body; it always has been.

16 THE COURT: And it is a corporate entity?

17 MR. BEERS: It is a corporate entity.

18 THE COURT: And it is what sort of corporate entity?

19 MR. BEERS: Nonprofit.

20 THE COURT: It is a nonprofit corporate entity?

21 MR. BEERS: Correct.

22 THE COURT: And who makes up the board of directors?

23 MR. BEERS: The same people who are by definition, that  
24 is by canon, the members of the executive council of the  
25 Episcopal Church, which acts as the board of directors of the

1 Episcopal Church. In Mr. Duffy's words, he said, "who acts  
2 for the general convention when the general convention is not  
3 in session."

4 THE COURT: And you're telling me that the national, the  
5 Protestant Episcopal Church of the United States of America,  
6 is an unincorporated association.

7 MR. BEERS: Correct, like many denominations and labor  
8 unions and all kinds of things.

9 THE COURT: How about in South Carolina? Is it  
10 incorporated in the state of South Carolina?

11 MR. BEERS: Is what incorporated, the national church?

12 THE COURT: The Protestant Episcopal Church of the  
13 United States of America; is it incorporated in the state of  
14 South Carolina?

15 MR. BEERS: We're getting back to one of our favorite  
16 subjects. Did you mean the national church?

17 THE COURT: Yes.

18 MR. BEERS: It is not incorporated anywhere. It's an  
19 unincorporated association, period.

20 THE COURT: Are you sure?

21 MR. BEERS: Yes.

22 THE COURT: Are you positive?

23 MR. BEERS: Yes, ma'am.

24 THE COURT: Because there is, in South Carolina, a  
25 corporation whose name is -- Ian.

1 (Brief pause.)

2 THE COURT: I'll get that to you later because I  
3 pondered that.

4 MR. BEERS: Well, you know --

5 THE COURT: But to your knowledge, there is -- the  
6 national church is not incorporated in South Carolina?

7 MR. BEERS: Anywhere.

8 THE COURT: Got it. Okay.

9 MR. BEERS: Now, there are two explanations to that.

10 THE COURT: Now let me go back where I was.

11 Okay. So we have the executive council who acts as the  
12 board of trustees, board of directors, for the unincorporated  
13 national church?

14 MR. BEERS: Yes.

15 THE COURT: It also -- "it" being the executive council  
16 as it's now known, it's been known as other names like the  
17 national council --

18 MR. BEERS: National council, Board of Missions. And  
19 Board of Missions.

20 THE COURT: Yes. And now those individuals also act as  
21 the board of directors for the corporation, which is the --  
22 something, which is the check-writing arm, if you will, the  
23 financial management arm of the unincorporated association,  
24 and that entity's name is? Tell me again.

25 MR. BEERS: The domestic -- let me start again. The

1 church is called the Protestant Episcopal Church of the  
2 United States of America, and this is the Domestic and  
3 Foreign Missionary Society of the Protestant Episcopal Church  
4 in the United States of America.

5 THE COURT: Okay. And that is a corporation?

6 MR. BEERS: That is a corporation.

7 THE COURT: And its board of directors are the same  
8 people as the executive council -- used to be known as the  
9 national council, now executive council -- which act as the  
10 board of trustees and directors for the unincorporated  
11 association.

12 MR. BEERS: Correct, by canon, and also the officers are  
13 the same.

14 THE COURT: Okay, okay. I'm with you. I feel so  
15 enlightened. But that's only one arm. We've got other arms  
16 and legs.

17 MR. BEERS: Well, let me ask Mr. Duffy some questions.

18 Q. Mr. Duffy --

19 THE COURT: Go ahead. I'm multi-tasking.

20 MR. BEERS: I don't have 504 in front of me.

21 MS. KOSTEL: I'll get it.

22 MR. BEERS: Let me take a look.

23 THE COURT: Just for your informational purposes, for no  
24 other reason --

25 MR. BEERS: Yes, and as counsel to the presiding bishop,

1 I'd really like the information, Your Honor.

2 THE COURT: Yeah, absolutely.

3 -- there is an entity called the Protestant Episcopal  
4 Church in the United States of America, Inc.

5 MR. BEERS: Yes.

6 THE COURT: It is a corporation. It is in good  
7 standing. It is registered as a foreign corporation with the  
8 Secretary of State of South Carolina. It's in good standing,  
9 which is nice to know, and it is a nonprofit organization and  
10 it is incorporated in the state of Wisconsin, ta-da.

11 MR. BEERS: Well --

12 THE COURT: I don't understand that. You don't need to  
13 do anything with it.

14 MR. BEERS: Well, I can tell you why it's there.

15 THE COURT: Okay.

16 MR. BEERS: Several years ago, about 1996, the bishop --  
17 a bishop in Wisconsin decided that he would try to trademark  
18 the name of the church and create corporations in different  
19 states, and he did. The movement died. It's long passed.  
20 That corporation is -- there were several.

21 THE COURT: Not in South Carolina.

22 MR. BEERS: But it's not -- all I can tell you is that  
23 it has nothing to do with the national church.

24 THE COURT: I'm with you, but just for your  
25 informational purposes, in South Carolina it exists and it's

1 in good standing. It's alive and well here. Just for  
2 your --

3 MR. BEERS: I can represent to the Court that it has not  
4 functioned for many years. But in any event, that's fine.

5 Q. Now, who would --

6 THE COURT: I thought that was you all, but it's not.

7 MR. BEERS: It is not. It is not.

8 THE COURT: I got it. I understand.

9 MR. BEERS: It is not. And, actually, it was known at  
10 PECUSA, Inc., but it's gone -- I mean, it's not gone in South  
11 Carolina evidently, but --

12 THE COURT: No.

13 MR. BEERS: Now may I return to Mr. Duffy?

14 THE COURT: At least as of this morning.

15 Q. In 504, Exhibit 504, which entity is making the  
16 grants -- allegedly making the grants?

17 A. The Board of Missions.

18 MR. BEERS: Your Honor, I move that into evidence once  
19 more.

20 MS. GOLDING: One basic reason I have for admission is  
21 that the attorney says "grants"; the witness said "funds" --

22 MR. BEERS: Sorry.

23 MS. GOLDING: -- and there's -- you know, the word  
24 "grants" obviously means something very different from loans  
25 and things of that nature.

1 MR. BEERS: I apologize.

2 MS. GOLDING: And I believe that characterization's  
3 improper.

4 MR. BEERS: I didn't mean it. I'm just trying to get at  
5 the core issue which is who is the entity that was doing  
6 whatever the exhibit says. And it was the Board of Missions.  
7 They may be grants, they may be loans, that's for the  
8 document. It speaks for itself on that. I was just trying  
9 to --

10 THE COURT: I understand. I'm with you. With that  
11 correction --

12 MS. GOLDING: I still have an objection because it is a  
13 separate legal entity than the defendant the national church.

14 MR. BEERS: That is absolutely contrary to what we've  
15 established, Your Honor. The Board of Missions is not an  
16 entity. It's a committee. It's a division of the church.  
17 It's just like the executive council. The executive  
18 council's not -- it's like a board of directors. It would be  
19 like saying the board of directors is a distinct legal entity  
20 from the corporation, which is nonsense.

21 THE COURT: So...

22 MS. GOLDING: I understood him to testify it is a  
23 corporation.

24 THE COURT: Thanks for saying that because I thought I  
25 was going to sound stupid if I said that because that's what



1 I thought too. I'm glad you said it instead of me.

2 You just said the committee; is it a corporation or a  
3 committee?

4 MR. BEERS: No, no, no. The Domestic and Foreign  
5 Missionary Society is a corporation. The Board of Missions,  
6 like its predecessor, like the national council, like the  
7 executive council, is just a -- it's like a board of  
8 directors. It's not a separate entity. We're just talking  
9 about the Board of Missions now, Your Honor. Whoever is  
10 doing what 504 says that it's doing was the Board of  
11 Missions. We're not dealing with the Domestic and Foreign  
12 Missionary Society.

13 MR. RUNYAN: Your Honor, could he please elicit  
14 questions from the witness about the corporate structure that  
15 makes this relevant to this case as opposed to trying to  
16 testify for the Court?

17 MR. BEERS: I have and I can do it again. I believe  
18 that Mr. Duffy has testified what the Board of Missions was.

19 MR. RUNYAN: Objection; leading.

20 MR. BEERS: I'm talking to the Court.

21 MR. RUNYAN: Excuse me, I thought you were asking him a  
22 question.

23 MR. BEERS: Listen more carefully.

24 MR. RUNYAN: Yes, I will.

25 MR. BEERS: I believe he testified that whoever was

1 acting in Exhibit 504 was the Board of Missions. And I  
2 believe he testified that that was the predecessor to the  
3 national council, which is the predecessor to the executive  
4 council, which is like the board of directors. It is not a  
5 separate entity. And when we get to an exhibit where the  
6 person acting, making the decisions is the Domestic and  
7 Foreign Missionary Society, we can take that up, but that's  
8 not implicated in this document.

9 THE COURT: Okay. Ask him again.

10 Q. What entity is making either loans or grants or some  
11 financial transaction in 504?

12 A. The entity making the financial distribution of funds  
13 here is the Board of Missions, the Board of Missions of the  
14 Domestic and Foreign Missionary Society.

15 Q. And the Board of Missions is the predecessor to?

16 A. The national council.

17 Q. Which is the predecessor to?

18 A. The executive council.

19 (Brief pause.)

20 MR. BEERS: Ask one more question, Your Honor?

21 Q. So who made the decision to make the financial  
22 distributions? I don't care what the vehicle was for paying,  
23 I just want to know who made the decision.

24 A. In this case the board.

25 Q. Thank you.

1 THE COURT: Okay. Here's what I'm going to do: I'm  
2 going to -- just on the issue of the entity, just on the  
3 issue of the entity, much like you do when you're talking  
4 about an expert witness, I'm going to allow cross-examination  
5 just as to this, just as to the entity, because of the  
6 questions that have arisen, and I think it's appropriate, and  
7 I think I have the discretion to do that.

8 I do not want you to go into the merits, whoever's going  
9 to do this. I just want you to deal with the entity itself  
10 with regards to this exhibit. Who's going for it?

11 CROSS-EXAMINATION BY MR. RUNYAN:

12 Q. Good morning, Mr. Duffy.

13 A. Good morning.

14 Q. Can you hear me okay?

15 A. Yes, sir.

16 Q. Okay. I understood your last question to be that the  
17 Board of Missions authorized the funds to be sent to wherever  
18 they were sent that are contained in this exhibit.

19 A. Yes, sir.

20 Q. So if the funds that are contained in this exhibit are  
21 from the -- some other entity such as the children's relief  
22 fund -- I'm making this up -- it would be something that the  
23 Board of Missions authorized?

24 A. I don't understand that, I'm sorry.

25 Q. The proceedings of the Board of Missions would be

1 somewhat of a -- perhaps a journal of an annual meeting  
2 maybe?

3 A. Perhaps, right.

4 Q. All right. And the Board of Missions, your testimony is  
5 it is a part of the Domestic and Foreign Missionary Society?

6 A. It was the board of directors for the Domestic and  
7 Foreign -- right.

8 Q. Okay. So as a board of directors of the DFMS, they are  
9 discussing in here, and according to your testimony,  
10 approving the transmission of funds to other entities?

11 A. Entities, right.

12 Q. And do you know anything about the corporate structure  
13 of the Episcopal Church?

14 A. I know something about it, yes.

15 Q. Have you ever seen any evidence that the Episcopal  
16 Church -- I gather that the Episcopal Church has no stock  
17 ownership interest in the DFMS; is that right?

18 A. Correct.

19 Q. All right. When did the Board of Missions become the  
20 executive council?

21 A. The Board of Missions became the national council in  
22 1919.

23 Q. And then the national council became --

24 A. The executive council in 1964 as a result of the 1964  
25 general convention.

1 Q. And was the overlapping director situation the same in  
2 whenever this one is as it is today, 1880-something?

3 A. Can you ask me that again?

4 Q. Yes. I'm having a hard time seeing this. Looks like  
5 it's 1868 maybe.

6 Has it always been the case that the board of directors,  
7 the Board of Missions, people who are on it, have also been  
8 part of the governing body of the Episcopal Church?

9 A. Yes, sir.

10 Q. All right. And that governing body has always been the  
11 executive council?

12 A. It is today the executive council.

13 Q. When did it become the executive council?

14 A. In 1964.

15 Q. All right. So before that, before 1964, what -- and I'm  
16 talking about at the 1800s -- what was the other board on the  
17 Episcopal Church, of the Episcopal Church, that this entity  
18 was overlapped with, the Board of Missions?

19 A. I think I'm understanding your question. In the  
20 19th Century, there were a couple of boards that were enabled  
21 by general convention; there was the Domestic and Foreign  
22 Missionary Society of the Protestant Episcopal Church in the  
23 United States; and there was --

24 THE COURT: Say that again for me.

25 THE WITNESS: The Domestic and Foreign Missionary

1 Societies of the Protestant Episcopal Church in the United  
2 States of America.

3 Another body that was authorized by general convention  
4 in the 19th Century was known as the American Church  
5 Missionary Society. These boards eventually came together --  
6 and I'm sorry I don't know exactly that date -- but they were  
7 merged under the oversight of the general convention for the  
8 benefit of bringing together and unifying the mission of the  
9 church. But they came together -- it was a merger. They  
10 came together under the title of Domestic and Foreign  
11 Missionary Society of the Protestant Episcopal Church.

12 THE COURT: That was the surviving entity?

13 THE WITNESS: That was the surviving entity.

14 Q. In 1868, we're looking at a document here that says the  
15 Board of Missions. And that is the Board of Missions of what  
16 entity?

17 A. The Domestic and Foreign Mission -- the DFMS, if I can.

18 Q. All right. In 1868, what was the comparable entity that  
19 this board overlapped with with the Episcopal Church?

20 A. Well, there was no comparable. I mean, this was the  
21 entity that carried out and executed the business of the DFMS  
22 on behalf of and at the request of the general convention.

23 Q. So there was no -- there was no executive council?

24 A. No, at that point it was the executive council; small E,  
25 small C, right.

1 MR. RUNYAN: Okay.

2 MS. GOLDING: Just a few questions.

3 CROSS-EXAMINATION BY MS. GOLDING:

4 Q. With respect to DFMS, when was that incorporated?

5 A. It was twice incorporated. And, I'm sorry, I don't want  
6 to be held accountable for those exact dates. I believe the  
7 first time was earlier around 1832, but -- and then later in,  
8 reincorporated in 18, roughly, 76. I may be right, I may be  
9 wrong on those dates, I'm sorry.

10 Q. And the functions of DFMS, from its first incorporation  
11 in 1832 to the present, substantially have not changed, have  
12 they?

13 A. Actually, that's not exactly true but --

14 Q. How is it not true?

15 A. When the unity of the organization occurred in 1919, it  
16 brought together the sum parts of the mission of the church  
17 that were not part of the DFMS's original --

18 Q. So in 19 --

19 A. -- plan.

20 Q. -- 90 [sic] the corporation DFMS expanded its  
21 responsibilities or activities; would that be correct?

22 A. In 1919, yes.

23 Q. Okay. And what state now is DFMS incorporated in?

24 A. I understand in the state of New York.

25 Q. Do you know if DFMS has registered as a foreign

1 corporation in any other states?

2 A. At least one that I know of.

3 Q. Which one?

4 A. Texas.

5 Q. Okay. And that's because DFMS transacts business or its  
6 activities in the state of Texas?

7 A. Yes, ma'am.

8 MS. GOLDING: Okay. No further questions, Your Honor.

9 MR. BEERS: May I offer something further, Your Honor?

10 THE COURT: Yes. That was very helpful.

11 THE WITNESS: Thank you.

12 THE COURT: Yes, go ahead.

13 MR. BEERS: How -- what's the most convenient way to  
14 give to the Court a copy of the 2009 canons?

15 MS. KOSTEL: Give everybody a book.

16 MR. BEERS: Counsel, I'm going to ask him to show the  
17 Court.

18 MR. RUNYAN: You're moving it into evidence.

19 MR. BEERS: It's in evidence.

20 MS. KOSTEL: Yes, it's in evidence. All of them are.

21 MR. RUNYAN: I'm sorry I didn't hear, is it in?

22 MS. KOSTEL: She let them all in.

23 MR. RUNYAN: All right. Just give her a copy.

24 MR. BEERS: Your Honor, for the record, I'm going to  
25 hand you a copy of -- let me find out what the exhibit number



1 is, Your Honor. I believe it's 203.

2 MS. KOSTEL: I have one for Your Honor and one for the  
3 witness.

4 THE COURT: Great.

5 MR. BEERS: And I'd like to direct the Court's attention  
6 to page 29, canon 3, which is titled Of the Domestic and  
7 Foreign Missionary Society.

8 THE COURT: Hold on one second.

9 (Brief pause.)

10 THE COURT: Okay.

11 MR. BEERS: And if you'll look at Article 1 and then  
12 look at Article 2, which, as the Court sees, executive  
13 council as constituted by canon shall be its board of  
14 directors and shall adopt bylaws for its government not  
15 inconsistent with the constitution and canons.

16 And then if you drop down to -- if you'll take my  
17 representation -- excuse me -- if you'll take my  
18 representation, Article 3 has to do with the officers and the  
19 relationship between the officers of the two entities.

20 And then Article 4, this constitution of the society may  
21 be altered or amended at any time by the general convention  
22 of the church.

23 It's an entity of the church. It's under the complete  
24 control of the church.

25 MS. GOLDING: Your Honor, I'm going to object to that

1     characterization.  That's not proper and the document speaks  
2     for itself.

3             MR. BEERS:  All right.

4             THE COURT:  Sustained.

5             Okay.  Now we're back to the document.

6             MR. BEERS:  And, once again, we move in 504.

7             THE COURT:  Let me ask one question of counsel.  These  
8     are extracts from the annual reports of the Board of Missions  
9     1866 to 1919.  In terms of discovery, have the entire annual  
10    reports of the Board of Missions been provided to counsel  
11    from 1866 to 1919?

12            MR. RUNYAN:  No, Your Honor.

13            MS. KOSTEL:  They certainly were available in the  
14    archives but not --

15            MR. RUNYAN:  Well, what was produced to us on the first  
16    day of trial was this.

17            MS. KOSTEL:  No, not the first day of trial, I'm sorry.  
18    This was produced -- this is Bates stamped -- this was  
19    produced months ago.

20            MR. RUNYAN:  Excuse me, December.

21            THE COURT:  Okay.

22            MS. KOSTEL:  December, thank you.

23            THE COURT:  Not the extracts -- I mean, the extracts  
24    were.

25            MR. RUNYAN:  The extracts.

1 MS. KOSTEL: Yes.

2 THE COURT: Okay. Of the annual reports.

3 MR. RUNYAN: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. BEERS: And they could have asked for more.

6 THE COURT: Okay. And these are in the journals of the  
7 national convention?

8 MR. RUNYAN: No, they're not.

9 THE COURT: They're not?

10 MR. RUNYAN: No, they're not a part of the journal of  
11 the defendant.

12 MR. BEERS: No, the journals -- the journals -- the  
13 journals contain what happens at the triennial general  
14 convention.

15 THE COURT: Yes, I just thought I heard that.

16 MR. BEERS: Yes, plus --

17 THE COURT: Where are they?

18 MS. KOSTEL: They're separate documents that each one of  
19 these boards creates.

20 THE COURT: Okay.

21 MS. KOSTEL: Like minutes or, you know --

22 THE COURT: Okay, okay. And where are they?

23 MS. KOSTEL: In the archives.

24 THE COURT: Hi.

25 THE WITNESS: Hi.

1 THE COURT: So you have the whole hoopla?

2 THE WITNESS: Yes, Your Honor.

3 MS. KOSTEL: And to be clear, Your Honor, when this  
4 production, which was produced in December, I think the  
5 bottom of every page of the extract says that it came from  
6 the archives.

7 THE COURT: Sure.

8 MS. KOSTEL: And we made the archives available to  
9 plaintiffs with a variety of things that they could come in  
10 and look at.

11 THE COURT: I'm not suggesting that they're not happy.  
12 They haven't told me they're not happy. All right. Very  
13 well.

14 All right. Admitted. Go for it.

15 (Defendant's Exhibit 504 admitted into evidence.)

16 MR. BEERS: Thank you, Your Honor.

17 THE COURT: Yes.

18 CONTINUED DIRECT EXAMINATION BY MR. BEERS:

19 Q. Now turn to Exhibit 505. And, Mr. Duffy, if you would  
20 tell me what that is.

21 A. Okay. Looking at the title page to extracts produced by  
22 the archives from the minutes and reports of the national  
23 council.

24 MR. BEERS: We move its admission, Your Honor.

25 THE COURT: Any objection? I know about the national

1 council, it predates the executive council.

2 MS. GOLDING: No foundation, Your Honor.

3 THE COURT: I got some foundation. Overruled. It's in.  
4 All right. Go on. I've got it.

5 (Defendant's Exhibit 505 admitted into evidence.)

6 Q. 506, Mr. Duffy?

7 A. Yes, this is the cover page to documents produced by the  
8 archives from the minutes and proceedings of the national  
9 council.

10 MR. BEERS: We'd move that, Your Honor.

11 THE COURT: And we're fixing to change names. Yes, it's  
12 admitted, over the objection of the plaintiffs.

13 (Defendant's Exhibit 506 admitted into evidence.)

14 Q. 507, tell us what that is, Mr. Duffy.

15 A. Okay. So this is one of these entities created by the  
16 general convention and for the specific purpose of addressing  
17 the education of African-Americans in the 20th -- this was a  
18 20th Century creation and it was reported to the general  
19 convention and was operated with and alongside the Domestic  
20 and Foreign -- the DFMS. And these are excerpts from audit  
21 reports of that organization that are in the archives.

22 Q. That organization was created by the general convention  
23 and it reported to the general convention?

24 MS. GOLDING: Your Honor, I think the witness needs to  
25 testify, not Mr. Beers.

1 THE COURT: And you're --

2 MR. BEERS: Ms. Golding, Ms. Golding, I was summarizing  
3 his testimony. He had already testified to that.

4 THE COURT: Sustained.

5 Q. Correct?

6 THE COURT: That was sustained. That was leading.  
7 Already testified to it.

8 MR. BEERS: Well, I move its admission, Your Honor.

9 THE COURT: Any objection?

10 MS. GOLDING: Same objection as to Exhibit 504, Your  
11 Honor. This is a different entity than the defendant.

12 THE COURT: Overruled. It's in.

13 (Defendant's Exhibit 507 admitted into evidence.)

14 Q. Exhibit 508, Mr. Duffy, what's that?

15 A. These are extracts from the archives of the American  
16 Church Missionary Society, which in the 19th Century was a  
17 missionary arm of the general convention.

18 Q. Created by whom?

19 A. Created by the general convention.

20 Q. To whom did it report?

21 A. It reported to the general convention.

22 MR. BEERS: Move it in, Your Honor.

23 THE COURT: Just to see if I've connected the dots  
24 properly. This is the entity that you just discussed that in  
25 the 19th Century this entity was joined with the -- and I was

1 so cool because I had an acronym for a moment, but F -- help  
2 me.

3 THE WITNESS: The DFMS.

4 THE COURT: That one.

5 THE WITNESS: Yes.

6 THE COURT: This was the one that you talked about that  
7 they were joined together?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: I gather because the need to keep them  
10 separate was not perceived any longer in the 19th Century?

11 THE WITNESS: Correct.

12 THE COURT: I got it. Over the objection of plaintiffs,  
13 in.

14 (Defendant's Exhibit 508 admitted into evidence.)

15 MR. BEERS: Thank you.

16 THE COURT: Yes. Proceed.

17 Q. Mr. Duffy, how about 509?

18 A. Okay. This is -- these are extracts from records that  
19 the archives holds of the Episcopal Church building fund,  
20 which is an organization of the church founded by the general  
21 convention, reports to the general convention, with an  
22 explicit, very focused mission to make funds available, loans  
23 in this case, available to parishes and dioceses to support  
24 building churches and church-related buildings.

25 MR. BEERS: We move its admission, Your Honor.

1 MS. GOLDING: No objection, Your Honor.

2 THE COURT: Very well.

3 (Defendant's Exhibit 509 admitted into evidence.)

4 Q. And 510?

5 A. These are excerpts from the records of the United Thank  
6 Offering, which is a wholly-owned organization of the  
7 Domestic and Foreign Missionary Society that makes grants and  
8 distributes funds to missionary activities across the church  
9 body, operated by the women of the church.

10 Q. I'm sorry, but again --

11 A. Operated specifically by the women of the church.

12 Q. And how does it get its funds?

13 A. It receives its funds from dioceses and parishes who  
14 gather these funds during an annual campaign. The funds are  
15 brought together at general convention and offered up at the  
16 main service.

17 MR. BEERS: I move its admission, Your Honor.

18 THE COURT: Oh, you move the admission?

19 MR. BEERS: Yes, excuse me.

20 THE COURT: Oh, I thought you said something about its  
21 mission.

22 For clarification purposes, is this going to be both  
23 sides? Because I would presume it's going to be what went to  
24 the diocese. Am I also going to see what came from the  
25 diocese or am I just going -- in other words, in my head,



1 I've got -- based on what you just said, I've got money that  
2 came from the diocese. Am I going to have both sides of that  
3 or am I just going to have what went to the diocese? See  
4 what I'm saying?

5 THE WITNESS: Mm-hmm, we were asked to document funds  
6 leaving the church, the national church, if I could use that.

7 THE COURT: So this is not going to be what came from  
8 the diocese, just what went to the diocese.

9 THE WITNESS: That's correct, Your Honor.

10 THE COURT: Okay. For what it's worth, I'll admit it.

11 (Defendant's Exhibit 510 admitted into evidence.)

12 MR. BEERS: Thank you, Your Honor.

13 Q. Exhibit 511?

14 A. These are documents, I believe, that are entitled  
15 miscellaneous, if I'm not -- so I would have to look at  
16 individual documents --

17 THE COURT: Kind of tough for you.

18 THE WITNESS: Yes.

19 -- that are from smaller organizations, so there weren't  
20 complete runs of funds going out every year, so we pulled  
21 these -- I guess these have been pulled together as just  
22 miscellaneous. So they're all documents, however, that exist  
23 in the archives and represent smaller pieces of that thing  
24 called the Episcopal Church.

25 Q. Could you give me some examples?

1 A. Sure. The domestic committee of the home department of  
2 the Domestic and Foreign Missionary Society, the Episcopal  
3 Church Foundation, the Presiding Bishop's Fund for World  
4 Relief.

5 Q. Are these all reports to the general convention?

6 A. Absolutely.

7 MR. BEERS: We move this in, Your Honor.

8 THE COURT: And the same question: These are just the  
9 monies that came to the diocese; you're not offering -- these  
10 documents are not going to tell me the amounts of money that  
11 came to the diocese? Because if it's the bishop's relief  
12 fund, obviously, they're from the diocese and he might have  
13 had, I don't know, an oyster roast or something, raised  
14 money, sent it back.

15 THE WITNESS: Right, so again, we were asked to simply  
16 document the money coming out of these entities and not  
17 coming in.

18 THE COURT: I got it.

19 It's admitted, for what it's worth, over objection.

20 (Defendant's Exhibit 511 admitted into evidence.)

21 MR. BEERS: Ms. Kostel --

22 THE COURT: I just presume it's the same objection. Am  
23 I making a bad assumption?

24 MS. GOLDING: No, Your Honor.

25 THE COURT: Because you know what they say about

1 assumptions?

2 MS. GOLDING: Yes.

3 MR. BEERS: Ms. Kostel, can we have Exhibit 512?

4 Q. What is this document, 512?

5 A. This is the cover page of the Book of Common Prayer,  
6 which is the -- here it is, the authorized standard book of  
7 worship for the Episcopal Church, the authorized and only  
8 valid, by virtue of the general convention -- can only be  
9 changed by the general convention.

10 MR. BEERS: We'll put in a hard copy tomorrow, Your  
11 Honor. We probably have one in the room if you'd like to  
12 look at a hardcopy.

13 THE COURT: Okay. And you just want to put it into  
14 evidence?

15 MR. BEERS: Yes.

16 THE COURT: Okay. It's in.

17 (Defendant's Exhibit 512 admitted into evidence.)

18 Q. Now, 431 --

19 THE COURT: It is what it is; in other words, it's in.

20 MR. BEERS: Yes, ma'am.

21 MS. GOLDING: The only thing with respect to  
22 Exhibit 512, what year version was that?

23 MR. BEERS: Let me ask him some questions about that and  
24 clarify that.

25 MS. GOLDING: Thank you, Your Honor.

1 Q. First of all, what was the publication year of that  
2 book, that version of the Book of Common Prayer? What does  
3 it say?

4 A. The publication year, I did not notice the publication  
5 year, but it is known as the 1979 edition of the Book of  
6 Common Prayer.

7 Q. And what happened in 1979?

8 A. 1979, the second reading of a constitutional amendment  
9 was passed by the general convention authorizing this exact  
10 copy to be the book of worship for all Episcopal Churches.

11 Q. Would you turn to the preface of the prayer book.

12 MS. GOLDING: Which page are you referring to?

13 MS. KOSTEL: Page 9.

14 MS. GOLDING: Do you have a hardcopy?

15 MR. TISDALE: I have one at home.

16 Q. I just have one question. Would you turn to the end of  
17 the preface. What is the date of the preface?

18 A. 1789, October 1789.

19 Q. Do you know whether or not the Book of Common Prayer has  
20 ever had any other preface?

21 A. I don't believe so.

22 Q. Thank you. All right. Now turn to 431.

23 (Brief pause.)

24 MR. BEERS: Your Honor, there's some people in the  
25 courtroom who would like me to ask you for a break.

1 THE COURT: That sounds brilliant. We'll take 15  
2 minutes.

3 MR. BEERS: We need to hold it to that, Your Honor,  
4 because Mr. Duffy's got a plane reservation this afternoon.  
5 Thank you.

6 (Recess held.)

7 THE COURT: All right. Yes, sir.

8 MR. BEERS: Ms. Kostel, could we see Exhibit 431?

9 Q. Mr. Duffy, would you turn to 431.

10 MS. KOSTEL: May I approach, Your Honor?

11 THE COURT: Yes.

12 MS. KOSTEL: Thank you.

13 Q. Mr. Duffy, I want to call your attention to page 99.  
14 Now let me back up before we get to page 99.

15 Tell us what this document is?

16 A. This is the -- commonly called the "Blue Book" and  
17 officially entitled The Reports of the Committees,  
18 Commissions, Boards, and Agencies of the General Convention.

19 Q. Did you mean an excerpt from the blue book?

20 A. I meant an excerpt.

21 Q. Yes, okay. Go ahead.

22 A. And it is -- forms part of the journal of convention.  
23 It used to be published but the journal got so large that  
24 they began to publish the reports as a separate book and  
25 that's -- so this is an excerpt from the report of the

1 standing commission on constitution and canons.

2 Q. Let's go back to what the blue book is.

3 Do I understand that before things got so voluminous --  
4 make sure I understand your testimony -- that reports of  
5 bodies that reported to the general convention had their  
6 reports in the back or the front or somewhere in the annual  
7 journal?

8 A. Yes, sir.

9 Q. But it got too big?

10 A. Right.

11 Q. And when does this come out?

12 A. When does the blue book...

13 Q. When does this document become public?

14 A. I believe it's -- it's at least nine or ten months  
15 before general convention.

16 Q. And its purpose?

17 A. Its purpose is to inform the deputies and bishops who  
18 attend general convention of the work that has been done by  
19 its official bodies in the three years between and to receive  
20 from them legislation or resolutions pertaining to that, to  
21 the work of those -- the study work of those commissions and  
22 bodies.

23 Q. And is this a report of a commission that we have?

24 A. Yes, sir.

25 Q. And what commission is that?

1 A. This is the report of the standing commission on  
2 constitution and canons.

3 Q. All right. Now if you'll turn to page 99. And do you  
4 see on the left-hand margin on line 25 the words "Canon 14"?

5 A. Yes, sir.

6 Q. And what's going on there?

7 A. Well, the -- any attempt to change the constitution or  
8 the canons is governed by rules that are in the -- rules of  
9 the convention, that they have to be set out in a certain  
10 manner; new text has to be italicized, deleted text has to be  
11 overstruck, and it has to be distributed to everybody in that  
12 format. And so that's what's going on here. We have what  
13 appears to be a new Canon 14, is the way I read this, and all  
14 of that italicized text under it is the new canon -- is new  
15 text.

16 Q. And where does the comment that you see, where does that  
17 come from?

18 A. That comes from the standing commission itself.  
19 They've, obviously, printed their revisions, and then  
20 sometimes those comments are after the whole thing. But  
21 because this was so long, I remember this canon, they were  
22 sticking some of their comments right into the body of the --  
23 in these square blocks.

24 MR. BEERS: Thank you. I'd move that into admission,  
25 Your Honor.

1 THE COURT: What is the "that," though.

2 MR. BEERS: Oh, the -- I move the document in. I move  
3 the document in.

4 MR. RUNYAN: Two objections, Your Honor. One is  
5 relevance, which I think has been covered before on the issue  
6 of hierarchy.

7 The second is, this is an incomplete version of  
8 Canon 14. I would object to it as an incomplete document.

9 MR. BEERS: Well, let me ask Mr. Duffy another question.

10 Q. Was Canon 14 adopted?

11 A. Yes, sir.

12 MR. BEERS: Well, then, Canon 14 is in evidence, Your  
13 Honor.

14 THE COURT: Is in what?

15 MR. BEERS: Is in evidence.

16 MR. RUNYAN: But this document is incomplete. The  
17 witness has testified to Canon 14. Canon 14 is not all here,  
18 that's my issue. I object.

19 THE COURT: And for the sake of completeness, I'm just  
20 asking it be -- before it is admitted, that it be made  
21 complete. I understand the issue of the relevancy and I  
22 overrule it on that basis, but it must be in its entirety.  
23 And, quite frankly, the reason for that, if I am looking at  
24 this and it becomes important to my determination, I will  
25 never remember that this isn't all of Canon 14.



1 I'm not saying you've got to do it right at this minute,  
2 but at some point before the end of the proceedings if you  
3 all can just make that the complete Canon 14, that would be  
4 most appreciated.

5 MR. RUNYAN: It'd just be marked for identification at  
6 this point?

7 THE COURT: Yes, and that will be a reminder. And mark  
8 it for identification as conditionally admitted. And the  
9 only condition that needs to be satisfied is that whatever  
10 the rest of it is, it just be added.

11 And, again, that's as much as for my edification as for  
12 anything else so that I'm really looking out for me. Because  
13 as I am reviewing these documents, I need to be sure I'm  
14 looking at the whole thing, so that would be helpful to me.  
15 And I don't care when you do it, I really don't. We're going  
16 to conditionally admit it. It is admitted when you're able  
17 to make it the whole 14.

18 Q. I'd like to turn to 434 -- Exhibit 434.

19 Mr. Duffy, do you have 434 before you?

20 MS. KOSTEL: Just a second.

21 MR. BEERS: No, I guess you don't. Can I hand this up,  
22 Your Honor.

23 THE COURT: The hardcopy of it?

24 MR. BEERS: Yes.

25 THE COURT: Yes. Thank you.

1 Q. Mr. Duffy, tell us what this document is.

2 A. This is the --

3 Q. Excuse me, just a second. I think counsel needs more  
4 time.

5 THE COURT: I handed mine to Mr. Duffy. It's so much  
6 easier to read. And it's not in evidence, so I don't have it  
7 yet, just for your informational purposes.

8 And so when you're ready to tell him what it is, you can  
9 tell him what it is.

10 MR. RUNYAN: I apologize, Mr. Duffy.

11 Lack of foundation. Would you lay a foundation, please?

12 MR. BEERS: Well, I haven't started yet.

13 MR. RUNYAN: Well, he was just going to talk about it.

14 MR. BEERS: Oh, no, no, no, no.

15 MR. RUNYAN: I have a foundation -- a foundation  
16 objection.

17 MR. BEERS: No, no, no. I wasn't going to --

18 Q. First of all, would you just tell us what you understand  
19 the document is?

20 A. Right. This was a letter, a memorandum, that was sent  
21 to all diocesan administrators and treasurers and  
22 chancellors.

23 Q. Stop there. Where did you get this document?

24 A. This document is in the archives of the Episcopal  
25 Church.

1 Q. And in what category would this be?

2 A. Records of the treasurer, the finance department.

3 Q. Is that standard?

4 A. Yes, sir.

5 Q. And just without getting into any substance, just could  
6 you tell me what the subject matter of this document is?

7 A. The file is entitled tax exemption.

8 MR. BEERS: All right. Now we move it in, Your Honor.

9 MR. RUNYAN: No objection.

10 THE COURT: Very well.

11 (Defendant's Exhibit 434 admitted into evidence.)

12 MR. BEERS: How about 435?

13 Your Honor, if I may, I'm going to hand you a stack and  
14 we'll go through them one by one.

15 THE COURT: Would you like to know what the stack is?

16 MR. RUNYAN: It would be lovely.

17 MR. BEERS: Take a look at them. 435, Your Honor.

18 Q. Mr. Duffy, what's this document?

19 MR. RUNYAN: I have a foundation objection.

20 MR. BEERS: We'll find out.

21 MR. RUNYAN: Okay.

22 Q. What does it appear on its face to be? Let's start with  
23 that.

24 A. It is a letter from the assistant treasurer of the  
25 Diocese of South Carolina.

1 Q. And where did you get this document?

2 A. In the same file -- in the file entitled tax exemption  
3 in the records of the treasurer of the finance department of  
4 the DFMS.

5 Q. A type of document you routinely receive?

6 A. Routinely.

7 Q. And do you know what the subject of this document is?

8 A. Yes, it has to do with the group exemption for the -- of  
9 the -- the Episcopal Church's group exemption and its  
10 application to the Diocese of South Carolina.

11 Q. Thank you.

12 MR. BEERS: We offer this, Your Honor.

13 MR. RUNYAN: No objection.

14 THE COURT: Very well.

15 (Defendant's Exhibit 435 admitted into evidence.)

16 Q. Now, 436 --

17 MS. KOSTEL: 435.

18 MR. BEERS: That was 435.

19 THE COURT: Yes, it was, yes.

20 MS. KOSTEL: Oh, I'm sorry.

21 Q. 436, Mr. Duffy, what does this appear to be?

22 A. Okay. This is part of the same file and it is a letter  
23 that came from you to the treasurer, Steven Duggan, and would  
24 be in that same file that we received from the treasurer's  
25 office routinely and it's under the title of tax exemption.

1 MR. BEERS: We offer that.

2 MS. GOLDING: Your Honor, this document, obviously,  
3 is -- contains conclusions of law and unsupported facts and  
4 goes to central issues in this lawsuit. I do not believe  
5 it's proper to be presented.

6 MR. RUNYAN: In addition to the fact that it is hearsay  
7 written by Mr. Beers to the IRS, not a party to this case  
8 that I know of.

9 MR. BEERS: Your Honor, this is a document that, in the  
10 ordinary course of business, was sent to the IRS regarding  
11 our group exemption.

12 MS. KOSTEL: I'm sorry, Your Honor, would you like a  
13 hard copy?

14 THE COURT: No, I can read it very easily. I was just  
15 going to read the rest of it.

16 And that's the conclusion, there aren't any attachments  
17 to this letter. Is that the end?

18 MS. KOSTEL: Yes, Your Honor.

19 THE COURT: All right. Now, of course, with regards to  
20 admissibility, number one, it's been authenticated. And  
21 number two, relevance is with regards to a matter which is of  
22 consequence to the litigation, does this letter make a fact  
23 which is of consequence more probable or less probable; in  
24 other words, does it move the peanut ahead or back? I think  
25 it does. I think it's admissible and in over the objection.

1 (Defendant's Exhibit 436 admitted into evidence.)

2 MR. BEERS: Thank you, Your Honor.

3 Q. Now let's turn to 437. What's this, Mr. Duffy?

4 A. This is a letter from the IRS to the Episcopal Church  
5 but found in the records of the treasurer and the finance  
6 department and held in -- a couple of copies, actually, to  
7 make sure we can always find it. It is the exemption number,  
8 which is pretty important.

9 MR. BEERS: We offer that in evidence, Your Honor.

10 MR. RUNYAN: Same objection as to that, Your Honor.

11 THE COURT: Not as to authenticity but as to relevance,  
12 right?

13 MR. RUNYAN: And hearsay.

14 THE COURT: Well, it's hearsay. What about the hearsay  
15 objection?

16 MR. BEERS: Well, Your Honor, this is part of a suite of  
17 documents.

18 THE COURT: We don't have an exemption for that.

19 MR. BEERS: Okay. The memo goes out inviting the  
20 dioceses to come under the group exemption. The Diocese of  
21 South Carolina says yes. The church makes an application to  
22 the IRS, and this is the official response.

23 THE COURT: Right.

24 MR. BEERS: It's a -- I mean, you can take judicial  
25 notice of it. It's an action of the federal government.

1 THE COURT: I understand.

2 MR. RUNYAN: I think, Your Honor, the third paragraph  
3 contains some conclusions that the absence of the declarant  
4 makes it impossible to understand what the intent was of  
5 those conclusions, and that's the whole problem; inability to  
6 cross-examine the person who used some of the words in the  
7 third paragraph, so it's hearsay.

8 MR. BEERS: Well --

9 (Brief pause.)

10 THE COURT: Let me say this, this document is hearsay  
11 and I cannot find an exception that I think is applicable.  
12 But for your purposes, as I understand it, I don't remember  
13 exactly who, I would say that there have been multiple  
14 people, though, who have testified with regards to the group  
15 exemption and that the diocese was also a party to that.

16 I am concerned with regards to the fact that this is  
17 hearsay and the level of hearsay. It's actually triple  
18 hearsay, and I think it's admissible in terms of the fact  
19 that it's kept and it's typed, that doesn't concern me.

20 And I thought about whether or not it really matters  
21 whether it could be admitted, not for the truth of the matter  
22 asserted but for some other reason, but clearly it would be  
23 being admitted for the truth of the matter asserted.

24 The third level of hearsay, obviously, cannot be handled  
25 here today, but I know that the diocese -- I know that they

1 were a part of the group exemption, I know that, so, I mean,  
2 I know that.

3 MR. BEERS: And I guess we want to close the loop that  
4 it's a response to a particular application, and that  
5 application listed the Diocese of South Carolina as part of  
6 the group.

7 THE COURT: I know. That's in your letter.

8 MR. BEERS: Sorry?

9 THE COURT: That's in your letter.

10 MR. BEERS: Yes. And the only point that we were  
11 offering this for is that we have a group exemption --

12 THE COURT: Yes.

13 MR. BEERS: -- which covers the Diocese of South  
14 Carolina.

15 THE COURT: It's already been testified to by somebody.

16 MR. BEERS: But let me tell you, Your Honor, in the  
17 30(b)(6) depositions, witness after witness after witness  
18 denied that they knew anything about this. But if you're  
19 satisfied that there is evidence in the record that the South  
20 Carolina -- people in South Carolina elected to be part of  
21 the group exemption, that's fine.

22 THE COURT: And this letter doesn't add anything to  
23 that. It doesn't detract anything, but it doesn't add  
24 anything to it. And your letter is very general. Your  
25 letter just says South Carolina.



1 MR. BEERS: All right. Let's move to 442.

2 THE COURT: Right. I'm so sorry. You've got to read  
3 that. Can you read that?

4 I just don't think Mr. Duffy can read that.

5 MR. BEERS: I don't think that's the right one,  
6 Ms. Kostel.

7 Q. Here you go. Here it is. Mr. Duffy, where does this  
8 file -- where does this document come from?

9 A. So this document also comes from the records of the  
10 treasurer and the finance department and they're found -- and  
11 it is found in the same file on tax exemptions, which is an  
12 accumulating file of correspondence with our dioceses and the  
13 IRS.

14 Q. And what does this document on its face purport to be?

15 A. This is a reply, I believe, from Nancy Armstrong, the  
16 assistant treasurer, updating -- as required, updating the  
17 treasurer's office on the status of the diocese and the  
18 parishes and congregations currently active and their  
19 addresses and all that directory information.

20 THE COURT: Is it copied to -- to there you go. Okay.  
21 Got it.

22 MR. BEERS: We move that in, Your Honor.

23 MR. RUNYAN: No objection.

24 THE COURT: Okay. Very well.

25 (Defendant's Exhibit 442 admitted into evidence.)

1 Q. Now, Mr. Duffy, would you turn to 446.

2 MR. RUNYAN: Is there a question?

3 MR. BEERS: There's no question.

4 MR. RUNYAN: Okay, thank you.

5 MR. BEERS: Do you want me to ask one?

6 MR. RUNYAN: You would have to sooner or later.

7 THE COURT: Do you have this document?

8 MS. GOLDING: We have a document that says the Diocese  
9 of Maryland, Your Honor.

10 MR. RUNYAN: And we only have a few pages. We don't  
11 have the whole -- -

12 THE COURT: How can you tell it even says that?

13 MS. GOLDING: From their list.

14 MR. RUNYAN: It's from their list, that's the only way.

15 MR. BEERS: No, it's not the only way. The word  
16 Maryland's right there at the top of the page next to the  
17 date 1790.

18 THE COURT: Mine's got a hole in it.

19 MR. BEERS: Well, why don't we find out what Mr. Duffy  
20 has to say about this document.

21 Q. Mr. Duffy, tell me, what is this document and where did  
22 you get it?

23 A. All right. So the archives maintains a comprehensive  
24 collection of the journals of each diocese of the church,  
25 foreign and domestic. This is a -- what I'm looking at is an

1 excerpt from the 1790 journal of the Diocese of Maryland held  
2 in the archives in better condition.

3 THE COURT: Okay. It's authenticated. Tell me what the  
4 relevance is. It's Maryland.

5 MR. BEERS: This is a collection of expressions by the  
6 Diocese of Maryland regarding their compliance with the  
7 canons of the national church.

8 These are documents we offer to show that this diocese  
9 understood that it was bound by the canons of the church and  
10 it was reporting on that -- the degree of that compliance, at  
11 very early on 1790 -- starting in 1790 and running up through  
12 1818. Now, Ms. Kostel's --

13 Oh, yes, there are two things. One is that in this  
14 document, the Diocese of Maryland is entitled the Protestant  
15 Episcopal Church in the Diocese of Maryland. We offer that  
16 because there has been some suggestion in this case that the  
17 diocese claims that the term "Protestant Episcopal Church in  
18 the Diocese of South Carolina" was somehow unique or unusual,  
19 and we're going to show through this exhibit and several  
20 others that it was in common use in several dioceses. That's  
21 number one.

22 And number two, it is an explanation of the manner in  
23 which they have obeyed the canons and the reasons why.

24 MR. RUNYAN: Your Honor --

25 THE COURT: Sustained.

1 MR. BEERS: Would you, with respect, ask you --

2 THE COURT: Let's make this an offer of proof.

3 MR. BEERS: Sorry?

4 THE COURT: Let's make this an offer of proof. In other  
5 words, this exhibit will be marked. We can either mark it  
6 for identification purposes or we can mark it as a Court's  
7 exhibit and make it an offer of proof.

8 MR. BEERS: All right. Let me consult with Ms. Kostel  
9 on that.

10 (Brief pause.)

11 MR. BEERS: Now, in order to speed up, I would like to  
12 ask Mr. Duffy some questions before --

13 Yes, Your Honor, we offer that as -- present that as an  
14 offer of proof.

15 THE COURT: Thank you.

16 MR. BEERS: So I guess it's Exhibit 446 for  
17 identification.

18 THE COURT: Perfect.

19 Q. Now, Mr. Duffy, would you tell me what 447 is.

20 A. Well, these I know well. These are the -- well, that is  
21 an excerpt from the journal of the diocese of Massachusetts.

22 Q. From -- excerpts from various --

23 A. From 1799.

24 Q. Various -- several journals?

25 A. Yes, well, I'm looking at the 1799, but the list I have

1 indicates that there are several in this packet, yes.

2 Q. All right. Now I'm going to go on to 448.

3 A. Okay. So this is from excerpts from material in the  
4 archives from -- these are excerpts of the journals of the  
5 Diocese of New Hampshire, also in the archives.

6 Q. 448 or 449?

7 A. Well, the one I'm looking at on the screen is --

8 THE COURT: It says 4th Convention 1804, it doesn't  
9 have --

10 THE WITNESS: This is 448, I assume.

11 Q. All right. And 449?

12 A. 449, oh, it's New Jersey. Okay. So this is an excerpt  
13 from the journal of the Diocese of New Jersey.

14 Q. Journals?

15 A. Journals. There are several in here.

16 Q. 450?

17 A. These are excerpts from the journals of the Diocese of  
18 New York.

19 Q. 451?

20 A. These are excerpts from the journals of the Diocese of  
21 Pennsylvania in the archives.

22 Q. 452?

23 A. These are excerpts from the journals of the Diocese of  
24 Rhode Island.

25 Q. 454?

1 THE COURT: Vermont.

2 THE WITNESS: Thank you, ma'am. These are excerpts from  
3 the journals of the Diocese of Vermont.

4 Q. 455?

5 A. These are excerpts from the journals of the Diocese of  
6 Virginia.

7 Q. 477?

8 A. These are excerpts from the journals of the Diocese of  
9 Connecticut.

10 Q. And, I believe, 478.

11 A. And these are excerpts from the journals of the Diocese  
12 of Delaware.

13 MR. BEERS: If the Court please, we offer -- we offer  
14 all of these for the same reasons that we offered the  
15 original ones from the Diocese of Maryland.

16 THE COURT: Got it.

17 MR. BEERS: And we would have each marked for  
18 identification and put in the record as a proffer.

19 THE COURT: Thank you so kindly.

20 Q. Now, would you please look at 463.

21 A. Okay. This is a -- these are excerpts from the journal  
22 of the general convention for the -- for 1964, which is  
23 located in the archives.

24 MR. BEERS: And we offer this in evidence, Your Honor,  
25 I'll be glad to explain why.

1           MR. RUNYAN: Well, I guess our -- I might not have an  
2           objection to this if I could see the whole thing, but since I  
3           can't see the whole thing, it's incomplete. That would be  
4           the objection.

5           MR. BEERS: Well, we -- first of all, the journals are  
6           in evidence. Are they in evidence?

7           MS. GOLDING: No.

8           MR. BEERS: No, they're not, but we can supply the whole  
9           volume.

10          MS. KOSTEL: Again, just to point out, we're putting  
11          in -- at the request of everyone in the room, we're putting  
12          in excerpts from the diocesan journals to save having to put  
13          in the entire journals, so this is an excerpt from the  
14          general convention journal.

15          THE COURT: I think that Mr. Runyan just wanted to be  
16          able to see the whole document.

17          MS. KOSTEL: The whole journal, Your Honor?

18          THE COURT: I don't know. Probably the whole excerpt,  
19          to begin with, the whole excerpt because it was chopped off  
20          and then you moved it up, so I don't know where it is at this  
21          point. It's kind of hard to make a decision when half of  
22          your page is chopped off.

23          MS. KOSTEL: They are on the hard drive that they've  
24          had.

25          MR. RUNYAN: "They" what, the whole journal?

1 MS. KOSTEL: No, this excerpt is.

2 MR. RUNYAN: Ah, how about -- well, okay. The same  
3 problem.

4 THE COURT: Say what?

5 MR. RUNYAN: She said the excerpt was on the hard drive.  
6 I think it's the same issue, still incomplete.

7 MR. BEERS: Well, Your Honor, the word "incomplete"  
8 seems to me to be misused here. If you have a book that's  
9 1,000 pages and there's one page in which there is a point  
10 and that page is offered, it's hard to see what's wrong with  
11 that. We're offering just these words.

12 THE COURT: Well, I understand that, but let me hear  
13 from Mr. Runyan. I'm sure that his concern is with regards  
14 to lack of completeness. Is it because Article 5, Section --  
15 or Article 5 is incomplete? Tell me to what extent, if any,  
16 incompleteness you're concerned with.

17 MR. RUNYAN: Well, there are two issues. One is that  
18 this -- first of all, I'm not really sure what the point is,  
19 so I don't know the relevance. But assuming that it has  
20 relevance, Mr. Beers, it looks like a portion of the page  
21 stops where it shouldn't stop.

22 Second is, until I know context, I don't know relevance.  
23 But I would say there's a relevance objection as well and  
24 maybe he can clarify that.

25 MS. KOSTEL: Where does the page stop, Alan, where it's



1 not supposed to stop?

2 MR. RUNYAN: It ends as follows, colon, blank.

3 MR. BEERS: No, page 271.

4 MR. RUNYAN: Where's the rest of it?

5 MS. KOSTEL: But that's not the same subject. See the  
6 hash mark?

7 MR. RUNYAN: Well, how do I know what the subject is?

8 MS. KOSTEL: Read it. There's a hash park on page 270.

9 There's a hash mark on page 271. It's beginning and end.  
10 It's obvious.

11 MR. RUNYAN: Okay. I have a relevance and an  
12 incompleteness objection.

13 MR. BEERS: Can I address the relevance first, Your  
14 Honor?

15 THE COURT: Yes.

16 MR. BEERS: This is an amendment to the constitution to  
17 make it clear that dioceses may not, on their own, change  
18 their boundaries or cede territory back to the church without  
19 the consent of the general convention.

20 MR. RUNYAN: I --

21 MR. BEERS: I'm not finished. It is the official  
22 expression by the general convention that the general  
23 convention controls the -- this aspect of the dioceses. The  
24 dioceses may not change their boundaries without the consent  
25 of the general convention.

1           MR. RUNYAN: And my objection on that basis is the  
2 document speaks for itself. I don't believe how counsel read  
3 that is what's in there, but that document speaks for itself.  
4 The document's incomplete. Obviously it's an issue of  
5 importance.

6           MR. BEERS: Well, seems to me he can't have it both  
7 ways. He can't say, well, we object to its relevance, and  
8 then I tell him why we think it's relevant and then he says,  
9 well, you can't do that because the document speaks for  
10 itself. That's a little circulative.

11          MR. RUNYAN: Mr. Beers' testimony is not in the record.  
12 So to the extent the document is relevant, it speaks for  
13 itself.

14          THE COURT: I understand.

15          MR. RUNYAN: And right now is incomplete.

16          THE COURT: I understand what you're saying. Now let me  
17 ask you this question: Are pages 270 and 271 what are being  
18 offered?

19          MS. KOSTEL: The text between the hash marks, so there's  
20 a line on 270 where a new subject begins.

21          THE COURT: All right. So only Constitution Article 5  
22 Section 8 is being offered?

23          MS. KOSTEL: Well, I think actually above that, Your  
24 Honor, where it says the house of bishops received house of  
25 deputies' message, just because it's saying that this came

1 forward to the house and so that's where the hash mark is and  
2 I think the way the journals work is that sets out the topic,  
3 so there's that hash mark.

4 THE COURT: So you would begin your offer from "the  
5 house of bishops received"?

6 MS. KOSTEL: Yes.

7 THE COURT: And you would conclude it with "communicated  
8 to the house of deputies"?

9 MS. KOSTEL: Yes.

10 THE COURT: Let me read it, then, and let me see.

11 (Brief pause.)

12 THE COURT: Okay. The objection is sustained. We'll  
13 mark it for -- well, it will remain marked for identification  
14 purposes and be an offer of proof.

15 MR. BEERS: Thank you, Your Honor. No. 464 I'll  
16 represent to the Court is an excerpt of the journal of  
17 general convention for 2009 on the same subject. And I'm  
18 assuming we have the same objection?

19 THE COURT: I don't know. I don't know. I have to see  
20 it.

21 MR. BEERS: Same objection?

22 MR. RUNYAN: Can you give me just a second?

23 MR. BEERS: Sure.

24 MR. RUNYAN: Your Honor, two points to make in addition  
25 to that. I'm looking at the exhibit that they introduced

1 this morning, the 2009 constitution and canons, that the  
2 proposed exhibit references Article 5, Section 8. There is  
3 no Article 5, Section 8 in this constitution and canons.

4 THE COURT: Well, and I can't tell -- the reason I was  
5 concerned about the other one is it was watching the sausage  
6 being made. And this one, likewise, it gets referred to the  
7 committee. It's passed by the house of bishops on the first  
8 day, and then it is referred to the committee on amendments  
9 to the constitution. And then I can't -- because this is  
10 report number -- this is -- see, this is Message No. 8, and  
11 then the rest of the page refers to Report No. 6, and it's  
12 communicated as Message No. 8. And it just says that  
13 Message No. 8 was received by the house of bishops and  
14 referred to the committee. And then it goes on to other  
15 matters.

16 MS. KOSTEL: Let's withdraw it.

17 THE COURT: Yes, okay.

18 MR. BEERS: Let's move to 466.

19 MS. KOSTEL: 465.

20 MR. BEERS: Whoops, sorry. 465, thank you -- no, that  
21 was 465, Ms. Kostel.

22 MS. KOSTEL: I don't think so.

23 (Attorneys confer.)

24 MR. BEERS: Errors creeping in, Your Honor, sorry.

25 Q. 465.

1 A. I recognize this as an excerpt from the journal of  
2 general convention of 2009.

3 Q. And comes from your files?

4 A. Yes, sir.

5 MR. BEERS: We offer this, 465, Your Honor.

6 MR. RUNYAN: Objection on the grounds of relevance.

7 MR. BEERS: Relevance?

8 THE COURT: Yes.

9 MR. BEERS: This is a decision by the highest  
10 legislative authority in the Episcopal Church, the general  
11 convention, that dioceses may not leave. This is a  
12 recognition of the reorganized dioceses or continuing  
13 dioceses in each of four dioceses who recognize that they are  
14 the diocese and that they did that before South Carolina.  
15 The diocese in South Carolina took its action. This is a  
16 decision by the highest authority in the church.

17 THE COURT: You can't testify to that and he didn't  
18 testify to that and it's not evident on its face, so what are  
19 we going to do about that?

20 MR. BEERS: Well, let's take it on its face. The  
21 general convention -- the general convention recognized the  
22 continuing dioceses in four other dioceses. Leave it at  
23 that.

24 THE COURT: Go to the top of it.

25 MR. BEERS: Yes.

1 THE COURT: Go to the top of the document.

2 MR. BEERS: Yes.

3 THE COURT: It says the bishop in northern Carolina made  
4 a further resolution --

5 MR. BEERS: Oh, I'm sorry, Your Honor.

6 THE COURT: -- the motion's defeated, the question was  
7 called.

8 MR. BEERS: Sorry, Your Honor, you do not have the hash  
9 marks.

10 THE COURT: I'm sorry?

11 MR. BEERS: I'm looking at the bottom of the page, final  
12 text of resolution that was adopted.

13 THE COURT: Okay. This document on its face says what  
14 it says.

15 MR. BEERS: Yes.

16 THE COURT: It's got -- it has -- on its face, it has  
17 absolutely nothing to do with South Carolina. Now, having  
18 said that, if you want to identify it and have -- we've had  
19 Mr. Duffy testify to the authenticity of it and then hold it  
20 back and leave it marked for identification purposes and then  
21 you have someone else who's able to testify to make it  
22 relevant, maybe that's the appropriate thing to do.

23 You can't testify to what you just testified to because  
24 none of that is stated in here. So it's authenticated. It's  
25 in, in terms of authentication for identification purposes.

1 Perhaps someone else will testify to what it means. Yes?

2 MR. BEERS: Just one quick response.

3 THE COURT: Sure.

4 MR. BEERS: It has a great deal to do with the Diocese  
5 of South Carolina in that -- in that --

6 THE COURT: I want to stop you there.

7 MR. BEERS: Okay.

8 THE COURT: Because it doesn't say that on its face and  
9 you don't -- you have to have someone testify and connect  
10 those dots. And I'm not saying that you cannot do that. I'm  
11 just saying that it isn't evident on its face. It's just an  
12 attaboy for folks in Fort Worth, Pittsburgh, Quincy, and  
13 San Joaquin. It's a kudo, and that's what it says.

14 I'm not keeping you from calling or having additional  
15 witnesses who can say this is what this is. You can't do  
16 that because you're not a witness.

17 MR. BEERS: Fine. Thank you, Your Honor.

18 THE COURT: Yes. So let's do this, it's authenticated,  
19 it's a piece of it and we'll leave it, at this point, for  
20 identification purposes, and it's been identified, and it's  
21 been authenticated.

22 MR. BEERS: Thank you, Your Honor. May we now turn to  
23 466?

24 THE COURT: And the question is: What is it?

25 THE WITNESS: Okay. I recognize this as what we call

1 the certified resolutions that come out of executive council  
2 that are found in the archives in the records of the  
3 secretary of executive council.

4 Q. And do you recognize the signature?

5 A. Yes, sir, this is the signature of Gregory Straub, who  
6 was the secretary of general convention and the secretary of  
7 executive council.

8 THE COURT: Okay. Yes, sir.

9 MR. RUNYAN: It's identified as a letter in their  
10 exhibit list. I don't see who it's to, for starters.

11 And secondly, it's obviously hearsay. Mr. Straub is not  
12 here.

13 And third, I don't see the relevance to this diocese. I  
14 don't see it. I don't see us listed there anywhere.

15 MR. BEERS: I think, Your Honor -- Your Honor, please --

16 THE COURT: Yes.

17 MR. BEERS: -- it does have a lot to do with this  
18 diocese. First of all, just taking the text as it is with  
19 regarding the four other dioceses, it is a clear expression  
20 by the board of directors of the Episcopal national church as  
21 to what is the policy and the polity of the church, and the  
22 Court can give such weight as it wants to that, but it is an  
23 official expression of the understanding of the church's  
24 polity by its board of directors. That's number one. And  
25 that applies beyond -- that applies to all dioceses.



1           And it says on its face, that any amendment to a  
2   diocesan constitution that purports in any way to limit or  
3   lessen an unqualified accession to the constitution and  
4   canons of the Episcopal --

5           THE COURT: Oh, no, you can't go that fast.

6           MR. BEERS: I know, I suddenly just woke up.

7           -- unqualified accession to the constitution and canons  
8   of the Episcopal Church is null and void.

9           And that is not limited to these four dioceses. It  
10   does -- it is intended to cover other dioceses. That's  
11   number one -- no, excuse me, number two.

12          MR. RUNYAN: Well, Your Honor, as to those points, first  
13   of all, there's a conclusion at the bottom that is, at least  
14   in this Court, a legal conclusion, which I don't believe  
15   there's any foundation for this gentleman to offer.

16          MR. BEERS: He's not offering it. Mr. Straub's not  
17   offering it.

18          MR. RUNYAN: Well, he is if this goes in.

19          MR. BEERS: Mr. Straub, as the secretary, is merely  
20   certifying its authenticity.

21          MR. RUNYAN: Secondly, there is no relevance under the  
22   standard of the United States Supreme Court on hierarchy  
23   which requires that it must be the highest judicatory to  
24   which the matter has been taken. "The matter" is the  
25   departure of this church. And this is not a judicatory, so

1 on that basis, it's irrelevant as well.

2 THE COURT: All right. Here's what I'm going to do with  
3 this document, it's going to be marked for identification  
4 purposes only at this point. It's 2007. It says what it  
5 says. It's hearsay. It's been authenticated in terms of it  
6 is a document that was written and has been authenticated.

7 The relevance on its face is not apparent, but if it  
8 could be made -- you know, sometimes to admit a document,  
9 there have to be several steps. What I see at this point  
10 does not get this document to have relevance with regards to  
11 this case. Number one, I don't know who this went to; number  
12 two, I don't know that it was ever communicated to the  
13 plaintiffs; number three, I don't know whether or not there  
14 was a -- it's 2007. And the relevance, while it certainly  
15 might exist, it may become relevant. At this point, it isn't  
16 relevant on its face for the reasons I've already mentioned.

17 MR. BEERS: If I may just respond to a couple aspects of  
18 that.

19 THE COURT: Sure.

20 MR. BEERS: It's not a letter. It's a certified copy of  
21 the resolution adopted by the board of directors.

22 MS. KOSTEL: I think Mr. Duffy testified to that.

23 MS. GOLDING: Your Honor, we received -- the list we  
24 received from the defendants identifies this clearly as a  
25 letter.

1 MS. KOSTEL: That was a mistake.

2 MR. BEERS: That was a mistake. We all make them.  
3 What's funny about that?

4 THE COURT: Hey, stop.

5 MR. BEERS: Gee whiz.

6 MR. HOLMES: Your Honor, I'm sorry, would it be 803(6)  
7 of the hearsay?

8 THE COURT: I'm going to handle what's going on out here  
9 first. That's to stop. You all address me.

10 MR. BEERS: Yes, ma'am, I apologize.

11 THE COURT: Yes, sir. You don't practice law in the  
12 state of South Carolina, but we have -- we have rules that  
13 govern the means and the manner in which counsel speak with  
14 one another, and they will be complied with.

15 You have to be sure that they are complied with. So  
16 that's the first thing.

17 MR. HOLMES: Yes, ma'am. Thank you.

18 THE COURT: The second thing is you address the Court.  
19 You do not address each other.

20 Thirdly, I've ruled. You need to explain that you don't  
21 argue with the Court in South Carolina, right?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: Thank you kindly. You would like for me to  
24 review a rule. Tell me that rule again, sir.

25 MR. HOLMES: 803(6), Your Honor.

1 THE COURT: Thank you. Let me take a look at it.

2 MR. HOLMES: Of the rules of evidence, of course.

3 THE COURT: Okay. I'm with you.

4 MR. HOLMES: If you'll give me the opportunity, I would  
5 ask -- and I don't know it's important enough to raise, but  
6 maybe the IRS' determination, I think that's 8038, I found a  
7 federal district court case that would support that argument.

8 THE COURT: Okay. Now tell me which one. Give me a  
9 number.

10 MR. HOLMES: With the 803 -- Rule 803(6), that being  
11 that this report that's being offered in evidence is a record  
12 of an activity conducted in the regular course of business of  
13 the church, based on the testimony of the witness, the  
14 archivist, and the content's consistent with that.

15 THE COURT: I agree with that part. That's the  
16 reason -- that's the reason, Mr. Holmes, that I said that  
17 it's an authenticated document.

18 MR. HOLMES: Yes, ma'am.

19 THE COURT: It wouldn't be excluded on the basis of  
20 hearsay.

21 My concern -- and then I went on to say it ought --  
22 because, as you know when you admit a document -- I know  
23 you've done enough, particularly criminal law, that it takes  
24 many steps.

25 The first step, this step, you're exactly correct, I

1 think it's authenticated. I think that Mr. Duffy can  
2 authenticate it. The problem is that on its face, it doesn't  
3 have relevance to these issues, but that doesn't keep someone  
4 else from connecting those dots. The authentication dot,  
5 done.

6 The problem is that we're talking about June the 25th,  
7 2007. We're talking about other places. And because it  
8 doesn't say "Charleston" on its face, there needs to be a  
9 witness to connect those dots.

10 So what I'm saying at this point isn't that it is  
11 excluded for all time. I'm just simply saying that at this  
12 point the relevancy has not been established. Doesn't mean  
13 at all that that can't happen. There may be somebody that  
14 can come in and say, oh, well, boy, were we having trouble in  
15 2007. Here's evidence of it. We issued this because we were  
16 getting ready. You better believe this went out to  
17 Charleston and we talked about it at the next convention.

18 In other words, there's lots of testimony that can come  
19 out that will make this relevant, it just isn't on its face.  
20 It is what it is. It may become relevant, but it isn't yet.

21 Do you see what I'm saying?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: But you are correct, I agree with you.

24 MR. HOLMES: Thank you.

25 THE COURT: And that's why I said, it is marked for

1 identification purposes because the hearsay now is handled.

2 MR. HOLMES: Thank you.

3 THE COURT: Yes.

4 MR. BEERS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Q. 467.

7 MR. RUNYAN: Presuming that the witness will testify  
8 that he got this out of the archives, our objection would be  
9 relevance.

10 MR. BEERS: Your Honor, in order to speed things along,  
11 may I suggest the following?

12 THE COURT: Okay.

13 MR. BEERS: Exhibit 467 --

14 Q. Mr. Duffy, would you just tell us what that document  
15 appears to be.

16 A. This is a letter to bishop -- Presiding Bishop Schori  
17 from Bishop Dorsey Henderson indicating the results of the  
18 title 4 review committee decision.

19 Q. That's fine. And that comes from the -- that's kept in  
20 the archives?

21 A. Yes, yes, sir.

22 Q. And 468?

23 A. This is a notification to a number of groups and  
24 important bodies in the church regarding the deposition of  
25 Bishop Schofield.

1 Q. And 469?

2 A. This, I believe, is the letter informing Presiding  
3 Bishop Schori of the decision of the review board in the  
4 case -- the disciplinary board in the case of Bishop Robert  
5 Duncan.

6 Q. And 470?

7 A. And this is the notification to all the important bodies  
8 of recordkeeping, what have you, of the deposition of Bishop  
9 Duncan, all held in the archives.

10 MR. BEERS: Your Honor, we're offering all of these and  
11 I'm grouping them together to try to move things along.

12 One has to do with charges against Bishop X, and then  
13 the second one is the result of that -- the outcome of that  
14 charge. And then the next one is the charge against Bishop  
15 Y, and the outcome of that.

16 And I don't think there probably is going to be problems  
17 with authenticity, but I figured the relevance objections  
18 probably all could be dealt with together, if you have them.

19 THE COURT: So tell me, what is the relevance?

20 MR. BEERS: I'm sorry?

21 THE COURT: Let me ask you this question: It appears to  
22 me that these are bishops somewhere else; yes, is that  
23 correct?

24 MR. BEERS: Yes.

25 THE COURT: They're not in Charleston?

1 MR. BEERS: Correct.

2 THE COURT: Okay. So tell me, what is the relevance  
3 with regards to these matters?

4 MR. BEERS: The general convention by canon allots to  
5 the -- something called the disciplinary board -- well, a  
6 disciplinary board --

7 THE COURT: Sure.

8 MR. BEERS: -- and to the house of bishops and to the  
9 presiding bishop the authority to discipline bishops in  
10 certain circumstances.

11 THE COURT: Right.

12 MR. BEERS: These documents show that this disciplinary  
13 board, the house of bishops, and the presiding bishops dealt  
14 with a charge about two bishops and, as the highest authority  
15 in the church under the canons, made a decision in that  
16 regard, and that decision was to depose them for violating  
17 the -- violating the rules of the church or repudiating the  
18 rules of the church. And that -- those are decisions by the  
19 highest bodies in the Episcopal Church --

20 THE COURT: Yes.

21 MR. BEERS: -- in regard to those two bishops.

22 THE COURT: Yes.

23 MR. BEERS: And the charges are that those two bishops  
24 attempted to lead their dioceses out of the Episcopal Church.

25 THE COURT: Okay.



1           MR. BEERS: And these documents talk about that, they  
2 say that, and that's why they were deposed.

3           THE COURT: Got it.

4           MR. BEERS: That is a decision by the highest body in  
5 the church that a bishop who tries to lead a diocese out of  
6 the church is going to be deposed because that is contrary to  
7 the rules of the church.

8           We're trying to establish, obviously, that  
9 Bishop Lawrence tried to -- has tried to lead his diocese out  
10 of the Episcopal Church, and this is a decision by the  
11 highest body in the church that says that that is a violation  
12 of our constitution and canons.

13          THE COURT: Got it. Okay. And that's the relevance of  
14 these matters?

15          MR. BEERS: Yes.

16          THE COURT: Okay. Is there an objection?

17          MR. RUNYAN: Yes, Your Honor. If there's relevance, it  
18 would be Bishop Lawrence and not the bishops in other  
19 locations.

20          Secondly, this is, obviously, cumulative because, to the  
21 extent there are any such rules, they're contained in the  
22 constitution and canons which are already in evidence. So he  
23 can use those to say that they say what they say.

24          These are replete -- the hearsay that's contained in  
25 this is unbelievable. There's hearsay upon hearsay upon

1 hearsay, and, again, having to do with other people, not the  
2 Diocese of South Carolina.

3 I mean, not to mention the lack of foundation on -- from  
4 this witness except that they're in the archives. I mean,  
5 there's just -- there's -- I don't even know where to begin  
6 on these. They're just not relevant. I mean, that's the  
7 simple idea, the idea that somehow the deposition of a bishop  
8 on other charges from another part of the church has  
9 relevance to whether a diocese can leave or whether they have  
10 an interest in the property of the diocese and parishes is  
11 just beyond me.

12 THE COURT: Well, here's what I'm going to do at this  
13 point. Again, there are layers of hearsay. This document  
14 will continue to be marked for identification purposes. And  
15 at this point, there may be other layers of hearsay that must  
16 be handled, but additionally, with regards to the relevance,  
17 there very well may be someone, a witness who can speak to  
18 that and tell me why these letters, these actions have  
19 relevance with regards to South Carolina.

20 I can tell you this, that if there was simply a result  
21 that was presented, Pearson says I must accept the result. I  
22 can't go behind it, not going to go behind it, which I think  
23 probably makes the issue of whether it is relevant or not --  
24 which certainly bears on whether it's relevant or not, but  
25 there's got to be somebody else that could testify to that.

1           For now it is one layer of the hearsay in that it is a  
2   document that's handled and it remains marked for  
3   identification purposes.

4           MR. BEERS:   Could I ask a question for clarification,  
5   Your Honor?

6           THE COURT:   Sure.

7           MR. BEERS:   468 and 470 each embody, on their face, the  
8   result.

9           THE COURT:   Come on back to that because, you know, we  
10   sort of went through them quickly. I didn't have a chance to  
11   read that.

12          MR. BEERS:   Sorry, if you would look at 468.

13          THE COURT:   Okay.

14   Q.   Mr. Duffy what is that?

15   A.   This is a notification to various bodies of the  
16   Episcopal Church of the deposition of Bishop John David  
17   Schofield.

18          THE COURT:   And tell me what it is that you want me to  
19   do with this.

20          MR. BEERS:   Admit it into evidence on the ground that --  
21   on the ground that --

22          THE COURT:   Yes.

23          MR. BEERS:   -- the highest authority in the church under  
24   our rules has deposed this bishop.

25          THE COURT:   Okay.

1 MR. BEERS: Now, it doesn't have the charge itself,  
2 which is why we introduced the charge so that one could see  
3 why he was deposed, but we may be able to put in a witness on  
4 that subject. But the action is deposition of that bishop.  
5 And 470 is the deposition of the other bishop. That's the  
6 official action. And it seems to me that's clearly  
7 admissible.

8 And as to the relevance --

9 THE COURT: Yes, that's what I'm looking for.

10 MR. BEERS: Yes.

11 THE COURT: Tell me about that.

12 MR. BEERS: The highest body in the church deposes a  
13 bishop because -- assuming we can connect this up --

14 THE COURT: Okay. I understand.

15 MR. BEERS: -- because the bishop attempts to lead the  
16 diocese out of the Episcopal Church.

17 THE COURT: Right.

18 MR. BEERS: And he's deposed because he's charged with  
19 violating the rules of our polity.

20 THE COURT: Right.

21 MR. BEERS: Okay?

22 THE COURT: Right.

23 MR. BEERS: All right. And in that way they're saying  
24 that dioceses can't leave. That's our polity.

25 THE COURT: Got it.

1           MR. BEERS: And there are two of them. Now we have, in  
2 this case, a case where we have a bishop who purported to  
3 lead the diocese out of the church.

4           THE COURT: Right.

5           MR. BEERS: We have a ruling from the highest body in  
6 the church that that conduct is not consistent with our  
7 polity, it's a violation of our polity.

8           THE COURT: Got it.

9           MR. BEERS: That seems, to me, to be relevant.

10          THE COURT: But here's the interesting part --

11          MR. BEERS: Okay.

12          THE COURT: -- if we were hierarchical jurisdiction,  
13 where the way that we, as a state, resolved the disputes with  
14 churches was to enforce the hierarchical nature of a church,  
15 and we assumed the hierarchical nature for purposes of  
16 argument, then there would be one of two things. I presume  
17 that at some point you're going to tell me this is what  
18 happened to Bishop Lawrence. I guess I would say good-bye,  
19 Bishop Lawrence. But we are not a hierarchical jurisdiction.  
20 And Pearson would tell me that for whatever purposes, I guess  
21 if -- that's where the relevance gets to be rather tricky.  
22 Because while Pearson says that I must accept the Church's  
23 determination, once the Right Reverend John Schofield is, I  
24 gather, deposed, I can't go behind that decision, under South  
25 Carolina law. But nobody's asking me to go behind that

1 decision. That's not what we're about here.

2 So then you take a look at the fact that whether or not  
3 this action regarding John David Schofield has any relevance  
4 with regards to South Carolina. I don't know. I mean, I'm  
5 having difficulty finding that relevance because there are,  
6 A, unanswered questions.

7 I know -- see, I know based on the All Saints case that  
8 our churches are allowed to make amendments to their  
9 constitution and their bylaws and allowed to take certain  
10 steps which have a very dramatic effect on the way that  
11 church disputes are resolved.

12 And while I am reluctant to exclude this piece of  
13 evidence, other than the fact that at this moment it is  
14 authenticated in that it is a document that is in the  
15 archives, obviously regularly kept type of document within  
16 the archives, and that level of hearsay has been met, and I'm  
17 not at the conclusion of the case, it seems to me to be  
18 appropriate at this point to leave it marked for  
19 identification purposes only rather than to exclude it, only  
20 because I hadn't heard all the testimony.

21 I can tell you, though, that, as you are well aware,  
22 we're not a hierarchical jurisdiction.

23 MR. BEERS: Well, let me respond very briefly, Your  
24 Honor.

25 THE COURT: Yes.

1 MR. BEERS: Just for clarification.

2 THE COURT: Sure, of course.

3 MR. BEERS: I'm not contending. Obviously, this is  
4 helpful for the record because we contend that hierarchy is  
5 important. But if we are able to show that, hierarchy or  
6 not, that there was a mutual understanding between the  
7 national church and the Diocese of South Carolina that in  
8 return for the benefits of having an identity in the  
9 Episcopal Church they agreed to abide by the constitution and  
10 canons of the church, then we get over the hump on the  
11 hierarchy and we are, it seems to me, entitled to win this  
12 case on the grounds that they have breached their agreements  
13 with the Episcopal Church.

14 And this evidence is relevant to that because this is  
15 relevant to showing that the polity of the church -- to which  
16 we say they agreed in return for benefits -- the polity of  
17 the church is that a diocese cannot leave. We have to  
18 establish that the polity of the church is that dioceses may  
19 not leave, and we intend -- we intend -- we think the record  
20 will show that, and it may be too coarse to say there was a  
21 deal, but in return for coming into the church and receiving  
22 its benefits over the years and growing as an Episcopal  
23 Church they agreed, for all time, to abide by the polity of  
24 the church, then we have a breach that's material. And that  
25 breach is explained by these documents.

1 Now, I just needed to get that out for where we are.

2 THE COURT: I understand. I'm with you. And as I say,  
3 that is exactly the reason why at this point it remains  
4 marked for identification.

5 MR. BEERS: Thank you.

6 THE COURT: It is not excluded in the event that you can  
7 connect those dots.

8 MR. BEERS: Thank you, Your Honor.

9 THE COURT: Yes.

10 Q. Mr. Duffy, would you now turn to Exhibit 479 --

11 MR. BEERS: Is that right, Ms. Kostel?

12 A. This is an excerpt from the journal of general  
13 convention for 1964 and it's found in the archives.

14 Q. Yes.

15 MR. BEERS: We are not offering the whole volume.

16 THE COURT: Okay.

17 MR. BEERS: There may not be hash marks.

18 MS. KOSTEL: There is a hash mark on the left page.

19 THE COURT: I don't know what it is. What is this?

20 MS. KOSTEL: Mr. Duffy said it was an excerpt from the  
21 journal of the general convention of 1964.

22 THE COURT: Oh, 1964, there's the date. It's a  
23 resolution?

24 MS. KOSTEL: Yes.

25 MR. BEERS: It's a resolution adopted by the general



1 convention, which means adopted by both houses.

2 MR. RUNYAN: Well, that's not obvious from this  
3 document, so I object on foundation.

4 THE COURT: It's adopted by the house and gets  
5 communicated to the house -- all right. It's adopted by the  
6 house of bishops and then it gets communicated --

7 MR. BEERS: No, I'm sorry, Your Honor, if you would look  
8 at the -- below on the left, page 312, under levels of  
9 authority within the church.

10 THE COURT: Okay.

11 MR. BEERS: Yeah, just before the all caps sentence,  
12 levels of authority within the church, resolved, the house of  
13 deputies concurring that this 61st general convention do now  
14 adopt and publish the following statement.

15 Did you find that?

16 THE COURT: Not in the section that I'm looking at.

17 MR. BEERS: Go down to the bottom of page 312, if you  
18 will, please.

19 THE COURT: I'm so sorry, but the pages aren't evident.

20 MR. BEERS: I'm sorry.

21 MS. KOSTEL: It's the left-hand page.

22 THE COURT: I see levels of authority within the church.  
23 I've got that.

24 MR. BEERS: At the bottom of the page.

25 THE COURT: I see that. And then I see the resolution

1 was adopted.

2 MR. BEERS: Right.

3 THE COURT: And then I see -- let me ask you this  
4 question: Is the up-above levels of authority within the  
5 church, is that the process? Because I thought you said when  
6 I saw the --

7 MR. BEERS: It is the process by which the resolution's  
8 introduced and debated and so forth, but the actual text is  
9 in the hash mark on the following page.

10 THE COURT: Okay. Then I need to see the following  
11 page, I guess.

12 MR. BEERS: Oh, yes, I'm sorry.

13 MS. KOSTEL: Can you give the Court the hard copy,  
14 please?

15 THE COURT: Great, thanks.

16 MR. BEERS: And the passages are highlighted.

17 THE COURT: And do you have page 314?

18 MR. BEERS: Sorry.

19 MS. KOSTEL: I don't believe so, Your Honor. We can get  
20 it. I think it moves to another topic.

21 THE COURT: Okay.

22 MS. KOSTEL: But we can provide it.

23 THE COURT: Okay. Let me tell you what I'm reading.

24 MR. BEERS: Sure.

25 THE COURT: What I read this to say is that there's