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THIS FILE FOLDER CONTAINS DOCUMENTS DATED:

2-15-05 TO 2-22-05

1 George J. MacKoul (Bar No. 170586)  
2 SABBAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as )  
17 Guardian ad Litem for, Rachel Lomas and )  
18 Amber Lomas, )  
19 Plaintiffs, )

20 vs.

21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr. )  
22 Francis Arakal, Fr. Richard Ryan, Bishop )  
23 Steven Blaire and The Diocese of Stockton )  
24 and Does 1-100, )  
25 Defendants )

Case No.: CV018440  
PLAINTIFFS' MOTION IN LIMINE #10  
TO EXCLUDE ALL EVIDENCE,  
REFERENCE TO EVIDENCE AND/OR  
ALL ARGUMENTS REGARDING  
KATHLEEN MACHADO COACHING,  
FABRICATING OR CONSPIRING WITH  
HER CHILDREN THE ALLEGATION OF  
SEXUAL ABUSE SET FORTH IN THE  
COMPLAINT AS REVENGE AGAINST  
FR. ILLO AND TO FURTHER EXCLUDE  
ANY EVIDENCE REFERENCE TO  
EVIDENCE AND/OR ARGUMENT  
REGARDING AMBER AND/OR  
RACHEL LOMAS FABRICATING OR  
BEING COACHED INTO THE  
FABRICATION OF THE ALLEGATIONS  
OF SEXUAL ABUSE TO AFFECT THEIR  
RELATIONSHIP WITH FR. ILLO. THE  
MOTION IS BASED ON THE  
TESTIMONY OF DEFENDANTS'  
EXPERT PSYCHOLOGIST, DR.  
ROGER KATZ WHO TESTIFIED ON  
FEBRUARY 21, 2005, THAT THESE  
THEORIES PROFFERED BY THE  
DEFENSE ARE BASED ON  
SPECULATION.

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Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
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Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

**TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

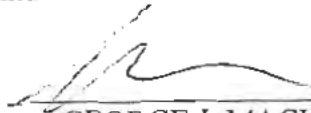
PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order excluding any and all evidence, all evidence, reference to evidence and/or all arguments to exclude all evidence, reference to evidence and/or all arguments regarding Kathleen Machado coaching, fabricating or conspiring with her children the allegation of sexual abuse set forth in the complaint as revenge against Fr. Illo and to further exclude any evidence reference to evidence and/or argument regarding amber and/or Rachel Lomas fabricating or being coached into the fabrication of the allegations of sexual abuse to affect their relationship with Fr. Illo. The motion is based on the testimony of defendants' expert psychologist, Dr. Roger Katz who testified on February 21, 2005, that these theories proffered by the defense are based on speculation.

This motion is based upon the grounds that the proposed evidence is without foundation and is irrelevant to prove or disprove any of the allegations stated in the complaint or any affirmative defenses stated by the defendants in their answers to the complaint. Therefore the evidence should be excluded under Evidence Code Section 350.

1 Further, the motion is based upon the authority of Evidence Code Section 352 that the  
2 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence  
3 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of  
4 Points and Authorities, the pleadings and papers on file in this action, and upon the argument and  
5 evidence as may be presented prior to or at the hearing of this matter.

6 Dated:

2-22-05



7 GEORGE J. MACKOUL  
8 SABBAAH & MACKOUL  
9 Attorneys for the Plaintiffs  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **THE PROFFERED EVIDENCE/ARGUMENTS HAVE NO FOUNDATION.**

4 Evidence Code Section 403(a) states in part:

5 "The proponent of the proffered evidence has the burden of producing evidence as to the  
6 existence of the preliminary fact, and the proffered evidence is inadmissible unless the  
7 court finds that there is evidence sufficient to sustain a finding of the existence of the  
8 preliminary fact...

9 Also see, Hyatt v. Sierra Boat Co. (1978) 79 Cal.App.3d 325, 337-39 (proof of  
10 foundational fact required before evidence may be referenced at trial).

11 The defendants have **no** preliminary facts, to support the arguments (captioned above)  
12 they intend to make at the time of trial. In fact defendant Arakal's own designated expert Dr.  
13 Roger Katz, *a professor of clinical psychology*, testified at the deposition on February 21, 2005  
14 to the following opinions (after reviewing most of the testimony and evidence in this case to  
15 date):<sup>1</sup>

- 16
- 17 1. Based on **speculation**, Dr. Katz opined that Kathleen Machado, coached Amber Lomas  
18 into fabricating allegations of sexual abuse by Fr. Arakal, so as to affect the mothers  
19 relationship with Fr. Illo.
  - 20 2. Based on **speculation**, Dr. Katz opined that, Amber Lomas fabricated the allegations of  
21 sexual abuse against herself and her sister, Rachel, by Fr. Arakal and reported the abuse  
22 to Fr. Illo on September 11, 2001 to get Fr. Illo to reunite with their family.
  - 23 3. Dr. Katz testified that there are no formal studies in the field of psychology that would  
24 support the premise made in 1 and 2 above. That premise is that a mother of three minor

25 <sup>1</sup> The transcript for this deposition were not finished at the time of the making this motion.

1 children would fabricate or coach her children to into making allegations of sexual abuse  
2 against a priest, with the motive to change the dynamics of the relationship with the **non**  
3 **molesting priest.**

4 Not surprisingly, Dr. Katz was withdrawn as expert immediately after he gave his  
5 deposition testimony.

6 We therefore ask this court to exclude this evidence or reference thereto as nothing more  
7 "then the slinging of mud", against an innocent inother, and lacking in any foundation in law or  
8 in fact. It is simply being proffered by the defense, in a desperate attempt to justify sexual abuse  
9 of minors by a Catholic priest.

10  
11  
12 **2.**

13 **ANY REFERENCES TO OR INTRODUCTION OF THE LETTERS ARE**  
14 **IRRELEVANT AND SHOULD BE EXCLUDED**

15 Evidence Code Section 350 states that "(n)o evidence is admissible except relevant  
16 evidence." Relevant evidence is defined by Evidence Code Section 210 as "having any tendency  
17 in reason to prove or disprove any disputed fact that is of consequence to the determination of  
18 the action."

19 Any evidence or argument which states that the mother coached or fabricated the  
20 allegations of sexual abuse against Fr. Arakal, (or that the children did it on their own) so as to  
21 affect the relationship the family had with Fr. Illo is irrelevant. It does not prove or disprove that  
22 the children were molested by Fr. Arakal.  
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3.

**THE PROFFERED EVIDENCE SHOULD BE EXCLUDED BECAUSE IT IS BASED ON  
SPECULATION AND IS ALSO HIGHLY PREJUDICIAL**

Evidence Code Section 352 states as follows: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)

The evidence sought to be offered is at best speculative. Oakland Raiders v. National Football League (2001) 93 Cal.App.4th 572, 590-92 (evidence that is speculative is irrelevant). People v. Babbitt (1988) 45 Cal.3d 660, 682 (evidence that only produces speculative inferences is irrelevant). William Dal Porto & Sons, Inc. v. Agricultural Labor Relations Bd. (1987) 191 Cal.App.3d 1195, 11-12 (wholly speculative evidence is not relevant and is properly excluded). People v. Louie (1984) 158 Cal.App.3d Supp. 28, 47 (same). People v. De La Plane (1979) 88 Cal.App.3d 223, 244 (evidence which produces only speculative inferences is irrelevant).

The evidence sought to be admitted is highly prejudicial because it will turn the focus of the jury away from the minors and onto the relationship between the mother and Fr. Illo. This will to some degree, cause the jury to be prejudicial towards the minors, not because of what Fr. Arakal did to them, but based on the mother's relationship with Fr. Illo.

It will also to some degree cause the jury to become confused and draw inferences that are based on speculation.

4.

**CONCLUSIONS**

Based on the forgoing, plaintiffs request that this motion be granted.



1 Dated: 2-22-05



GEORGE J. MACKOUL  
SABBAH & MACKOUL  
Attorneys for the Plaintiffs

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FEB 22 2005

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ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

George J. MacKoul (Bar No. 170586)  
SABBAH AND MACKOUL  
Attorneys and Counselors at Law  
49 Locust Street  
Falmouth, Mass 02540  
Phone: 508-495-4955  
Fax: 508-495-4115

Anthony Boskovich (Bar No. 121198)  
LAW OFFICES OF ANTHONY BOSKOVICH  
28 North First Street 6<sup>th</sup> Floor  
San Jose, California 95113-1210  
Phone: 408-286-5150  
Fax: 408-286-5170

Attorneys for the Plaintiffs

SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

Kathleen Machado as an individual and as  
Guardian ad Litem for, Rachel Lomas and  
Amber Lomas,  
Plaintiffs,

vs.

Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.  
Francis Arakal, Fr. Richard Ryan, Bishop  
Steven Blaire and The Diocese of Stockton  
and Does 1-100,  
Defendants

) Case No.: CV018440  
) **PLAINTIFFS' OPPOSITION TO**  
) **DEFENDANT ARAKAL'S MOTION IN**  
) **LIMINE TO PRECLUDE RICHARD SIPE**  
) **FROM TESTIMONY REGARDING THE**  
) **CREDIBILITY OF ANY PARTY OR**  
) **WITNESS AND WHICH SEEKS TO**  
) **ESTABLISH ARAKAL'S CONDUCT BY**  
) **THE PRIOR ACTS OF OTHERS.**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

1.

**INTRODUCTION**

Defendant Fr. Joseph Arakal (hereafter Arakal) seeks an order from this court to exclude unspecified testimony by plaintiffs' expert, Richard Sipe.

1 The motion is not specific. It is too vague and ambiguous. It is the type of motion that a  
2 court would have a very difficult time fashioning an order that the lawyers could even comply  
3 with.

4 Motions in Limine are like objections at trial. They are suppose to be tailored to prevent a  
5 *particular* type of evidence or reference to evidence from being elicited. Defendant's motion  
6 makes no such delineation. Motions in Limine may be inappropriate where it is difficult to  
7 specify exactly what evidence is the subject of the motion. People v. Morris (1991) 53 Cal.3d  
8 152, 188-90. "[U]ntil the evidence is actually offered, and the court is aware of its relevance in  
9 context, its probative value, and its potential for prejudice, matters related to the state of the  
10 evidence at the time the objection is made, the court cannot intelligently rule on its  
11 admissibility." People v. Jennings (1988) 46 Cal.3d 963, 975, n.3. Actual testimony often defies  
12 pretrial predictions of what a witness will say on the stand. People v. Morris (1991) 53 Cal.3d  
13 152, 188.

14 Even if the motion is viewed in the most favorable light to the defendants, the motion  
15 seeks to prevent Sipe from making any assumptions or deriving any inferences about the  
16 evidence in this case. It further seeks to stop this expert from drawing any analogies from the  
17 facts of this case and to compare those facts to the years of study he has done on similar cases.

18 The "net" affect of this motion then, is to prevent Sipe from testifying "at all".

19 The defendant's reasons for making this motion are:

- 20 1. Sipe's expert opinion regarding the credibility of the parties in this matter is based on  
21 speculation and conjecture;
- 22 2. Sipe's seeks to establish the conduct of the defendant, Arakal by the prior acts of  
23 others.  
24

25 Both of these arguments are not correct and misstate the deposition testimony of Sipe.

1 By way of background, Richard Sipe, is a former Benedictine Monk, a former  
2 psychotherapist and currently still a Roman Catholic Priest and is a one of the few experts in the  
3 world who has studied the sexual behavior of Catholic Clerics. His C.V., which was  
4 unchallenged at his deposition, and was attached as an exhibit to his deposition transcript by the  
5 defendants, is also attached to this opposition (See attached **Exhibit A**).

6 Sipe testified during his deposition that he has been an expert witness in 215, to 220  
7 sexual abuse cases involving Catholic priests. He also testified that he reviewed additional 2000-  
8 2800 cases (See highlighted portions of page 18 of Sipe's Deposition transcript attached as  
9 **Exhibit B**) involving clergy sexual abuse.  
10

11 Sipe then testifies that he has authored seven (7) books on the issue of sex and celibacy  
12 involving Catholic clerics. These books are based on over 40 years of research, which defense  
13 counsel acknowledged his opinion testimony would be based upon (see highlighted portions of  
14 page 40 of Sipe's deposition attached as **Exhibit C**).

15 Sipe testified (without objection) that he is an expert in the celibate sexual "system" of  
16 the Catholic church (see highlighted portions of page 44 and 45 of Sipe's deposition attached as  
17 **Exhibit D**).

18 Clearly, Sipe is qualified to testify as to the issues of conduct regarding sex abuse by  
19 Catholic Clerics. This is a subject, which is beyond the normal experiences of most jurors. His  
20 testimony will be helpful at the time of trial.  
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SIPE TESTIFIED THAT HIS OPINIONS WOULD BE THE SAME EVEN IF THE CREDIBILITY OF THE PARTIES WERE NOT "IN ISSUE". FURTHER HIS COMMENTS ON HIS "BELIEF IN THE GIRLS STORY" WAS NOT A COMMENT ON THEIR CREDIBILITY BUT RATHER AN ASSUMPTION, BASED ON HIS KNOWLEDGE TRAINING AND EXPERIECE, THAT THE GIRLS' BEHAVIOR WAS CONSISTENT WITH HOW VICTIMS OF CLERGY ABUSE ACT.

Sipe testified that his opinions would not change even if he were asked to not consider the credibility of the parties. Please see highlighted portions of Sipe Deposition, page 78 attached as **Exhibit E**.

Defendant's preconceived notion about what Sipe testified to is not a proper dispute for a motion in limine. "It is a misuse of a motion in limine to attempt to compel a witness or a party to conform his or her trial testimony to a preconceived factual scenario based on testimony given during pretrial discovery. One purpose of pretrial discovery is to pin down the testimony of parties and witnesses which can be used for impeachment at the time of trial" Kelly v. New West Federal (1996) 49 Cal.App.4th 659, 664. (Emphasis added).

Sipe opinion was based on certain assumptions, from his review of the evidence in this case, to explain the behavior of Fr. Arakal and Fr. Illo common to priests who are alleged to have sexually and emotionally abused children.

Experts are allowed to make reasonable assumptions and inferences from the evidence. The strength of those assumptions goes to weight not to admissibility. For example, in an arson cases an expert may draw an inference and testify to his opinion that a fire has been ignited by flammable liquid, even though he has found no residue, taste nor smell of it; strength of his assumptions affects the weight rather than admissibility of his opinion. People v. Sundlee (App. 3 Dist. 1977) 138 Cal.Rptr. 834, 70 Cal.App.3d 477. (Emphasis added).



1 Likewise, experts are allowed to make assumption about weather or not a particular type  
2 of behavior is common or uncommon. For instance in People v. Housley (App. 1 Dist. 1992) 8  
3 Cal.Rptr.2d 431, 6 Cal.App.4th 947, the court held that a Doctor did not improperly render an  
4 opinion on an alleged rape victim's credibility by testifying that victims commonly and falsely  
5 recant their stories of abuse and often tell conflicting versions of true story of abuse. The doctor  
6 plainly testified that she had never met victim, was unfamiliar with details of case, and had never  
7 read any reports associated with the matter, and thus her testimony made clear that she was  
8 merely explaining behavior common to sexual abuse victims. (Emphasis added).  
9

10 In the case at bar, Sipe also testified that he did not personally interview the girls or the  
11 priests, but that he "believed the story the girls were telling". These assumptions/inferences are  
12 based on his review of the evidence in this case and his training as a psychotherapist, a priest, as  
13 well as his 45 years of experience studying the sexual behavior of the Catholic Clergy as well as  
14 the victims of that abuse. See attached **Exhibit F**, highlighted portions of Sipe deposition, pages  
15 76 and 77.  
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3.

**SIPE BASED HIS OPINIONS ABOUT FR. ARAKAL'S INAPPROPRIATE BEHAVIOR ON HIS STUDIES REGARDING THE SOCIOLOGICAL/CULTURAL PATTERNS OF CATHOLIC CLERICS AS THEY RELATE TO SEXUAL ABUSE OF MINORS.**

Sipe testified, based on his studies, that Fr. Arakal actions fit a pattern and practice identified as "grooming", minors for sexual activity. Sipe rendered this opinion, not in a vacuum, but in the context of the clerical system endemic to the church, which allows vulnerable individuals to become the victims of abuse by clerics, (See page 62 and 63, highlighted portions of the deposition transcript attached as **Exhibit G**). This type of testimony is far beyond the common experience of most jurors.

In California, it has been long recognized that it is outside "common experience" of most jurors to understand the specific cultural, sociological patterns and motives of certain groups alleged to be engaged in criminal activities.

For instance in People v. Gardeley (1997) 14 Cal.4th 605; 59 Cal.Rptr.2d 356, it was held that an expert could testify as to The subject matter of the culture and habits of criminal street gangs, as being outside common experience sufficient to allow expert testimony.

In People v. Newman (1944) 24 Cal.2d 168, 174-176, it was held permissible for a police officer who was qualified as an expert in such matters to testify as to the meaning of signs, symbols, letters and figures appearing on betting markers, scratch sheets and other memoranda used in the business of bookmaking and to explain the *modus operandi* of recording bets in such business.

Further, in People v. Clay (1964) 227 Cal.App.2d 87, 38 Cal.Rptr. 431 a police officer who had 26 years of service in a police department, four years of which he spent investigating and educating others on the crime of "till tapping" was qualified to testify as an expert in the investigation of till tapping.

1 Likewise, in this case, plaintiffs will seek to offer the testimony of Sipe to educate and  
2 explain to the jury how the minors in this case were susceptible to the acts by the priests in  
3 question, based on the custom, perceptions, culture and practices of Catholic Clerics and their  
4 followers.

5  
6 4.

7 **THE OPINIONS OF SIPE REGARDING THE PATTERN AND PRACTICE OF**  
8 **CLERICS LIVING IN THE CELIBATE STATE REGARDING THE SEXUAL ABUSE**  
9 **OF CHILDREN IS MORE POBATIVE THAN PREJUDICIAL.**

10 Although defense counsel is upset about the opinions held by Sipe, he cannot cry  
11 "prejudice" because his client engaged in conduct that happens to fit into a subculture pattern  
12 that Sipe has studied for over 40 years.

13 Sipe's testimony is critical to the plaintiffs case as it will assist the trier of fact in  
14 understanding how priests use and abuse their position of authority and power over the young  
15 and old alike.

16 He will also testify to the code of silence/denial and cover up of the offending priest by  
17 fellow priests and the church hierarchy. This will assist the trier of fact in proving plaintiffs'  
18 negligence, ratification of negligence, intentional infliction of emotional distress and conspiracy  
19 claims.

20 Motions in limine should not be misused to deprive a party of due process in the name of  
21 efficiency. Fatica v. Superior Court (2002) 99 Cal.App.4th 350, 353. Trial court erred when it  
22 granted motion in limine precluding critical expert testimony (and "gutting" plaintiff's case)  
23 when reasonable alternatives existed. Id.

24 Absent highly unusual circumstances, evidence that relates to a critical issue, where other  
25 evidence does not as directly support that issue, must be received over a Section 352 objection.

Kelly v. New West Federal Savings (1996) 49 Cal.App.4th 659, 664


1 This motion is a futile attempt by defendant Arakal to not allow an important expert to  
2 testify on behalf of the plaintiffs. It should not be allowed.

3  
4 5.

5 CONCLUSION

6 Based on the forgoing, the Motion in Limine filed by the defendant, Fr. Arakal should be  
7 denied. The testimony of Sipe was not based on his belief of which party was credible or not  
8 credible. Sipe's testimony is important to explain to the jury the sociological/cultural "system" of  
9 catholic priests in the celibate state and how this state, influences, encourages and covers sexual  
10 abuse of minors.

11  
12  
13 Dated: 2-22-05

14   
15 GEORGE J. MACKOUL  
16 SABBAAH & MACKOUL  
17 Attorneys for the Plaintiffs  
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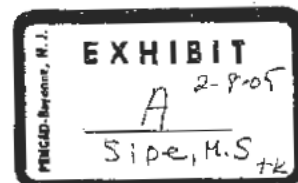


# EXHIBIT A

January 2005

# CURRICULUM VITAE

## A. W. RICHARD SIPE



### EDUCATION

- Loyola College , Baltimore , Maryland , MS 1980
- The Seton Psychiatric Institute, Baltimore , Maryland , Certificate-Resident in Counseling of Religious 1965-1967
- The Menninger Foundation, Topeka , Kansas , Certificate in Counseling 1964-1965
- Saint John's Seminary, Collegeville, Minnesota , Ordained Roman Catholic Priest (M.Div. Equiv.) 1957-1959
- Collegio Sant' Anselmo, Rome , Italy 1955-1957
- Saint John's University , Collegeville , Minnesota — BA 1950-1955
- Saint John's Preparatory School , Collegeville , Minnesota 1946-1950

### CERTIFICATION

- Psychiatrist Assistant: Registration No. S-00001 The Maryland State Board of Medical Examiners 1982-2000
- National Certified Counselor (NCC) Certificate #03879 1983-2000
- National Academy of Certified Clinical Mental Health Counselors (CCMHC) Certificate No. 183 1981-2000

### PROFESSIONAL POSITIONS

- Pastoral Counselor (Volunteer) Owen Clinic, University of California at San Diego 2000-
- Psychiatrist Assistant (State of Maryland ) 1982-1999
- Consultant, Task Force on Sexual Abuse — St. John's Abbey & University, Collegeville , Minnesota

- 1993-1994
- Supervisor in Family Therapy — Child and Adolescent Fellows Program, 1989-1993
- John's Hopkins Medical School Department of Psychiatry
- Counselor, (Private Practice Associates) 1970-1982
- Staff, Consultation Center for Clergy and Religious Archdiocese of Baltimore 1978-1982
- Consultant in Family Therapy North Baltimore Mental Health Center 1978-1980
- Counselor, Loyola College Counseling Service (Acting Director 1974) 1971-1979
- Consultant to the Program of Psychiatry and Religion, Spring Grove State Hospital , Baltimore , Maryland 1969
- Personnel Director, St. John's Abbey 1968-1970
- Director of Family Services, the Seton Psychiatric Institute, Baltimore , Maryland 1967-1970
- Executive Director, Saint John's University Institute for Mental Health, 1965-1969
- Collegeville , Minnesota
- Counselor, Saint Boniface High School, Cold Spring , Minnesota 1959-1964

#### ACADEMIC APPOINTMENTS

- Instructor in Psychiatry (part-time), John's Hopkins School of Medicine, Department of Psychiatry, Baltimore , Maryland 1972-1997
- Adjunct Professor, Pastoral Counseling, Saint Mary's Seminary and University, Baltimore , Maryland 1972-1984
- Adjunct Associate Professor of Psychology Loyola College , Baltimore , Maryland 1971-1975
- Assistant Professor of Pastoral Counseling, St. John's University , Collegeville , Minnesota 1967-1970

- Lecturer in Pastoral Counseling, Woodstock College , Woodstock , 1968-1970 Maryland

## ARTICLES

- " Cincinnati's 30 pieces of silver," The National Catholic Reporter, December 12, 2003
- "Does the Church Really Care," Corpus Reports, September/October, 2003.
- "Abuse: From the Eye of the Storm," Bread Raising, June, 2003.
- "Priests Still Die of AIDS as Church Postpones Needed Dialogue," The National Catholic Reporter, March 31, 2000 .
- "Perilous Choice to Ignore AIDS Issue," The National Catholic Reporter, March 31, 2000 .
- "Road Map and Road Blocks: The Seminarian's Dilemma," The TABLET ( London ), October 7, 1995 , (p. 1276-1278).
- "Achievement," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , October 1995.
- "Celibate Spirituality—In Search of the Feminine Voice," Sisters Today, September, 1995 (p. 342-346).
- "Transformation," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , September 1995.
- "Integration," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , August 1995.
- "Truth or Consequences," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , July 1995.
- "How I should Have Loved," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , June 1995.
- "Appropriate, Responsible, Mature," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , May 1995.
- "After the Fall," Reflections on Celibacy series in Priestly People, Jemez Springs , New Mexico , April, 1995

- "Authority and Power," Reflections on Celibacy series in Priestly People, Jemez Springs, New Mexico, March 1995.
- "Loneliness," Reflections on Celibacy series in Priestly People, Jemez Springs, New Mexico, February 1995.
- "Desire and Self Knowledge," Reflections on Celibacy series in Priestly People, Jemez Springs, New Mexico, January 1995.
- "Celibacy: Nature and Grace," Reflections on Celibacy series in Priestly People, Jemez Springs, New Mexico, December 1994.
- "How to be Celibate," Reflections on Celibacy series in Priestly People, Jemez Springs, New Mexico, November 1994.
- "Priest sex abuse case stirs political storm in Ireland," The National Catholic Reporter, December 2, 1994, (p. 17).
- "The Problem of Sexual Trauma and Addiction in the Catholic Church," Sexual Addiction and Compulsivity, Vol. 1, No. 2, 1994, (p. 130-137).
- "Celibacy and Power," The Tablet (London), November 26, 1994, (p. 1504-1505).
- "Divine Justice: William F. Love's Bishop Regain and Harry Kemelman's Rabbi Small" (with B.C. Lamb) The Armchair Detective, Vol. 27: No. 1, winter, 1994.
- "Victims of Clergy Abuse Achieve Rightful Status," Bread Rising, Vol. 4: No. 1, 1994.
- "A Step toward Prevention of Sexual Abuse," Human Development, Vol. 14: No. 4, 1993 (p. 27-28).
- "Clergy Sexual Abuse: The St. John's Initiative" St. John's Magazine, December, 1993.
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- Psychiatric Annals; Medical Insight; Theological Studies; American Journal of Psychiatry; Worship

## LECTURES

- "Forgiveness of the Church for Sexual Abuse" VOTF , St. Thomas University, St. Paul, Minnesota, November 7, 2004.
- "A Dangerous Business: Questions & Truth Telling" SNAP National Meeting, Denver, CO, June 12, 2004 .
- "Sexual abuse and suicide" seminar, SNAP National Meeting, Denver, CO, June 11, 2004.
- "The Consequences of Guilt" Santa Clara Symposium on Sin Against the Innocent, Santa Clara, CA, May 14, 2004.
- "Family Secrets: the extent of abuse" SNAP Retreat, Minneapolis, March 2, 2004
- "Confessions of an Expert Witness" VOTF, Minneapolis, Minnesota, March 1, 2004 .
- "The Bishops have spoken. Is there hope?" Call to Action San Diego, Pacific Beach, California, March 6, 2004 .
- "Beyond Abuse" VOTF Boston, January 24, 2004. .
- "Sexual Abuse: the Crisis Behind the Headlines" Call to Action, Milwaukee , Wisconsin , November 7-9, 2003 .
- "Being Catholic in the 21<sup>st</sup> Century: Crisis, Challenge, and Opportunity ." VOTF, Fordham University , Bronx . NY, October 25, 2003 .
- "Moral Leadership: Abuse Victims, the Press, Lawyers, and Law Enforcement." Keynote for the West Coast Conference of SNAP, Los Angeles , CA. October 18, 2003 .
- "An Historical Note on Clergy Abuse." National Clergy Abuse Network. Chicago , IL . October 3-4, 2003 .
- "A Theological Reflection in Three Acts-or-The Vegas Showgirl, God/Popeye, and Where the Church Went Wrong." Keynote for the National Meeting of Dignity, Las Vegas , Nevada , August 7-10, 2003 .
- "Does the Church Care?" Keynote for the National Conference of CORPUS, Dallas , Texas , June 27-29, 2003 .
- "View From the Eye of the Storm" Keynote for the 11<sup>th</sup> annual National Meeting of LINKUP, Louisville, Kentucky , February 22, 2003 .
- "Celibacy in Crisis" Institute for Continued Learning University of California San Diego , March 7,2003
- "Abuse at the Abbey" Survivors Network of Minnesota , Minneapolis , February 28-29, 2003 .

- "The Pastoral Challenge in a Climate of Distrust" State of California Chaplains' Conference. Oakland, California , October 23, 2002 .
- "Crisis in the Church" The Channel Club, Santa Barbara, California. September 27, 2002 .
- "Religious Construction of HIV/AIDS Diagnosis in San Diego & its Import on Decisions about Treatment & Care" Respondent, University of California San Diego Social Sciences Roundtable, February 13, 2002.
- "Was Jesus a Sexual Person?" CORPUS National Conference, Secaucus, New Jersey , June 30, 2001 .
- "The Healing Hand of God" The Cathedral of St. John the Baptist, Roman Catholic Diocese of Paterson, New Jersey, October 14, 1998.
- "Is Sexual Abstinence Possible?" Towson State University, Towson , Maryland , May 7, 1997 .
- "Religion and Psychiatry" Grand Rounds, Springfield State Hospital, Sykesville , Maryland , April 11, 1997 .
- "Celibacy, Sex and Fiduciary Boundaries," Symposium on Boundary Issues and Violations in the Clergy, The Menninger Foundation, Topeka, Kansas, September 20-21, 1996.
- "Celibacy: A Way of Living, Loving and Serving" (15 lectures) St. John 's Seminary, Collegeville, Minnesota , January 8-27, 1996 .
- "Denial in Recovery" The Florida Medical Professional Group convention, Ft. Lauderdale, Florida , November 4, 1995 .
- "Spirituality and Recovery" Keynote Panel National Council on Sexual Addiction and Compulsivity, Atlanta Georgia , March 23, 1995 .
- "The Person of the Priest: Toward a Celibate Integration" (10 lectures) St John 's Seminary, January 10-21, 1995 .
- "The Propietic Role of Victims of Clergy Sexual Abuse," Christian Survivors of Sexual Abuse, the Commonwealth Institute, London , October, 9, 1994 .
- "Christian Roots of Abuse" LINKUP, National Conference, Collegeville , Minnesota , August 4, 1994 .
- "Christian Leadership: Challenge to Sex and Power" LINKUP Leadership Conference, June 17, 1994 .
- "Psychoanalysis and Family Therapy" George Washington University , Washington , D.C., June 14, 1994 and November 8, 1994 .

- "The State of Sexual Abuse in the Catholic Church," Conference on Sexual Trauma in the Church, St. Johns University, Collegeville, Minnesota, August 12-13, 1993.
- "Sex and the Church" (15 lectures), St. Louis University, Department of Theology, St. Louis, Missouri, July 19-23, 1993.
- "Negotiating Loneliness in the Celibate Process," Vincentian Fathers Annual Convocation, St. Louis, Missouri, June 16, 1993.
- "Sexual Abuse by Clergy: Who and Why," Maryland Governor's Conference on Child Abuse and Neglect, April 29, 1993.
- "The Clergy and Human Sexuality," Maryland Association of Private Practicing Psychiatrists, December 3, 1992.
- "Sexual Abuse by Priests—Why?" VOCAL, Chicago, Illinois, October 18, 1992.
- "Sex and the Clergy," The City Club of Cleveland, October 18, 1991.
- Grand Rounds, the Veterans Hospital of Baltimore, September 17, 1991.
- "Addictions and Spirituality," Prince George's County Health Department, May 20, 1991.
- "The Celibate/Sexual Adjustment of Roman Catholic Priests," Research Conference, Johns Hopkins Medical School, Department of Psychiatry, May 6, 1991.
- "The Celibate/Sexual Agenda," CORPUS National Meeting, New York, June 22, 1991.
- "Outpatient Response to Sexual Problems Among Catholic Religious"—The National Guild of Catholic Psychiatrists, Montreal, Canada, May 8, 1991.
- "Facing Dangerous Questions: An Intellectual Odyssey," (Rolling-Leutkemeyer Lecture), McDonogh School, April 3, 1991.
- "Sexuality—Intimacy and Ministry" (2 lectures), Ministry Formation Program, Archdiocese of Baltimore, March 31, 1991.
- "Spirituality and Integrity" and "Remaining Credible Witnesses to Our Faith," Princeton Theological, December 4, 1990.
- "Sexual/Celibate Pressures of Catholic Priests," The American Psychological Association National Meeting, Boston, Massachusetts, August 11, 1990.
- "Celibacy and Sexuality" (13 lectures with Marianne Benkert, M.D.), St. John's University, July 23-26, 1990.

- "What Questions May a Theologian Ask About Celibacy," St. John's University School of Theology, July 25, 1990 .
- "Life, Love and Celibacy" (3 lectures) St. John 's Seminary, September 26, 1989 .
- "Celibacy, Sex and the Place of Women"—First National Meeting of CORPUS, American University , Washington , D.C., June 17, 1988 .
- "The Psychological Aspects of the Aging Process"— Catholic University of America , Washington , D.C. , March 21, 1987 .
- "Growth of Celibate Self: How? Now, Wow!" (10 lectures) (With Dr. Marianne Berkert), Erie Pennsylvania , August 7 to August 9,1986 .
- "Positive Patterns to Marriage"—Seminar. The United Hospitals of St. Paul , Minnesota , April 25, 1985 .
- "Making Marriage Work" (6 lectures), Baltimore Archdiocese Marriage Preparation, July - August 1985.
- "Family Therapy Grows Up"— Springfield Hospital Center , Psychiatric Grand Rounds, Sykesville , Maryland , April 12, 1985 .
- "Psychiatry and Religion: Partners in Health"—The United Hospitals of St. Paul , Minnesota , October 18, 1983 .
- "Family Therapy: A Perspective Not a Technique" Psychiatric Residence Conference, University of Maryland Medical School , Baltimore , August 11, 1983 .
- "Family Therapy." Veterans Administration Hospital , San Juan , Puerto Rico , March 16, 1983 .
- "Retired Priests: An Adaptive Task" Stella Maris Hospice, Towson , Maryland , May 6, 1981 .
- "Family Therapy as Sole Method of Treatment"—Panel: The Uses and Abuses of Family Therapy—American Ortho Psychiatric Meeting, New York , April 15, 1977 .
- "Psychic Reconciliation" Loyola College Lenten Lecture, Baltimore , Maryland , May 24, 1976 .
- "The Role of the Counselor"—American Orthopsychiatric Association, New York , June, 1973.
- "The Family:--Its Faith and Its Fears"— Wihnington , Delaware , March 10, 1971.
- "The Dilemma of the Hospital Chaplain: —Mid-West Health Congress, Kansas City , Missouri , March, 1970.

- "Occupational Hazards of Helping People"—Johns Hopkins , Medical School , April 1, 1969 .
- "What Clergy Learn About Psychiatry"— Maryland Association of Private Practicing Psychiatrists, Baltimore , Maryland , January 30, 1969 .
- "The Introduction of Psychiatry into a Religious Setting"—42nd Anniversary Congress of the Pan-American Medical Association, Buenos Aires , Argentina , November 26, 1967 .
- "The Role of Benedictines in the Church Today" St. John's Chapter, Collegeville , Minnesota , October 21, 1967 .
- "Psychiatric and Religious Intervention in Mental and Emotional Illness," George Washington University Faculty, Department of Psychiatry, Washington , D.C. , February 16, 1966 .

### BOOKS AND CHAPTERS

- Sex, Priests & the Secret Code: the Catholic Church's 2000 year paper trail of sexual abuse. with Thomas P. Doyle & Patrick J. Wall, Precept Press, Santa Monica, 2005
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- Celibacy in Crisis: A Secret World Revisited, Brunner/Routledge, New York , 2003.
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- "The Sexual Abuse of Minors by Clergy: Problems of Prevention" in Bless Me Father for I Have Sinned, Thomas G. Plante, Ph.D., Editor, Westport, CT: Greenwood, 1999.
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- Sex, Priests and Power: Anatomy of a Crisis, Brunner/Mazel, New York, 1995; Cassell Publishers, London, 1995.
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- A Secret World: Sexuality and the Search for Celibacy, Brunner/Mazel, New York, 1990.
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- "Sexual Aspects of the Human Condition"—in Changing View of the Human Condition, Paul Pruyser, Editor, Mercer University Press, 1987.
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- Hope: Psychiatry's Commitment, Editor: Brunner/Mazel, New York, 1970.
- A Physician in the General Practice of Psychiatry: The Selected Papers of Leo H. Bartemeier, M.D., Editor (with P.A. Martin, M.D. and G.L. Usdin, M.D.); Brunner/Mazel Publishing Co., New York, 1970.

## RESEARCH

- Priests With AIDS—A Desperate Cry: "The Church Has AIDS"
- Project: Celibacy in Literature and Life,—The Minister's Black Veil: Literature of Vocation, with Harris Gruman, Ph.D. & Dr. B.C. Lamb, Ph.D., JD. (T.B.P.).
- Apostles of Celibacy & the Problematic Paradigm (T.B.P.)
- "A Search for Celibacy, 1960-1985: Practice, Process and Achievement."
- "The Pastoral Promise: an Explanation of a Quality of Ministry" Master of Science Thesis, Loyola College, Maryland, December 5, 1979.

- "A Proposal for the Implementation for a Counseling Facility in a Small College Setting," St. John's University , Collegeville , Minnesota , July 1966.
- "The Ego Functioning of a Training Group: An Organizational Case Study Report"—Department of Preventive Psychiatry, The Menninger Foundation, Topeka , Kansas , 1965.
- "An Investigation into Parental Suicide and Adolescent Difficulties: Three Cases" St. Thomas University , St. Paul , 1964.

### FORENSIC CONSULTATION

- Consultant and expert witness in over two hundred cases of Catholic clergy abuse of minors and other clergy professional malfeasance, 1988-2005. Witness and consultant in Grand Jury investigations 2002 & 2003.

### BOARD, COMMITTEES, FELLOWSHIPS AND HONORS

- St. John's University INTERFAITH SEXUAL TRAUMA INSTITUTE Board of Directors, Chairman of the Board 1994-1996
- Isaac Taylor Institute for Psychiatry and Religion—Advisory Committee 1986-1989
- St. Luke's Institute, Suitland , Maryland , Board of Directors 1986-1988
- Institute for Religion and Human Development, Board of Directors (Chairman 1977-1983) St. John 's University 1977-1984
- Archdiocese Commission on Women in the Church (Baltimore) 1977
- Institute for Ecumenical and Cultural Research: Project Fellow (Faith: Human Condition) 1977-1982
- American Medical Association: Consultant, Committee for the AMA Handbook Human Sexuality 1969
- Who's Who in Religion 1975
- American Catholic Who's Who 1978-1979

## PROFESSIONAL ASSOCIATIONS

- American Family Therapy Academy 1986-1996
- National Council on Family Relations (24505) 1971-1995
- American Association of Mental Health Counselors (President 1971) 1971-1980
- American Personnel and Guidance Association (S-4038114) 1975-1995
- American Mental Health Counselors Association 1978-1997
- Maryland Mental Health Counselors Association 1978-1997

## MEDIA CONTACTS

- Television:
  - TV Documentary SEXUAL IDENTITY BBC 2005
  - TV Documentary CELIBACY BBC/HBO 2004
  - Participant in ten TV documentaries on clergy sexual abuse, USA , France , & UK during 2003/2004.
  - Court TV, January 2002.
  - CNN, TV January 2002.
  - "Non-Celibate Priests," Religion & Ethics PBS TV, July 2001.
  - "Priests With AIDS," 20/20, ABC TV, January 2001.
  - " St. John's Priest With AIDS," KSTP TV, January 2001.
  - "Sexual Abuse & St. John's Abbey," KSTP TV, November 10-11, 2000 .
  - "Priests: A Question of Celibacy," Canada Sex TV, September 2000.
  - NBC, CBS, ABC, Fox, CNBC: England , Yorkshire TV, BBC TV, Oxford TV, Netherlands TV, CBC TV, PBS, etc.
  - "Our Father," HBO, 1996.
  - "Sins of the Fathers," BBC-EVERYMAN September 10, 1995 .
  
- Print Media:

- Interviews:

*People Magazine, The National Review, The Boston Globe, Washington Post, Baltimore Sun, USA Today, New York Times, New York Post, News Day, A.P. News Service, Catholic News Service, The Catholic Register, National Catholic Reporter, London Times, The Chicago Tribune, Los Angeles Times, San Francisco Examiner, Wall Street Journal, Time, Newsweek, Hartford Courant, Miami Herald, Detroit Free Press, Playboy, L'Espresso, New Yorker, etc.*

- Radio:

Major US networks: ABC, NBC, CBS, FOX, CNN; NPR, PBC, CBC, BBC— England , Ireland , Wales ; Australian Radio, etc.

- Movies

Consultant in a Dan Wigatow/Sony Studio production. Screen play by Stanley Weiser.

# EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

-000--

KATHLEEN MACHADO, as an individual	)	
and as Guardian Ad Litem for RACHEL	)	
LOMAS and AMBER LOMAS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. CV 018440
	)	
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH	)	
aka FR. FRANCIS ARAKAL, FR. RICHARD	)	
J. RYAN, BISHOP STEVEN BLAIRE, and	)	
THE DIOCESE OF STOCKTON, et al.,	)	
	)	
Defendants.	)	
	)	JN: 14414

DEPOSITION OF: A.W. RICHARD SIPE, M.S.

DATE: February 8, 2005 at 11:08 a.m.

DEPOSITION OFFICER: Terri D. Kinser  
CSR No. 4393

TAKEN IN THE OFFICES OF:  
Hill & McPherson  
2453 Grand Canal Boulevard, Suite J  
Stockton, California 95207

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1 A. Well, I've been an expert in probably 215, 220  
 2 cases and I have reviewed cases probably now in total in  
 3 my career probably over -- well, I know over 2000 cases --  
 4 probably 2800 -- and many of these cases are from people  
 5 who are afraid to reveal what's happening until 20 years  
 6 later or so, while the priest has developed into a serial  
 7 perpetrator or done many things and then they are found  
 8 out and, of course, as you know, 700 (sic) priests were  
 9 relieved of their duties between 202 and 204 -- 2002 and  
 10 2004. This case is terribly important, because it's a  
 11 case at the inception. I've had other cases somewhat like  
 12 this that have to do with the grooming process, but this  
 13 is, in my estimation, really just as important as the --  
 14 as the Shanley case, because it's the other end of the  
 15 abuse spectrum.  
 16 I say that from my -- I notice that you rolled your  
 17 eyes at that.  
 18 Q. I did, because I find that to be inflammatory,  
 19 but that's okay. You can testify as you'd like to.  
 20 A. Inflammatory?  
 21 Q. I'm not going to get into a discussion with you.  
 22 I found it inflammatory, but go ahead.  
 23 A. Okay. My point is that understanding the whole  
 24 thing all the way along, that, for instance, the -- if  
 25 there had been evidence of Shanley's beginnings or any of

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1 these priests' beginnings at that time, they could have  
 2 been dealt with.  
 3 We've been through a great deal in this country in the  
 4 last 15 years surrounding this problem and the thing is  
 5 that the press, the church's intervention and so on has  
 6 been very important in alerting people to this whole  
 7 problem in the psyche and the cycle of it, which gives  
 8 more people a chance to look forward and to understand  
 9 what's going on with them and so I think that this has  
 10 elements in cases that I haven't had a chance to deal with  
 11 before.  
 12 Q. I meant to ask you this: This is not your binder  
 13 here -- the blue one?  
 14 A. Yes, it is.  
 15 Q. Is this part of the material that you looked at  
 16 in terms of preparing for this?  
 17 A. Yes, I read all that.  
 18 Q. Okay. What is contained in there?  
 19 A. You wanted this, did you? This is what you're  
 20 after for duplication (indicating)?  
 21 Q. Yes.  
 22 A. I just want to keep things straight here.  
 23 MR. MacKOUL: He just wants to know what's in  
 24 here (indicating).  
 25 MR. KOZINA: Yes. What's in the blue binder?

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1 THE WITNESS: This is the deposition of Father  
 2 Akala (sic).  
 3 MR. MacKOUL: Arakal.  
 4 THE WITNESS: Arakal. I'm sorry. These names  
 5 have all thrown me.  
 6 And then certain of the correspondence relating to  
 7 that from the church -- the removal from ministry, et  
 8 cetera, all relating to him and the investigation from the  
 9 diocese, et cetera.  
 10 This is -- has to do with something from the bishop.  
 11 There's correspondence from the bishop back and forth and  
 12 I have here an interview with Kathleen -- did you say  
 13 Machado --  
 14 MR. MacKOUL: Yes.  
 15 THE WITNESS: -- Machado. This is Sister  
 16 Barbara's interview and -- which includes her statement of  
 17 how she experienced all these things -- the things from  
 18 the police department and the bishop. Then I have the  
 19 deposition of Amber -- this is the way I keep my records.  
 20 MR. KOZINA: That's fine.  
 21 A. This is the deposition of Rachel. This is the  
 22 deposition of Bishop Blaire.  
 23 Q. You only have the first volume of that, correct?  
 24 A. Pardon?  
 25 MR. KOZINA: You only have the first volume?

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1 MR. MacKOUL: Only one's been taken.  
 2 MR. KOZINA: Do you anticipate getting any  
 3 further transcripts with regard to Bishop Blaire?  
 4 A. I would hope I would get all the transcripts of  
 5 anything before trial.  
 6 Q. You're not, because of that, prepared to give  
 7 full and complete testimony to the extent that it relates  
 8 to Bishop Blaire or would that affect your opinion?  
 9 MR. MacKOUL: Based on what he has today --  
 10 THE WITNESS: I can give a preliminary opinion.  
 11 MR. KOZINA: But we would want all your opinions  
 12 that you're going to offer at trial today, so go ahead.  
 13 Continue.  
 14 THE WITNESS: Well, I'm certainly open to that  
 15 after I read the other documents.  
 16 This is the final report of the canonical  
 17 investigation. In here there are letters from Kolleen and  
 18 Father -- the pastor, Father Joseph.  
 19 MR. COUGHLAN: Kolleen or Kathleen? I'm sorry.  
 20 THE WITNESS: Kolleen -- is it Kolleen or --  
 21 MR. KOZINA: Kolleen, just for your reference, is  
 22 the little girl.  
 23 A. Yeah, the little girl. There's a letter in here  
 24 to Father Francis --  
 25 Q. Father Francis or Father Ilo?

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# EXHIBIT C



1 eyes, I get the message, too.  
 2 MR. KOZINA: That's true. That's true. And it's  
 3 up to you, Mr. Sipe. You can testify in any fashion you'd  
 4 like and unless you declare that Mr. MacKoul is your  
 5 personal counsel at the deposition, you may -- you can't  
 6 refer to his instructions, his commentary as to how far  
 7 you should go or anything. This is a decision you have to  
 8 make.  
 9 MR. MacKOUL: Misstating what's going on in the  
 10 deposition.  
 11 THE WITNESS: Sir, you were the one who did --  
 12 you drew my attention to his hand going up.  
 13 MR. KOZINA: You're a little mad, aren't you,  
 14 Mr. Sipe?  
 15 MR. MacKOUL: Let's calm down. You're not  
 16 entitled to harass him.  
 17 MR. KOZINA: I'm entitled, Mr. MacKoul, to make  
 18 an observation and that's what I'm doing.  
 19 MR. COUGHLAN: As long as we're making  
 20 observations, you did tap the guy on the hand.  
 21 MR. MacKOUL: No, I didn't tap him. I raised my  
 22 hand and I did that because there was no question pending  
 23 and he was going on and on and on.  
 24 MR. KOZINA: You're not entitled to do that  
 25 because you're not counsel of record.

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1 MR. MacKOUL: That's fine, Vladimir. I apologize  
 2 to you. I'm sorry if I did something wrong, but I can say  
 3 I'm sorry.  
 4 MR. KOZINA: Yes, you can. I'll accept your  
 5 apology.  
 6 MR. MacKOUL: Thank you. Try it sometime.  
 7 We actually really like each other.  
 8 MR. KOZINA: We kind of like each other  
 9 afterward.  
 10 MR. MacKOUL: Not while we're working, though.  
 11 MR. KOZINA: While we're working, we're going to  
 12 be the best of combatants.  
 13 A. I would like to make a comment that I do not  
 14 believe that the atmosphere of anger and animosity in this  
 15 room is due to me and I do not appreciate the animosity  
 16 expressed by anyone. I don't appreciate it and I will --  
 17 Q. Thank you.  
 18 A. I will have that on the record.  
 19 Q. Thank you for that comment, for whatever it's  
 20 worth.  
 21 Okay. You're an expert witness and have been so  
 22 designated and I'd like to just get to your opinions so  
 23 why don't we move on?  
 24 Other than the documents we've discussed, are there  
 25 any other documents, save and except for the one we've

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1 held until you can get an opinion from private counsel,  
 2 that you've relied upon in reaching any of your opinions  
 3 today?  
 4 A. Well, I have -- I've written seven books on this  
 5 issue of sex, celibacy and so on and I've taken out what  
 6 some of the lawyers extract as being useful to their  
 7 consideration. So it's very hard for me to say. I have  
 8 done this research for over 40 years.  
 9 Q. Well, of course, we expect that we all use our  
 10 collective wisdom, understanding and knowledge. I was  
 11 just concerned with any documents that you expressly used  
 12 for this particular case.  
 13 A. No.  
 14 Q. And with that understanding -- and obviously  
 15 realizing that you can rely upon your experience and  
 16 education -- these would be the documents -- the sum of  
 17 the documents that you have.  
 18 Is that correct?  
 19 A. Yes, sir.  
 20 Q. Okay.  
 21 A. By the way, I have thought about this. The  
 22 report of this and Father -- Judge Nuss' evaluation and so  
 23 on was reported widely in the LA Times so I have not  
 24 thought that this was under any seal.  
 25 Q. I understand that. We were just trying to be

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1 extremely careful for you, because we know courts take a  
 2 very, very jaded eye toward the release of information  
 3 that might be under some confidentiality rule.  
 4 As I say, if you can get that cleared for us then  
 5 obviously we'll refer to it. If not, we'll just keep it  
 6 out of testimony. Fair enough?  
 7 A. Sure.  
 8 Q. Now, when were you first contacted on this matter  
 9 here?  
 10 A. I do not recall the date.  
 11 Q. Okay. Was it by telephone or by letter?  
 12 A. It was by telephone.  
 13 Q. Do you remember who it was that contacted you?  
 14 A. I believe it was Mr. George MacKoul.  
 15 Q. Okay. Do you remember the substance of the  
 16 telephone conversation?  
 17 A. The substance was that he had -- or there was a  
 18 case in Stockton of allegations of sexual abuse by a  
 19 priest and would I be interested in acting as an expert in  
 20 this.  
 21 I said, "Well, I'd like to know the details."  
 22 I think he gave me some of the details -- yes, he gave  
 23 me the names and the details over the phone and I said,  
 24 "Yes, I would be interested in that."  
 25 Q. Okay. Do you have a recollection of what details

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# EXHIBIT D



1 and names were given to you at that time?  
 2 A. The names of these priests were given me -- the  
 3 two priests. I'm sorry. I still have difficulty  
 4 remembering the correct pronunciation.  
 5 Q. That's okay.  
 6 A. And he mentioned the mother and the three  
 7 daughters.  
 8 Q. Okay. Do you have a habit of jotting down notes  
 9 when information is given to you in a telephone  
 10 conversation?  
 11 A. Sometimes. Sometimes not. I ask them to send me  
 12 a letter or send me the documentation.  
 13 Q. Okay. Did you take down any notes relating to  
 14 this telephone conversation?  
 15 A. I may have put down an address and I remember  
 16 writing out -- I asked him to spell the names of the  
 17 priests.  
 18 Q. Okay. Do you have that document with you today?  
 19 A. No. No.  
 20 Q. Do you still have that document?  
 21 A. Probably not.  
 22 Q. Okay.  
 23 A. Those would be phone messages I take.  
 24 Q. Did you prepare any rough notes concerning your  
 25 review of the documents?

1 A. I put my notes within this -- within these  
 2 documents.  
 3 Q. Okay. And these notes -- are they all tabulated  
 4 there -- we have various colored tabs -- or are they  
 5 randomly on those documents?  
 6 A. They're really kind of randomly on these  
 7 documents.  
 8 Q. Well, in that case, I hate to tell you this, but  
 9 we're going to be copying it all because we need to go  
 10 through it.  
 11 A. What I usually do is I highlight usually in  
 12 yellow or pink and I put a marker -- ordinarily, I put a  
 13 marker on that page.  
 14 Q. Okay.  
 15 A. I sometimes will circle something and put a  
 16 note --  
 17 Q. Sure.  
 18 A. -- with it and sometimes --  
 19 Q. How did you in terms of analyzing these documents  
 20 determine what you felt was necessary for you to formulate  
 21 an opinion that you intend to express at trial and what  
 22 was not?  
 23 A. The point is if -- from my background and my  
 24 writing, from my experience and research, since I'm an  
 25 expert on the celibate sexual system in the church, I look

1 A. No.  
 2 Q. None whatsoever?  
 3 A. None.  
 4 Q. How, if at all, did you record your impressions  
 5 and understanding of these documents?  
 6 A. How do I record them?  
 7 Q. How did you record them? Not how do you, but how  
 8 did you?  
 9 A. I had them here (indicating) when coming to the  
 10 deposition.  
 11 Q. But what I'm getting at -- at some point you  
 12 reviewed these documents.  
 13 Is that correct?  
 14 A. Yes.  
 15 Q. And is it my understanding that you took no notes  
 16 from your review of these documents?  
 17 A. No. I use -- I use markers.  
 18 Q. I'm just trying to clear this up for the record,  
 19 so bear with me. You didn't use a tape recorder or any  
 20 other recording device?  
 21 A. No.  
 22 Q. You didn't use any notes on a computer?  
 23 A. No.  
 24 Q. You used no form whatsoever of recordation with  
 25 respect to review of these records?

1 at it from a systemic kind of way. And this is a -- the  
 2 church, of course, is a system itself and if you focus on  
 3 celibacy in the priesthood, that forms a system -- a  
 4 system of communication, a system of values, et cetera.  
 5 So a parish is a system and this is very interesting for  
 6 me. The core of this is the question of a priest's  
 7 activity with three girls. That's the core of this case,  
 8 but it exists within a parish setting, where the pastor  
 9 was the counselor to the mother of these girls and that  
 10 this priest who comes from India is the assistant to that  
 11 pastor.  
 12 I have no idea, but I have many questions about the  
 13 background of this priest, who comes from India to  
 14 California -- the only thing he says is "To make money."  
 15 He makes a statement that -- I've not interviewed him,  
 16 of course. He makes a statement that he is here to make  
 17 money for his order and he indicated that the diocese pays  
 18 his order. And I was interested in that, because that's  
 19 not the ordinary way a priest working in a diocese  
 20 receives his compensation from the parish in which he  
 21 works. And I don't have a clarification of that. Is  
 22 there money passed from, for instance, the Diocese of  
 23 Fresno to the Carmelites (sic) in India or the Diocese of  
 24 Stockton for this priest's services?  
 25 Q. Let me ask you a question. You were a

# EXHIBIT E



1 explanation of your opinions.  
2 A. Okay.  
3 Q. I just need to know the summary of the opinions.  
4 Then we'll go into the basis for your opinion.  
5 Is that fair enough?  
6 A. Sure. That's fair enough.  
7 Q. Okay.  
8 A. I'm an old teacher. That is why I responded very  
9 ingenuously to his putting his hand up, because I know  
10 that in some depositions I can go on and on and on. I can  
11 lecture on this for hours.  
12 Now, my opinion --  
13 Q. Yes. Can you give us a synopsis?  
14 A. Yes. The opinion is that this priest had a clear  
15 pattern of grooming these children for sexual activity --  
16 this parish priest. His approach to the daughters. His  
17 activity there. His insinuation into the family, et  
18 cetera.  
19 This exists within the context of a parish in which  
20 the pastor had a very interesting relationship with the  
21 mother. He counseled the mother during a very difficult  
22 divorce and he was at that time a very, very close friend  
23 to the family.  
24 Q. Is this part of your opinion?  
25 A. This is part of my opinion, yeah, that the

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1 context is very important. And my opinion is that this  
2 led the children down a path of betrayal. First of all,  
3 there was a betrayal by the father, who was abusive. Then  
4 there was a betrayal by the pastor, who became friends to  
5 the mother and exchanged not only her letters with him,  
6 but his letters with her and biking together, et cetera,  
7 after a counseling relationship. The third betrayal was  
8 by the priest who came to the house and tickled the girls  
9 in activity that cannot be minimized. The fourth betrayal  
10 was when the young girl went to consult and report this to  
11 the pastor and the pastor involved her and really trapped  
12 her in a tremendously abusive situation of major  
13 proportions in terms of terror of a child. The fifth  
14 betrayal was the priest dismissing the girls from altar  
15 serving in a non-pastoral way and, of course, the report  
16 from the diocese about him was that he needed some  
17 pastoral upbringing. And then the betrayal in terms of  
18 even insinuating the power in the whole structure. For  
19 instance, the pastor says that he instructed his staff to  
20 kind of crowd out this woman -- this mother of the  
21 children --  
22 Q. Who says this?  
23 A. The pastor.  
24 Q. Actually says that?  
25 A. He actually says that in his deposition, that he

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1 instructed the staff to, in a sense -- I can't remember  
2 the words, but I can find them in here. And the staff,  
3 being more or less almost to a woman devoted to the  
4 priest, did this, but I noticed in any comments that I  
5 have --  
6 Q. Excuse me. This is not part of the opinion.  
7 This is an explanation.  
8 What's the rest of your opinion? I was a teacher for  
9 16 years myself so I'm trying to keep you on track.  
10 A. Thank you. I appreciate that.  
11 Q. We'll get through this.  
12 A. That the betrayal was that the pastor did intrude  
13 himself into the family in a betrayal way.  
14 Q. All right. Did you form any opinions with  
15 respect to any of the conduct on behalf of Monsignor Ryan,  
16 Bishop Blaire or the corporate entity, the diocese, the  
17 Roman Catholic Bishop of Stockton, a corporation sole,  
18 with respect to when they became aware of these  
19 allegations?  
20 A. My opinion about the report, once given to the  
21 bishop, was that he acted summarily and he acted correctly  
22 in that regard; that there are some questions, perhaps,  
23 about how other things were handled. My opinion would be  
24 that the diocese did not examine the -- this priest and  
25 his behaviors in the past before they accepted him into

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1 the diocese. The fact that there is no documentation is  
2 not proof that there was nothing there.  
3 Q. Do you have any proof that there was something  
4 there?  
5 A. I have no proof.  
6 Q. Okay. Are you then assuming that there was  
7 something there?  
8 A. I am assuming the -- the fact is that the diocese  
9 did not do a thorough investigation. They did a summary  
10 investigation, if anything.  
11 Q. Granted, but does this fall under the no harm, no  
12 foul rule in the sense that there was nothing there,  
13 unless you've got something for us?  
14 A. I'll tell you, letters even of commendation of  
15 priests who are tremendously perverse abusers, such as  
16 Father Porter, such as Father Goeghan, such as Father  
17 Shanley -- they all had recorded testimonies from another  
18 diocese that these people were in good standing and okay.  
19 Q. Is that something someone can rely upon?  
20 A. Pardon me?  
21 Q. Can somebody rely upon that?  
22 A. No.  
23 Q. Would you in the context of your own  
24 employment -- if you were to request a letter of  
25 recommendation and it was prepared and forwarded to a

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# EXHIBIT F

# EXHIBIT G



1 They started the tickling."  
 2 Now, he goes on and not just says that, but he blames  
 3 them for it, that "I just went along."  
 4 I don't believe that. He said he put his thing in the  
 5 pocket and never wanted the girls to do that; however, the  
 6 girls uniformly say that, "Yes, he did," and it fits in  
 7 with the picture, and that when the mother discovered that  
 8 or knew that she said, "Stop that. You can't do that."  
 9 MR. KOZINA: Can I ask you something for a  
 10 moment?  
 11  
 12 \*\* FURTHER EXAMINATION BY MR. KOZINA \*\*  
 13 MR. KOZINA: Without having to make a decision on  
 14 credibility of one party or the other, can you come up  
 15 with the opinions you just gave us without reference to  
 16 their credibility?  
 17 A. Well, I certainly came to --  
 18 Q. I think that calls for a "Yes" or "No." Then you  
 19 can explain it.  
 20 A. Yes.  
 21 Q. You can?  
 22 A. I think I can, yes.  
 23 Q. Without reference to credibility?  
 24 A. I don't understand the question.  
 25 Q. Let me ask it carefully. Without having to

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1 if it is your testimony that the priests are credible and  
 2 the girls are not, what is your opinion?  
 3 MR. MacKOUl: He's given his opinion.  
 4 MR. KOZINA: Well, let's have his opinion, then.  
 5 I'm entitled to it.  
 6 MR. MacKOUl: If he understands the question  
 7 you're asking him.  
 8 THE WITNESS: If I understand the question.  
 9 MR. KOZINA: In that case, Counsel, I would move  
 10 to strike all this testimony, for the record, but go  
 11 ahead.  
 12 Tell me what your opinion would be if you found that  
 13 the girls were not credible and the priests were.  
 14 A. You would like to do that, wouldn't you?  
 15 Q. This is not a rhetorical exercise, Mr. Sipe. I  
 16 asked you a question. You are required to respond to it,  
 17 if you can.  
 18 What would your opinion be if the girls were not  
 19 credible and the priests were?  
 20 MR. MacKOUl: Same objection. Improper  
 21 hypothetical. Misstates his testimony.  
 22 THE WITNESS: I really can't answer that.  
 23 MR. KOZINA: You don't want to answer it or you  
 24 can't?  
 25 THE WITNESS: No. You're asking me --

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1 decide who is credible and who is not, can you provide the  
 2 opinions you have provided today?  
 3 MR. MacKOUl: I just --  
 4 THE WITNESS: Ob, no.  
 5 MR. MacKOUl: I just want to put an objection on  
 6 the record.  
 7 MR. KOZINA: The answer was "No."  
 8 MR. MacKOUl: Improper --  
 9 MR. KOZINA: No, it's not. It's what he said.  
 10 THE WITNESS: Well, I'm not quite understanding  
 11 your question. I read everything and I have an opinion.  
 12 MR. KOZINA: All right.  
 13 THE WITNESS: And this priest could be --  
 14 objectively, before I start, this priest could be  
 15 objectively pure as the driven snow.  
 16 MR. KOZINA: But what is your opinion, if you  
 17 were to assume the girls are not credible -- what is your  
 18 opinion, if you were to assume that the girls were not  
 19 credible and the priests and the diocese was not credible?  
 20 MR. MacKOUl: That's an improper hypothetical.  
 21 He testified that the girls are credible and the priest is  
 22 not credible, so you're twisting his testimony. That's an  
 23 improper hypothetical.  
 24 MR. KOZINA: Well, the hypotheticals are intended  
 25 to be "What if's." If it's supported by the testimony --

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1 MR. MacKOUl: Badgering the witness.  
 2 Argumentative.  
 3 THE WITNESS: You're asking me, for instance, a  
 4 hypothetical. What would happen if 9-11 never happened?  
 5 I mean, not only 9-11 in this parish, but 9-11 nationally.  
 6 MR. KOZINA: Is this an answer or a question?  
 7 A. This is an answer.  
 8 Q. Okay.  
 9 A. That's why I'm saying, this is why it's  
 10 impossible for me to answer.  
 11 Q. All right. You do find it possible to come up  
 12 with an opinion -- is it correct -- by assuming the  
 13 credibility of the girls and the lack of credibility of  
 14 the priests.  
 15 Is that correct?  
 16 MR. MacKOUl: That's not correct.  
 17 MR. KOZINA: Mr. MacKOUl, I --  
 18 MR. MacKOUl: Excuse me. Misstates his  
 19 testimony. He never made an assumption. He made a  
 20 statement of fact. Counsel is misleading the witness  
 21 again for the third time.  
 22 MR. KOZINA: Did you receive all of the  
 23 depositions from Mr. MacKOUl?  
 24 THE WITNESS: This is all I've received  
 25 (indicating).

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Law Offices of Anthony Boskovich, 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540

4 508-495-4955

5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210

8 408-286-5150

9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and  
in her capacity as Guardian ad Litem for  
15 RACHEL LOMAS and AMBER LOMAS,  
*Plaintiffs,*  
16 v.  
17 FATHER JOSEPH ILLO; FATHER FRANCIS  
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;  
18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

No. CV 018440

PLAINTIFFS' OPPOSITION TO  
MOTION IN LIMINE TO  
EXCLUDE EVIDENCE RELATED  
TO DALLAS CHARTER AND  
ALLEGED CLERGY  
MALPRACTICE

Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

24 Defendants once again come to this court with yet another motion in limine that is totally  
25 inappropriate. Here, they request exclusion of evidence relating to a tort that does not exist, leaving  
26 this court to guess exactly what evidence that might be, and mention of a document that they fail to

28 Plaintiffs' Opposition to Motion in Limine  
re Dallas Charter and Clergy Malpractice

cy  
Filed FEB 22 2005  
DEBRA J. HUBBARD, CLERK  
Charlene Gray  
DEPUTY



Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 provide to the court or even inform the court of its contents. This is nothing more than an abuse of  
2 the process and a waste of this court's time, and the motion should be denied on that basis alone.

3 (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670-71 [56 Cal.Rptr.2d 803, 809])

4 In any event, the issues raised in this motion appear to mirror those in defendants' motion  
5 to exclude evidence of church governance. Plaintiffs acknowledge that California law does not  
6 provide for clergy malpractice, and the Dallas Charter was signed after the events in question.  
7 Rather than repeat that lengthy argument, plaintiffs request judicial notice of their opposition to that  
8 motion and will rely on those arguments.

9 The motion must be denied.

10  
11 Dated: 19 February 2005

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\_\_\_\_\_  
Anthony Boskovich  
Attorney for plaintiffs

Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540  
4 508-495-4955  
5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210  
7  
8 408-286-5150  
9 Attorneys for Plaintiffs

Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By *Charlene Gray*  
DEPUTY

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and  
in her capacity as Guardian ad Litem for  
15 RACHEL LOMAS and AMBER LOMAS,  
*Plaintiffs,*  
16 v.  
17 FATHER JOSEPH ILLO; FATHER FRANCIS  
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;  
18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

No. CV 018440  
PLAINTIFFS' LIMITED  
OPPOSITION TO MOTION  
IN LIMINE TO EXCLUDE  
OPINION TESTIMONY ON  
CREDIBILITY OF PARTIES  
Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

22 Once again, defendants bring an inappropriate motion, this time asking that plaintiffs follow  
23 the law regarding eliciting testimony of a witness' opinion on the credibility of a party. That of  
24 course is the law, and plaintiffs have no choice but to follow. It simply is not the proper subject of  
25 a motion in limine, and is an abuse of that process. On that basis, the motion should be denied  
26  
27

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1 outright. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670-71 [56 Cal.Rptr.2d 803,  
2 809])

3 One point needs to be made, however. Both Mary Mullins and Owen Kummerle testified  
4 that Father Illo admitted that he had lied to the choir about what was contained in Jose Munoz'  
5 personnel file when he implied that Jose had committed sexual misconduct in th church. That  
6 statement is an admissible admission by a party. (Evid. Code § 1220) It is admissible because it goes  
7 to Father Illo's credibility. (Evid. Code § 1109, subd. (c)) It is admissible to show a lack of accident  
8 or mistake, and intent. (Evid. Code § 1101, subd. (b); *Andrews v. City and County of San Francisco* (1988)  
9 205 Cal.App.3d 938, 945 [252 Cal.Rptr. 716, 720]) It is also probative of malice, and conscious  
10 disregard for the safety of others, which renders such evidence admissible to support a claim for  
11 punitive damages, (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1160-1161; *Bihun v.*  
12 *AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 989 [16 Cal.Rptr.2d 787,], overruled on  
13 other grds., *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 121]),  
14 as well as supporting plaintiffs' claim for defamation. (See, e.g., *Brewer v. Second Baptist Church of Los*  
15 *Angeles* (1948) 32 Cal.2d 791, 799 [197 P.2d 713, 718] ["The jury could conclude that Reverend  
16 Henderson had developed a strong dislike for plaintiffs. They could also conclude the Reverend  
17 Henderson wished to free himself of any criticism by expelling his opponents from the church. These  
18 facts considered with the language of the opening paragraph of the charges read to the church are  
19 clearly sufficient to support a finding of a malicious or improper motive for the publication on the  
20 part of Reverend Henderson."]; see also, *McNair v. Worldwide Church of God* (1987) 197 Cal.App.3d

21 //  
22 //  
23 //  
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26 //



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1 363, 376 [242 Cal.Rptr. 823, 833])

2 The motion must be denied.

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4 Dated: 19 February 2005

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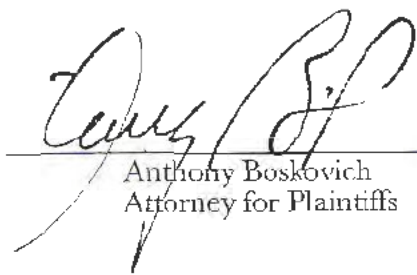
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Anthony Boskovich  
Attorney for Plaintiffs

Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540

4 508-495-4955

5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210

8 408-286-5150

9 Attorneys for Plaintiffs

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18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

No. CV 018440

PLAINTIFFS' OPPOSITION TO  
MOTION IN LIMINE TO  
PRECLUDE ANY REFERENCE  
TO OR DISCUSSION OF PRIOR  
UNRELATED COMMENTS BY  
FATHER ILLO

Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

23 Defendants come to this court with an extremely broad motion in limine asking that plaintiffs  
24 be precluded from introducing any evidence regarding "prior unrelated comments that may have  
25 been made by FATHER ILLO." As will be shown, this motion is overbroad, unintelligible, and this  
26 court cannot possibly fashion an order on the basis of this motion. In any event, evidence may be

cy  
Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

1 introduced about prior comments and conduct by Father Illo that tend to show his custom and  
2 practice, as well as malice toward Kathleen Machado and her children, all of which are relevant and  
3 admissible in plaintiffs' claims for intentional infliction of emotional distress and defamation.  
4 Additionally, evidence of Father Illo's past conduct is relevant to establishing the knowledge of  
5 Bishop Blaire and Monsignor Ryan, and the Diocese, which shows ratification and negligence in  
6 their supervision of Father Illo.

7 First, this motion is exactly the type condemned in *Kelly v. New West Federal Savings* (1996) 49  
8 Cal.App.4th 659, 670-71 [56 Cal.Rptr.2d 803, 809], in which the Court chastised defense counsel  
9 for bringing motions which contain no evidentiary support, state only general propositions of law,  
10 and leave the trial judge to rule in a vacuum. Here, defendants mention one occasion when Father  
11 Illo discussed his opinions with the father of a parishioner, but nothing else. What was the context  
12 of that conversation? How was it relevant or irrelevant to the issues here? Defendants ask this court  
13 to simply guess.

14 Quoting the Supreme Court case of *People v. Morris* (1991) 53 C.3d 152, 188, the *Kelly* court  
15 stated, at p. 671:

16 "Under appropriate circumstances, a motion in limine can serve the function of a  
17 'motion to exclude' under Evidence Code section 353 by allowing the trial court to  
18 rule on a specific objection to particular evidence.... [¶] In other cases, however, a  
19 motion in limine may not satisfy the requirements of Evidence Code section 353. For  
20 example, it may be difficult to specify exactly what evidence is the subject of the  
21 motion until that evidence is offered. Actual testimony sometimes defies pretrial  
22 predictions of what a witness will say on the stand. Events in the trial may change the  
23 context in which the evidence is offered to an extent that a renewed objection is  
24 necessary to satisfy the language and purpose of Evidence Code section 353. As we  
25 observed in *People v. Jennings* [(1988) 46 Cal.3d 963, 251 Cal.Rptr. 278, 760 P.2d  
26 475], '[U]ntil the evidence is actually offered, and the court is aware of its relevance  
27 in context, its probative value, and its potential for prejudice, matters related to the  
28 state of the evidence at the time an objection is made, the court cannot intelligently  
rule on admissibility.' (Citation) In these kinds of circumstances, an objection at the  
time the evidence is offered serves to focus the issue and to protect the record."  
(Citation)

25 The motion must be denied on that ground alone.



1 But, in an abundance of caution, plaintiffs will present additional arguments. Evidence of  
2 habit or customary practices, as demonstrated by repeated instances of similar conduct, is admissible  
3 to show conduct in conformity with that custom or habit on a particular occasion. (Evid. C. § 1105;  
4 *People v. Webb* (1993) 6 Cal.4th 494, 529 [24 Cal.Rptr.2d 779, 801-02]) Habit or customary practice  
5 may be established by repeated instances of conduct whether they occur before or after the time of  
6 injury. (*Dincau v. Tomayose* (1982) 131 Cal.App.3d 780, 795-796 [182 Cal.Rptr. 855, 864-65])  
7 Evidence of other instances of conduct are admissible as long as they are sufficiently related in time  
8 and character to the conduct at issue in the litigation. (*Ibid.*)

9 Prior statements are also admissible to show, among other things, motive, opportunity, intent,  
10 preparation, and absence of mistake or accident. (Evid Code § 1101, subd. (b)) For example, prior  
11 similar acts of unprovoked violence has been held admissible to show intent and absence of mistake,  
12 thus tending to show an intent to injure the plaintiff. (See, e.g., *Andrews v. City and County of San*  
13 *Francisco* (1988) 205 Cal.App.3d 938, 945 [252 Cal.Rptr. 716, 720]) Additionally, the more often a  
14 person commits a similar act, the more relevant to the issue of intent. Applying the so-called  
15 Doctrine of Chances, our Supreme Court has held: “[The] more often one does something, the more  
16 likely that something was intended, and even premeditated, rather than accidental or spontaneous.  
17 (*People v. Steele* (2002) 27 Cal.4th 1230, 1244 [120 Cal.Rptr.2d 432, 443])

18 Additionally, the motion cuts much too wide a swath because it precludes appropriate and  
19 admissible evidence of credibility. (Evid. Code § 1109, subd. (c)) Defendants prior statement and  
20 their opposition to plaintiffs’ motions in limine indicate that credibility is a critical issue in this case,  
21 and it is virtually certain that one or more defendants or their witnesses will make statements in  
22 which Father Illo’s prior statements will go directly to credibility. Also, a party’s conduct on other  
23 occasions is proper impeachment when the party represents that the conduct charged is inconsistent  
24 with its usual practice. (See, *Kovacs v. Strugeon* (1969) 274 Cal.App.2d 478, 486 [79 Cal.Rptr. 426,  
25 432] [proper to cross-examine witness regarding drinking habits when he has testified it is not his  
26 habit to drink every night]; see also, Evid. C. § 780 [admitting “any matter that has any tendency

1 | in reason to prove or disprove the truthfulness of [a witness'] testimony...") In the vacuum provided  
2 | by defendants' motion, this court simply cannot preclude this evidence at this stage because it most  
3 | likely will run afoul of subdivision (c).

4 | Evidence of other instances of misconduct is also probative of malice, and conscious disregard  
5 | for the safety of others, which renders such evidence admissible to support a claim for punitive  
6 | damages, (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1160-1161 [74 Cal.Rptr.2d 510,  
7 | 530-31]; *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 989 [16 Cal.Rptr.2d  
8 | 787,792], overruled on other grds., *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25  
9 | Cal.Rptr.2d 109, 121]), as well as supporting plaintiffs' claim for defamation. (See, e.g., *Brewer v.*  
10 | *Second Baptist Church of Los Angeles* (1948) 32 Cal.2d 791, 799 [197 P.2d 713, 718] ["The jury could  
11 | conclude that Reverend Henderson had developed a strong dislike for plaintiffs. They could also  
12 | conclude the Reverend Henderson wished to free himself of any criticism by expelling his opponents  
13 | from the church. These facts considered with the language of the opening paragraph of the charges  
14 | read to the church are clearly sufficient to support a finding of a malicious or improper motive for  
15 | the publication on the part of Reverend Henderson."]; see also, *McNair v. Worldwide Church of God*  
16 | (1987) 197 Cal.App.3d 363, 376 [242 Cal.Rptr. 823, 833])

17 | Additionally, other outrageous acts and comments by Father Illo are admissible to show  
18 | knowledge, negligence, and ratification by the Diocese, Bishop Blaire, and Monsignor Ryan. In  
19 | order to prove these claims, there must be evidence of the employer's knowledge that the employee  
20 | cannot be trusted to act properly without supervision. (*Juarez v. Boy Scouts of America, Inc.* (2000) 81  
21 | Cal.App.4th 377, 395 [97 Cal.Rptr.2d 12, 25]; *Noble v. Sears, Roebuck & Company* (1973) 33  
22 | Cal.App.3d 654, 664 [109 Cal.Rptr. 269]) Father Illo's other defamatory acts as well as other  
23 | outrageous and mean-spirited conduct against other parishioners, particularly women and gays, all  
24 | with knowledge of his superiors, goes directly to his superior's liability. And, as argued in Plaintiffs'  
25 | Opposition to Defendants' Motion regarding Church Governance, the failure to deal with the issue  
26 | is strong evidence of ratification.



1 Defendants' argument that the prior comments, whatever they might be, are inadmissible  
2 hearsay is ludicrous. First, we don't know what the comments are. Next, they are not being offered  
3 to prove the truth of the matter, but rather will most likely be offered to show that the statements  
4 were in fact made. That is patently not hearsay. (Evid. Code § 1200, subd. (a); see *Am-Cal Investment*  
5 *Company, Inc. v. Sharlyn Estates, Inc.* (1967) 255 Cal.App.2d 526, 541 [63 Cal.Rptr. 518, 528]) Showing  
6 that the Bishop and diocese had knowledge of the behavior also makes the statements admissible as  
7 nonhearsay. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 988 [16 Cal.Rptr.2d  
8 787, 792], overruled on other grds., *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25  
9 Cal.Rptr.2d 109, 121])

10 The evidence, whatever it might be, also is not subject to exclusion by Evidence Code section  
11 352. Given the emotional nature of the plaintiffs charges, and of the evidence necessary to prove  
12 them, it is not unanticipated that defendants would attempt to exclude them as unduly prejudicial.  
13 But, what statements are they talking about? In any event, "prejudicial" is not synonymous with  
14 "damaging", (*Bihun, supra*, at 989-990), nor does it refer to anything the defendant finds  
15 inconvenient. (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998 [62 Cal.Rptr.2d 164]) Evidence is unduly  
16 prejudicial when it "uniquely tends to evoke an emotional bias against the party as an individual and  
17 which has very little effect on the issues." (*Bihun, supra*, at 989) Accusations of childhood sexual  
18 abuse, as well as "outing" of a gay parishioner for no reason other than spite, are truly disturbing but  
19 that does not justify restricting the admission of material evidence that is probative of the essential  
20 issues in dispute. (*Ibid.*) Although damaging and inconvenient to the defendants, the evidence of its  
21 consistent retention and reassignment of known child molesters is the very heart of this case.

22 Any evidence of this sort to be introduced by plaintiffs will not take much trial time. It is not  
23 necessary to conduct numerous mini-trials to determine the admissibility of the statements, if any;  
24 this court will be able to rule promptly from the bench with full knowledge of the context in which  
25 they are being offered. Plaintiffs have a substantial burden to carry in this trial, and must be  
26 permitted the opportunity to prove their case.

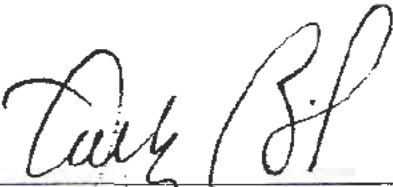


Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

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The motion must be denied.

Dated: 19 February 2005



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Anthony Boskovich  
Attorney for plaintiffs

Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540  
4 508-495-4955  
5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210  
7  
8 408-286-5150  
9 Attorneys for Plaintiffs

Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and  
in her capacity as Guardian ad Litem for  
15 RACHEL LOMAS and AMBER LOMAS,  
*Plaintiffs,*  
16 v.  
17 FATHER JOSEPH ILLO; FATHER FRANCIS  
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;  
18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

No. CV 018440  
PLAINTIFFS' OPPOSITION TO  
MOTION IN LIMINE TO LIMIT  
EVIDENCE AND WITNESSES TO  
THOSE DESIGNATED  
Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

22 This motion in limine is similar to the motions in limine that were severely criticized in *Kelly*  
23 v. *New West Federal Savings* (1996) 49 C.A.4th 659. It is not in fact a proper motion in limine, but  
24 rather, it is merely a declaration of existing law. (See *Kelly, supra*, at 670-671)

25 ....many of the motions filed by Amteck were not properly the subject of  
26 motions in limine, were not adequately presented, or sought rulings which  
would merely be declaratory of existing law or would not provide any

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meaningful guidance for the parties or witnesses. For example, Motion no. 19 sought to "...exclude any testimony of the plaintiffs which is speculative." No factual support or argument was presented to suggest the nature and type of speculative testimony which Amtech expected to be elicited from testimony which Amtech expected to be elicited from plaintiffs. Motions no. 8, 20 and 21 sought to exclude evidence of prior incidents unless an appropriate foundation was established to show the relevance of such evidence.... Again, no factual support was presented in connection with the motions, meaning that the court would have to rule in a vacuum. Motion no. 7, previously referred to, sought to limit the opinions of plaintiff's experts to those "rendered at deposition and in written reports." Again, there was no supporting evidence to suggest what opinions had been rendered at the depositions, leaving the court and the parties to guess what opinions during trial may be included within the scope of the ruling.

Plaintiffs cannot respond to this motion because they have no idea of any basis on which defendants could claim that Plaintiffs may attempt at trial to introduce the opinions of non-designated expert witnesses. For similar reasons, the Court cannot intelligently rule on this motion because it is left to guess as to the nature and source of any testimony to which defendant is referring.

Plaintiffs have disclosed their retained experts. Plaintiffs have therefore complied in every respect with Code of Civil Procedure section 2034. There has never been any suggestion in this case that plaintiff has not so complied.

Plaintiff's written exchange of expert trial witness information and expert declaration also stated the following other experts might be called:

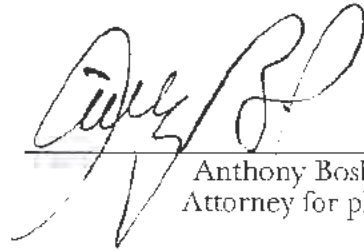
- 4) Any and all individuals designated as experts by any of the parties in this action; and,
- 5) Any and all individuals hereinafter selected and designated as experts pursuant to Code of Civil Procedure §2034.

...  
The Plaintiffs also hereby expressly reserve the right to call such other experts at trial as are necessary to rebut the testimony of experts who testify on behalf of other parties to this action.  
(Exhibit A to Declaration of Michael Phillips, p. 3)

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1 Plaintiffs have therefore complied with every aspect of the code, and can do no more. This  
2 motion is a waste of this court's time, and must be denied.

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4 Dated: 20 February 2005

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11 Anthony Boskovich  
12 Attorney for plaintiffs  
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Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150



Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540  
4 508-495-4955  
5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210  
7  
8 408-286-5150  
9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and  
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16 v.  
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18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

No. CV 018440  
PLAINTIFFS' OPPOSITION TO  
MOTION IN LIMINE TO  
PRECLUDE EVIDENCE OF  
SUBSEQUENT REMEDIAL  
MEASURES  
Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

22 As an apparent parallel of their motion regarding church governance, defendants attempt  
23 to exclude any evidence of any subsequent investigation into any matter by defendants on the  
24 grounds that they are inadmissible as subsequent remedial measures. As will be shown, this motion  
25 must be denied.

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Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY



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1 First, as with defendants' other motions, the defendants have presented a factually devoid  
2 motion and leave this court to guess exactly what the factual basis of the motion is. That is  
3 impermissible, and grounds for denying the motion in the first instance. (*Kelly v. New West Federal*  
4 *Savings* (1996) 49 Cal.App.4th 659, 670-71 [56 Cal.Rptr.2d 803, 809])

5 In an abundance of caution, plaintiffs will attempt to guess what investigations defendants  
6 are referring to. When Kathleen Machado received a letter from Father Illo that she had been asked  
7 to leave the parish, she wrote a letter to Bishop Blaire, asking that he look into the situation with  
8 Fathers Illo and Francis. Bishop Blaire recognized that the conduct of Father Illo was inappropriate,  
9 and that the conduct of Father Francis raised several red flags of sexual abuse, and he ordered two  
10 separate investigations, one into Father Illo, and one into Father Francis. Bishop Blaire has testified  
11 the investigation into Father Illo was a canonical investigation; the investigation into Father Francis  
12 was not a canonical investigation. In the investigation of Father Francis by Monsignor Ryan and  
13 Sister Barbara, Amber disclosed the molestations, and Kathleen also reported that Father Illo had  
14 held her 2½ year old daughter over a cliff, which was clearly a child abuse. Although Sister Barbara  
15 reported the abuse by Father Francis, no report was made by anyone regarding Father Illo's abuse,  
16 and in fact in the written report of the interview there is absolutely no mention of the cliff incident.  
17 The canonical investigation into Father Illo resulted in a preliminary report finding misconduct on  
18 the part of Father Illo, subject to the Bishop's unfettered discretion as to how to proceed. Rather  
19 than complete the investigation, Bishop Blaire has testified that he will wait until the civil  
20 proceedings have concluded before deciding how to proceed.

21 Evidence Code section 1151 provides:

22 When, after the occurrence of an event, remedial or precautionary measures are  
23 taken, which, if taken previously, would have tended to make the event less likely to  
24 occur, evidence of such subsequent measures is inadmissible to prove negligence or  
25 culpable conduct in connection with the event.

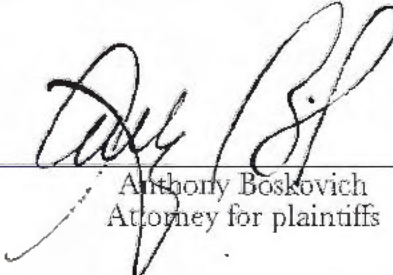
26 Upon reading the statute, the first question is whether the subsequent investigations "would  
27 have tended to make the event less likely to occur ..." Defendants have provided no evidence to this

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1 court that would tend to establish that these investigations would have tended to make the event less  
2 likely to occur. All witnesses, including Bishop Blaire, have testified that they knew that Father Illo  
3 had an explosive temper and tended to emotionally injure people. This was known prior to any  
4 investigation, and nothing was done about it. And, because the Bishop has testified that he will do  
5 nothing until the jury in this matter makes its determination, it simply cannot be said that the  
6 investigation was a subsequent remedial measure, but rather, as the Bishop characterized it and as  
7 the report itself states, the investigation into Father Illo was nothing more than a preliminary  
8 investigation into facts, thus making the statute inapplicable. The same is true regarding the  
9 investigation into Father Francis. "Evidence Code section 1151 plainly refers to "remedial or  
10 precautionary measures", not to mere reports or investigations conducted after an accident or other  
11 event resulting in injury. By its terms, it would appear to include only subsequent actions taken to  
12 repair or correct a problem identified by an investigation -- not the factual inquiries undertaken to  
13 determine whether such repair or correction was necessary. (*Fox v. Kramer* (2000) 22 Cal.4th 531, 544  
14 [93 Cal.Rptr.2d 497, 506])

15 The motion must be denied.

16  
17 Dated: 19 February 2005

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22   
23 Anthony Boskovich  
24 Attorney for plaintiffs



Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540

4 508-495-4955

5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210

8 408-286-5150

9 Attorneys for Plaintiffs

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19 DOES 1 through 100,  
*Defendants.*

No. CV 018440

PLAINTIFFS' COMBINED  
OPPOSITION TO MOTION  
IN LIMINE TO LIMIT  
EXPERT WITNESS TESTIMONY  
TO OPINIONS EXPRESSED  
IN DEPOSITION

Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

22 Unfortunately, defendants once again come to this court with an inadequate factual showing  
23 that would allow this court to make a meaningful ruling. The motions are unintelligible, but seem  
24 to be that plaintiffs' experts should be limited to expressing their opinions at trial as being entirely  
25 in conformity with their deposition testimony. Defendants' citation to *Jones v. Moore* (2000) 80  
26 Cal.App.4th 557, 565 [95 Cal.Rptr.2d 216, 220] is inappropriate and misleading, because the

28 Plaintiffs' Combined Opposition to Motions in Limine  
to Limit Opinion Testimony of Plaintiffs' Experts

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Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

1 | dispositive fact in that case was that the retained expert promised to notify the defendants of any  
2 | additional or changed opinions before trial testimony so that a further deposition could be  
3 | conducted, and that did not happen. The Court of Appeal held in those circumstances that  
4 | preclusion of any further opinion at trial was justified. Here, defendants have not informed the court  
5 | as to whether that agreement was made, and, if it was, this court could not possibly rule on this  
6 | motion because trial has not even yet begun.

7 | Further, defendants' motion to exclude any expert opinions not expressed at deposition is a  
8 | position that has been held to be an abuse of discretion and reversible error *Kelly v. New West Federal*  
9 | *Savings* (1996) 49 Cal.App.4th 659 [56 Cal.Rptr.2d 803])

10 | In the *Kelly* case, involving an accident when one of two elevators did not level properly,  
11 | causing the plaintiffs to fall and sustain injuries, one of the motions in limine granted by the trial  
12 | judge, which was found to be an abuse of discretion by the court of appeal, was a motion that sought  
13 | to preclude "plaintiffs, their counsel and/or any witnesses" from producing evidence that, in essence,  
14 | conflicted with the facts of the accident related by plaintiff in her deposition. One plaintiff had  
15 | originally identified the larger of two elevators as the subject elevator, but later was not sure which  
16 | one was involved. The other plaintiff was always unsure which elevator was involved.

17 | A second motion in limine sought to limit plaintiffs' expert to only those opinions expressed  
18 | in deposition. A third motion in limine, based upon the first, sought to preclude plaintiffs' expert  
19 | from testifying at all, because the opinions rendered during his deposition were based largely on the  
20 | larger elevator plaintiff had first identified. There was evidence, however, that both elevators had  
21 | a history of the same type of malfunction as plaintiff alleged, and after her deposition, plaintiff's  
22 | realization that she was not certain which elevator was the one involved was communicated to the  
23 | defendant.

24 | The court held that the granting of the motions in limine was an abuse of discretion.

25 | In the *Kelly* case, before turning to the precise issue of the defendant's motion to exclude the  
26 | expert's opinions, the court issued a scathing criticism of the prevalence in recent years of the filing  
27 |



1 of improper motions in limine which, like the several motions filed by defendant in this case, are  
2 completely devoid of any factual support, and in effect, ask the trial judge to make evidentiary rulings  
3 in a vacuum. Giving examples of several of the improper motions before it that gave the trial judge  
4 no specific example of the testimony he or she was being asked to exclude, the court stated, at p. 670-  
5 671:

6 . . . many of the motions filed by Amtech were not properly the subject of motions  
7 in limine, were not adequately presented, or sought rulings which would merely be  
8 declaratory of existing law or would not provide any meaningful guidance for the  
9 parties or witnesses. For example, motion no. 19 sought to ". . . exclude any  
10 testimony of the plaintiffs which is speculative." No factual support or argument was  
11 presented to suggest the nature and type of speculative testimony which Amtech  
12 expected to be elicited from plaintiffs. Motions no. 8, 20 and 21 sought to exclude  
13 evidence of prior incidents unless an appropriate foundation was established to show  
14 the relevance of such evidence. . . . Again, no factual support was presented in  
15 connection with the motions, meaning that the court would have to rule in a vacuum.  
16 Motion no. 7, previously referred to, sought to limit the opinions of plaintiff's experts  
17 to those "rendered at deposition and in written reports." Again, there was no  
18 supporting evidence to suggest what opinions had been rendered at the depositions,  
19 leaving the court and the parties to guess what opinions during trial may be included  
20 within the scope of the ruling. (Emphasis added.)

21 The court noted that one difficulty with such non-specific motions, which do not identify the  
22 precise testimony sought to be excluded, is that they do not satisfy the requirements of Evidence  
23 Code section 353 in apprising either the trial court or the reviewing court of the exact nature of the  
24 objection and the propriety of admitting or excluding particular evidence. Quoting the Supreme  
25 Court case of *People v. Morris* (1991) 53 C.3d 152, 188, the *Kelly* court stated, at p. 671:

26 Under appropriate circumstances, a motion in limine can serve the function of a  
27 "motion to exclude" under Evidence Code section 353 by allowing the trial court to  
28 rule on a specific objection to particular evidence. . . . [¶] In other cases, however,  
a motion in limine may not satisfy the requirements of Evidence Code section 353.  
For example, it may be difficult to specify exactly what evidence is the subject of the  
motion until that evidence is offered. Actual testimony sometimes defies pretrial  
predictions of what a witness will say on the stand. Events in the trial may change  
the context in which the evidence is offered to an extent that a renewed objection is  
necessary to satisfy the language and purpose of Evidence Code section 353. As we  
observed in *People v. Jennings* (1988) 46 Cal.3d 963 . . . , "[U]ntil the evidence is  
actually offered, and the court is aware of its relevance in context, its probative value,  
and its potential for prejudice, matters related to the state of the evidence at the time  
an objection is made, the court cannot intelligently rule on admissibility." (64 Cal.3d  
at p. 975, fn. 3.) In these kind of circumstances, an objection at the time the evidence



Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

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is offered serves to focus the issue and to protect the record. (*People v. Morris, supra*, 53 Cal.3d at pp. 188-190.) (Emphasis added.)

Absent any indication of specific testimony or specific evidence with which a party is concerned, a motion in limine should not be entertained because it is too vague for the court to rule intelligently on it. Here, the court is being asked to guess at what testimony might be offered at trial and to exclude it in advance; and the parties are likewise given no guidance as to exactly what testimony might potentially fall within the scope of the ruling.

Contrary to defendant's suggestion, there is nothing either expressly stated or implied with any provision in Code of Civil Procedure section 2034 that would require an expert witness to conform his or her testimony to that stated in a pretrial deposition. The purpose of section 2034 is ensure that both parties disclose to the other side the identities of all experts anticipated to testify and the general subject matter of their anticipated testimony, sufficient to enable one's adversary the opportunity to review any writings such experts rely upon and to depose them prior to trial.

To suggest that an expert witness must be limited at trial to stating only those opinions expressed at deposition is to suggest a means of issue preclusion that is not authorized by any statute or legal authority.

As the Court stated in *Kelly*, at p. 672:

While a party may be precluded from introducing evidence based on a response to a request for admission (Code Civ. Proc., § 2033, subd. (n)), depositions and interrogatories do not perform the same function as requests for admissions, issue preclusion: "As Professor Hogan points out, '[t]he request for admission differs fundamentally from the other five discovery tools (depositions, interrogatories, inspection demands, medical examinations, and expert witness exchanges). These other devices have as their main thrust the uncovering of factual data that may be used in proving things at trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial.' [Citation.]" . . . .

So long as plaintiff's experts in this case testify within the general scope of issues disclosed in the expert witness disclosure statement, there is no statutory or other basis for attempting to limit their trial testimony only to specific opinions stated during deposition. For one thing, certain

Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 questions may not have been asked during an expert's deposition, or they may not have been framed  
2 in the same manner, or in the same context, as they may be asked at trial. For another thing, it is  
3 always possible that an expert witness may review new material, or simply think of something he or  
4 she had not thought of before, between the time of deposition and the time of trial.

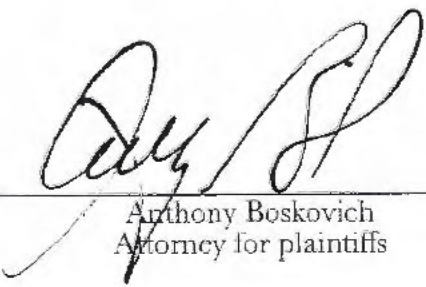
5 To the extent an expert may express an opinion at trial that conflicts with testimony given  
6 at deposition, the proper means for challenging it is through cross-examination, not preclusion of the  
7 testimony. In *Kelly*, the court came to the same conclusion, stating, at p. 672:

8 It is a misuse of a motion in limine to attempt to compel a witness or a party to  
9 conform his or her trial testimony to a preconceived factual scenario based on  
10 testimony given during pretrial discovery. One purpose of pretrial discovery is to pin  
11 down the testimony of parties and witnesses which can be used for impeachment at  
12 the time of trial. Amtech clearly succeeded in this regard. Other than issue  
13 preclusion based on response to requests for admissions, sanctions for abuse of the  
14 discovery process, or a clear case of waiver or estoppel, a court abuses its discretion  
15 when it precludes a party from trying a case on a theory consistent with existing  
16 evidence, even though the pretrial testimony of the party relating to how the accident  
17 occurred is contrary to the theory. There is no suggestion in the record before us that  
18 plaintiffs abused any portion of the discovery process, nor are there any facts to  
19 support a theory of waiver or estoppel. (Emphasis added.)

20 Accordingly, the court found that the motions in limine were themselves improper, and the  
21 granting of them was an abuse of discretion that constituted reversible error. To grant defendant's  
22 motion in limine in this case would likewise be an abuse of discretion and reversible error.

23 Therefore, the motion must be denied on the basis that defendants have presented an  
24 inadequate factual basis, and, in any event, are premature because defendant may still have an  
25 opportunity for a further deposition should the experts' opinions change or new opinions reached.

26 Dated: 19 February 2005

27   
28 \_\_\_\_\_  
Anthony Boskovich  
Attorney for plaintiffs



Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540  
4 508-495-4955  
5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6<sup>th</sup> Floor  
San Jose, California 95113-1210  
7  
8 408-286-5150  
9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and  
in her capacity as Guardian ad Litem for  
15 RACHEL LOMAS and AMBER LOMAS,  
*Plaintiffs,*  
16 v.  
17 FATHER JOSEPH ILLO; FATHER FRANCIS  
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;  
18 FATHER RICHARD RYAN; BISHOP STEVEN  
BLAIRE; THE DIOCESE OF STOCKTON;  
19 DOES 1 through 100,  
*Defendants.*

Filed FEB 22, 2005  
ROSA JUNQUEIRO, CLERK  
*Charlene Gray*  
DEPUTY

No. CV 018440

PLAINTIFFS' NON-OPPOSITION  
TO MOTION IN LIMINE TO  
PRECLUDE EVIDENCE OF  
WEALTH AND REQUEST FOR  
ORDER BIFURCATING ISSUE  
OF PUNITIVE DAMAGES AND  
ORDERING DEFENDANTS TO  
PRODUCE EVIDENCE OF  
WEALTH SHOULD THE JURY  
DETERMINE THAT PUNITIVE  
DAMAGES SHOULD BE AWARDED

Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

1 Plaintiffs' do not oppose defendants' motion in limine to exclude evidence of wealth, although  
2 the request contains a misstatement of the record in this matter. By stipulation of the parties,  
3 punitive damages were stricken only as to the Diocese of Stockton on 8 January 2003 pursuant to  
4 Code of Civil Procedure section 425.14. Thus, punitive damages are still alleged as to all other  
5 defendants.

6 By this opposition, plaintiffs request that the issue of punitive damages be bifurcated, and this  
7 is reflected in the proposed jury instructions submitted to the court and all parties. Additionally,  
8 plaintiffs have not sought an order to discover the financial wealth of defendants, and by this  
9 opposition request the court to order that the individual defendants prepare evidence of their  
10 financial wealth, to be turned over to plaintiffs if and when the jury determines that punitive  
11 damages should be assessed against any defendant.

12 By way of history, the reasons that no prior was sought prior to this time are twofold. As the  
13 Declaration of Anthony Boskovich makes clear, it has been extremely difficult to obtain discovery  
14 in this matter. Bishop Blaire and Monsignor Ryan's depositions were noticed to take place nearly  
15 a year ago, but they have only been made available in the last two weeks in order to complete their  
16 depositions, although the first part of Bishop Blaire's deposition was taken in October 2004. The  
17 transcripts of the most recent depositions are not yet available.<sup>1</sup>

18 Additionally, it makes more sense to order this discovery now, contingent upon the jury's  
19 determination. This promotes both judicial economy and economy for the parties, and also most  
20 fully protects the privacy rights of the defendants. Further, by making the order now but contingent  
21 upon a jury finding, there will be no delay in the trial of this matter, and thus a minimum of  
22 inconvenience to the jury.

---

24  
25 <sup>1</sup>It is for these reasons as well that plaintiffs have not brought a motion to reinstate the  
26 punitive damages allegations against the Diocese. Plaintiffs intend to make that motion during  
27 trial, and defendants have been made aware of plaintiff's intentions for many months, both orally  
28 and in writing.



1 The procedure requested is within the discretion of this court, and in fact is a favored means  
2 of procedure.

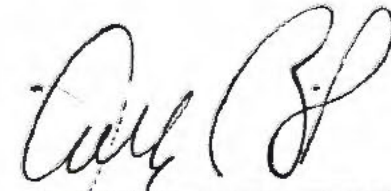
3 We reject defendant's argument that plaintiff's failure (1) to conduct pretrial  
4 discovery of defendant's financial records, (2) to subpoena documents or witnesses to  
5 be available at trial for the purpose of establishing defendant's financial condition,  
6 and (3) to formally move to bifurcate the issues of liability and award (see Civ. Code,  
7 § 3295), preclude plaintiff from obtaining a court order requiring defendant to  
8 produce his financial records at trial. We see no problem with a trial court, in its  
9 discretion, ordering a defendant to produce evidence of his or her financial condition  
10 following a determination of the defendant's liability for punitive damages, even  
11 though the plaintiff had not previously done any of those three things.

12 Civil Code section 3295, subdivision (c), allows the trial court, "at any time",  
13 to enter an order permitting the discovery of a defendant's profits and/or financial  
14 condition, if the plaintiff has established that there is a substantial probability that he  
15 or she can prevail on a claim upon which an award of punitive damages can be  
16 based. While it is true that subdivision (c) states that such an order may be made  
17 "[u]pon motion by the plaintiff supported by appropriate affidavits and after a  
18 hearing", that subdivision clearly presupposes that such motion procedure is required  
19 where the plaintiff has not actually prevailed on his or her claim at trial. However,  
20 once there has been a determination of liability by the trier of fact based on an actual  
21 weighing of the credibility of witnesses, this kind of affidavit-and-hearing procedure  
22 is patently superfluous. So long as the trial court allows the defendant sufficient time,  
23 following a determination of liability, to collect his or her financial records for  
24 presentation on the issue of the amount of such damages to be awarded, there is  
25 nothing prejudicial or unfair about using such a process to try the issue of the amount  
26 of punitive damages. If anything, this method serves the purpose behind section  
27 3295, to wit, to protect against premature disclosure of the defendant's financial  
28 condition. (Citation)

(*Mike Davidov Company v. Issod* (2000) 78 Cal.App.4th 597, 609 [92 Cal.Rptr.2d 897, 905-06]; accord,  
*Streetscenes L.L.C. v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 243 [126 Cal.Rptr.2d  
754, 760])

18 For these reasons, plaintiffs do not oppose the motion, and request the order delineated  
19 above.

21 Dated: 20 February 2005

23   
24 \_\_\_\_\_  
25 Anthony Boskovich  
26 Attorney for plaintiffs



Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586  
Sabbah and MacKoul  
2 Attorneys and Counselors at Law  
49 Locust Street  
3 Falmouth, Massachusetts 02540  
4 508-495-4955  
5 Anthony Boskovich, No. 121198  
Law Offices of Anthony Boskovich  
6 28 N. First Street, 6th Floor  
San Jose, California 95113-1210  
7  
8 408-286-5150  
9 Attorneys for Plaintiffs

Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and )  
in her capacity as Guardian ad Litem for )  
15 RACHEL LOMAS and AMBER LOMAS, )  
*Plaintiffs,* )  
16 v. )  
17 FATHER JOSEPH ILLO; FATHER FRANCIS )  
JOSEPH a.k.a. FATHER FRANCIS ARAKAL; )  
18 FATHER RICHARD RYAN; BISHOP STEVEN )  
BLAIRE; THE DIOCESE OF STOCKTON; )  
19 DOES 1 through 100, )  
*Defendants.* )

No. CV 018440  
PLAINTIFFS' OPPOSITION TO  
MOTION IN LIMINE  
REQUESTING JURY  
QUESTIONNAIRE AND  
INDIVIDUAL VOIR DIRE  
Date: 22 February 2005  
Time: 1:30 P.M.  
Department: 41  
Judge: Hon. Elizabeth Humphreys

21  
22 Plaintiffs oppose defendants request for a jury questionnaire and individual voir dire in this  
23 matter. This court has discretion to deny these requests so long as the denial is not unreasonable.  
24 (Code Civ. Proc. § 222.5) Here, the use of a juror questionnaire will unreasonably delay jury  
25 selection by 2 to 3 days, and individual voir dire will most likely take 2 weeks or more. The motion  
26 must be denied.

1 First, the parties have not even begun to meet and confer regarding any proposed juror  
2 questionnaire. Defendants' prospective questionnaire was not even received by plaintiffs' counsel  
3 until late Friday afternoon, and defendants have made no effort to meet and confer. The meet and  
4 confer process will take at least a day. The court will then be required to review the questionnaire  
5 and make its changes. That will take at least half a day. The venire will then fill out the  
6 questionnaire, and submit it to the clerk. Counsel will then need to review the questionnaires,  
7 consisting of hundreds of pages, prior to voir dire, and that will take a day, with the venire waiting  
8 in the wings. Then and only then, will voir dire begin, Thursday at the earliest.

9 Then, individual voir dire would begin. The court's questioning would last at least a half an  
10 hour, and the parties' questioning would last approximately 15 minutes each. The net result -- 1  
11 hour per juror. Then, it must be determined if the court will voir dire only the six-pack, or the entire  
12 venire before seating any jurors. If only the six pack is questioned (assuming the court uses the six-  
13 pack method), the venire will have to put its collective lives on hold until a jury is selected, which  
14 in counsel's experience would be at least 2 weeks. If the entire venire is questioned in advance, the  
15 process will take approximately the same amount of time. Thus, the combination of the  
16 questionnaire and voir dire will take the entire venire out of circulation for 3 weeks.

17 This is not a capital case in which there are constitutional mandates regarding jury selection.  
18 If defendants wanted a questionnaire, they should have circulated it weeks ago so that counsel would  
19 at least have been in agreement as to the form that would be submitted to the court.

20 This court has discretion to deny the request, and it should do so on the grounds that the

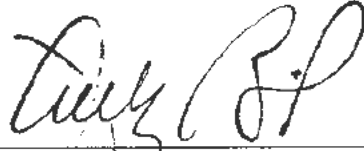
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1 process requested will result in an undue burden to the venire and result in an undue waste of time.

2 The motion must be denied.

3  
4 Dated: 19 February 2005

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6  
7 Anthony Boskovich  
8 Attorney for Plaintiffs

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27  
28 Law Offices of Anthony Boskovich 28 North First Street, 6<sup>th</sup> Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul (Bar No. 170586)  
2 SABBAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as )  
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20 vs. )

21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr. )  
22 Francis Arakal, Fr. Richard Ryan, Bishop )  
23 Steven Blaire and The Diocese of Stockton )  
24 and Does 1-100, )  
25 Defendants )

Case No.: CV018440  
**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION IN LIMINE  
TO PRECLUDE TESTIMONY  
REGARDING ANY INAPPROPRIATE  
TOUCHING OF ANY SORT TO  
PLAINTIFF AMBER LOMAS**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

1.

**INTRODUCTION**

Defendants seek to exclude any testimony regarding any inappropriate touching of plaintiff Amber Lomas.

cy  
Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY



1 Several of the causes of action plead in the complaint against Fr. Arakal by Amber  
2 Lomas are allegations of criminal battery, sexual battery and other related claims. By not  
3 allowing Amber Lomas or any other percipient witness to testify about the inappropriate  
4 touching that she claims occurred to her, plaintiff would be barred from any chance of proving  
5 this claim.

6  
7  
8 **2.**

9 **WEATHER OR NOT AMBER LOMAS WAS INNAPROPRIATELY TOUCHED BY FR.  
10 FRANCIS ARAKAL IS A FACT IN DISPUTE, THAT GOES TO THE JURY.**

11 Amber Lomas will testify at the time of trial that Fr. Francis Arakal put his hands on the  
12 inside of her thighs, near her pelvic region. Although he did this while engaged in the act of  
13 “tickling”, Amber testified that it made her feel “uncomfortable”. This feeling was validated  
14 minutes later when she witnessed her sister Rachel being pinned to the ground by Fr. Arakal  
15 while he grouped Rachel’s breast.

16 This will be the Amber’s testimony at the time of trial. It is a factual issue in dispute and  
17 not a proper subject of a motion in limine.

18  
19  
20 **3.**

21 **THE EVIDENCE IS OF A HIGHLY PROBATIVE NATURE AND IS SHOULD NOT BE  
22 EXCLUDED PURSUANT TO EVIDENCE CODE 352**

23 The evidence of inappropriate touching to Amber also supports Sipe’s and Dr. Sonnie  
24 Weedn’s theory’s regarding how pedophiles, push the physical boundaries of children in an  
25 attempt to groom them for future sexual activity.

1 To hold that this evidence is prejudicial is to essentially "gut" the plaintiffs' case before it  
2 has even been tried. Motions in limine should not be misused to deprive a party of due process in  
3 the name of efficiency. Fatica v. Superior Court (2002) 99 Cal.App.4th 350, 353. Trial court  
4 erred when it granted motion in limine precluding critical expert testimony (and "gutting"  
5 plaintiff's case) when reasonable alternatives existed. Id.

6 People v. Ortiz (1995) 38 Cal.App.4th 377, 394 (prejudice contemplated by Section 352  
7 is not merely evidence unfavorable to party); see also People v. Yu (1993) 143 Cal.App.3d 358,  
8 377 (same).

9 Cramer v. Morrison (1979) 88 Cal.App.3d 873, 884-85 (the more substantial the  
10 probative value of the relevant evidence, the greater must be the danger of prejudice to an  
11 adverse party to justify an exclusion under Section 352).

12 Brainard v. Cotner (1976) 59 Cal.App.3d 790, 796 (the discretion granted the trial court  
13 by section 352 is not absolute and must be exercised reasonably in accord with the facts before  
14 the court); see also Kessler v. Gray (1978) 77 Cal.App.3d 284, 291(same).

15 Clearly and unequivocally this evidence sought to be excluded by the defendants is more  
16 highly probative to plaintiffs theory of this case, and should not be excluded.


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4.

CONCLUSION

Based on the forgoing, the motion in limine filed by the defendants Arakal should be denied.

Dated: 2-22-05



---

GEORGE J. MACKOUL  
SABBAH & MACKOUL  
Attorneys for the Plaintiffs

1 George J. MacKoul (Bar No. 170586)  
2 SABBAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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20 vs. )

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22 Francis Arakal, Fr. Richard Ryan, Bishop )  
23 Steven Blaire and The Diocese of Stockton )  
24 and Does 1-100, )  
25 Defendants )

Case No.: CV018440  
**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS MOTION IN LIMINE TO  
EXCLUDE UNSPECIFIED EVIDENCE  
AND TO POTENTIALLY HAVE A  
CONTINUOUS 402 HEARINGS AFTER  
EVERY QUESTION THAT IS ASKED.**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

**1.**

**INTRODUCTION**

This unspecified motion in limine, is more a discussion on 402 A hearings, then a motion to exclude any particular type of evidence.



1 The proposed order filed with the motion speaks for itself: "IT IS ORDERED, that the  
2 court will conduct a hearing under California Evidence Code Section 402 prior to any testimony  
3 regarding matters that are unrelated to specific facts of this case".

4 Motions in Limine are like objections at trial. They are suppose to be tailored to prevent a  
5 *particular* type of evidence or reference to evidence from being elicited. Defendants motion  
6 makes no such delineation.

7 Matters that are lacking in "factual support or argument" are not properly the subject of  
8 motions in limine. Kelly v. New West Federal Savings (1996) 49 Cal.App.4th 659, 670. The  
9 court should not have to rule in a vacuum or guess at what evidence should be included within  
10 the scope of its ruling. Kelly at 670.

11 Motions in Limine may be inappropriate where it is difficult to *specify* exactly what  
12 evidence is the subject of the motion. People v. Morris (1991) 53 Cal.3d 152, 188-90 (Emphasis  
13 added). "[U]ntil the evidence is actually offered, and the court is aware of its relevance in  
14 context, its probative value, and its potential for prejudice, matters related to the state of the  
15 evidence at the time the objection is made, the court cannot intelligently rule on its  
16 admissibility." People v. Jennings (1988) 46 Cal.3d 963, 975, n.3. Actual testimony often defies  
17 pretrial predictions of what a witness will say on the stand. People v. Morris (1991) 53 Cal.3d  
18 152, 188.

19  
20 This motion lacks any factual support. The court would have to "guess" at what evidence  
21 the motion is seeking to exclude. It is therefore an inappropriate motion and should be denied.  
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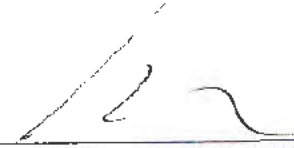
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4.

**CONCLUSION**

Based on the forgoing, the motion in limine filed by the defendants, should be denied.

Dated: 2-22-00



GEORGE J. MACKOUL  
SABBAH & MACKOUL  
Attorneys for the Plaintiffs

1 George J. MacKoul (Bar No. 170586)  
2 SABBAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

cy  
Filed FEB 22 2005  
ROSA JUNQUEIRO, CLERK  
By Charlene Gray  
DEPUTY

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as  
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20 vs.

21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.  
22 Francis Arakal, Fr. Richard Ryan, Bishop  
23 Steven Blaire and The Diocese of Stockton  
24 and Does 1-100,  
25 Defendants

) Case No.: CV018440  
) **PLAINTIFFS' OPPOSITION TO**  
) **DEFENDANTS' MOTION IN LIMINE TO**  
) **PRECLUDE TESTIMONY FROM OR**  
) **EVIDENCE PREPARED BY**  
) **PLAINTIFFS' EXPERT THOMAS**  
) **DOYLE.**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

1.

**INTRODUCTION AND ARGUMENT**

Defendants seeks to exclude the trial testimony of Thomas Doyle, by blaming the plaintiffs for not making Doyle available for deposition.

1 Again, defendants spend lots of time and paper "fixing the blame" rather than "fixing the  
2 problem". Most of the depositions were done by stipulation and waiver of formal deposition  
3 notice, although the defendants motion "conveniently" fails to discuss this.

4 Thomas Doyle, like Richard Sipe is a unique and very rare expert in his field of expertise.  
5 He is an expert in the canon law and the Catholic Hierarchy with respect to the history of their  
6 knowledge and ratification of sexual abuse by clergy. His testimony is important to help  
7 plaintiffs prove their negligence causes of action against the Diocese and Bishop Steven Blair.  
8 Unfortunately, he is currently in demand in hundreds of cases throughout the country and is  
9 constantly traveling. He frequently does his deposition electronically.

10 Exhibit H attached to defendants' motion says it all. Plaintiffs have time and time again  
11 attempted to accommodate defense counsel Kosina with the opportunity to take Thomas Doyle's  
12 deposition by videophone and or telephone. Plaintiffs have offered to pay the cost of the  
13 electronic hook up.

14 Mr. Kosina has always refused this offer. This is because Attorney Kosina calculated that  
15 his refusal to cooperate would allow him to bring this motion and give him an opportunity to  
16 exclude this expert.

17 The court requested that the parties work together to accommodate the completion of pre-  
18 trial discovery at the settlement conference on February 8, 2004. Plaintiffs have made every  
19 effort to do this, by making reasonable attempts to accommodate defense counsel so that he can  
20 take the deposition of Thomas Doyle.

21 Plaintiffs are still ready willing and able to the defendants so that they can take the  
22 deposition of Doyle, even during trial if necessary. Plaintiffs are still willing to fly Doyle to  
23 California, if his schedule allows for his personal appearance for deposition.  
24  
25



1 Last but not least, the rules of Civil Procedure allow for stipulations between the parties  
2 to accommodate the deposition by telephone or video phone (or any other discovery procedure)  
3 Ca Civ Pro § 2021; see also Ca Rules of Court Rule 333(e). This rule exists so that counsel can  
4 accommodate unique situations such as the scheduling of the deposition of Doyle, and avoid  
5 needless motions such as the one presently before this court on this issue.

6  
7 **CONCLUSION**

8 Based on the forgoing, the motion in limine filed by the defendants to exclude Doyle  
9 from testifying at trial should be denied. The court should further order the parties to cooperate  
10 to secure Doyle's deposition as soon as possible, so that he may testify at the time of trial.

11  
12 Dated:

13  
14 \_\_\_\_\_  
15 GEORGE J. MACKOUL  
16 SABBAAH & MACKOUL  
17 Attorneys for the Plaintiffs  
18  
19  
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22  
23  
24  
25

1 George J. MacKoul (Bar No. 170586)  
2 SABBAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
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Case No.: CV018440  
**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS MOTION IN LIMINE TO  
PRECLUDE OPINION TESTIMONY BY  
THOMAS DOYLE REGARDING THE  
CONDUCT OF FR. ILLO AND FR  
ARAKAL.**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

1.

**INTRODUCTION**

Like most of the motions filed by the defendants, this motion is moot and is without factual support.

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Filed FEB 22, 2005  
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By Charlene Gray  
DEPUTY

1 Thomas Doyle's deposition has yet to be taken. Therefore the defendants are only  
2 guessing as to what Doyle is going to be testified to at the time of trial as it relates to the specific  
3 facts of this case.

4 Motions in Limine are like objections at trial. They are suppose to be tailored to prevent a  
5 *particular* type of evidence or reference to evidence from being elicited. Defendants motion  
6 makes no such delineation.

7 Matters that are lacking in "factual support or argument" are not properly the subject of  
8 motions in limine. Kelly v. New West Federal Savings (1996) 49 Cal.App.4th 659, 670. The  
9 court should not have to rule in a vacuum or guess at what evidence should be included within  
10 the scope of its ruling. Kelly at 670.

11 Motions in Limine may be inappropriate where it is difficult to *specify* exactly what  
12 evidence is the subject of the motion. People v. Morris (1991) 53 Cal.3d 152, 188-90 (Emphasis  
13 added). "[U]ntil the evidence is actually offered, and the court is aware of its relevance in  
14 context, its probative value, and its potential for prejudice, matters related to the state of the  
15 evidence at the time the objection is made, the court cannot intelligently rule on its  
16 admissibility." People v. Jennings (1988) 46 Cal.3d 963, 975, n.3. Actual testimony often defies  
17 pretrial predictions of what a witness will say on the stand. People v. Morris (1991) 53 Cal.3d  
18 152, 188.

19  
20 Since defense counsel has refused to cooperate in securing the deposition of Doyle, they  
21 are speculating as to what his opinions would be at trial.  
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4.

**CONCLUSION**

Based on the forgoing, the motion in limine filed by the defendants should be denied.

Dated: 2-2-65



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GEORGE J. MACKOUL  
SABBAH & MACKOUL  
Attorneys for the Plaintiffs



1 George J. MacKoul (Bar No. 170586)  
2 SABBAAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
7 Fax: 508-495-4115

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

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By Charlene Gray  
DEPUTY

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as )  
17 Guardian ad Litem for, Rachel Lomas and )  
18 Amber Lomas, )  
19 Plaintiffs, )

20 vs. )

21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr. )  
22 Francis Arakal, Fr. Richard Ryan, Bishop )  
23 Steven Blaire and The Diocese of Stockton )  
24 and Does 1-100, )  
25 Defendants )

Case No.: CV018440  
**PLAINTIFFS' OPPOSITION TO  
DEFENDANT ROMAN CATHOLIC  
BISHOPS OF STOCKTON, BISHOP  
STEVEN BLAIRE, FR. FRANCIS  
ARAKAL AND FR. RICHARD RYAN'S  
MOTION IN LIMINE TO PRECLUDE  
RICHARD SIPE'S TESTIMONY  
REGARDING WHETHER FR. ARAKAL  
AND FR. ILLO COMMITTED ACTS OF  
MISCONDUCT.**

Honorable Elizabeth Humphreys  
DEPT: 41  
TRIAL DATE: FEBRUARY 22, 2005

1.

**INTRODUCTION**

This motion seeks to exclude unspecified testimony by Richard Sipe, regarding the  
"conduct of Fr. Illo and Fr. Arakal". What does this mean? What specific questions and answers

1 do the defendants seek to exclude? The motion is so vague and ambiguous that almost any  
2 question asked of the expert could be the subject of a mistrial.

3 Motions in Limine are like objections at trial. They are suppose to be tailored to prevent a  
4 *particular* type of evidence or reference to evidence from being elicited. Defendants motion  
5 makes no such delineation.

6 Matters that are lacking in "factual support or argument" are not properly the subject of  
7 motions in limine. Kelly v. New West Federal Savings (1996) 49 Cal.App.4th 659, 670. The  
8 court should not have to rule in a vacuum or guess at what evidence should be included within  
9 the scope of its ruling. Kelly at 670.

10 Motions in Limine may be inappropriate where it is difficult to *specify* exactly what  
11 evidence is the subject of the motion. People v. Morris (1991) 53 Cal.3d 152, 188-90 (Emphasis  
12 added). "[U]ntil the evidence is actually offered, and the court is aware of its relevance in  
13 context, its probative value, and its potential for prejudice, matters related to the state of the  
14 evidence at the time the objection is made, the court cannot intelligently rule on its  
15 admissibility." People v. Jennings (1988) 46 Cal.3d 963, 975, n.3. Actual testimony often defies  
16 pretrial predictions of what a witness will say on the stand. People v. Morris (1991) 53 Cal.3d  
17 152, 188.

18 The proposed order filed by the defendants with this motion says it all. Defendants seek  
19 to exclude any questions or answers eliciting testimony from Sipe regarding "the conduct of Fr.  
20 Joseph Illo and Fr. Francis Arakal".

21 This proposed order is simply to vague and overbroad. Further the arguments which  
22 support this request are based on false assumptions and misinterpretations of the deposition  
23 testimony of Sipe.

24 Essentially, the defendants makes two antithetical arguments in support of their motion.  
25 The first is that the alleged acts of misconduct by Fr. Illo and Fr. Francis are outside the scope of

1 lay testimony and the second argument is that the alleged acts of misconduct by Fr. Francis and  
2 Fr. Illo are also not the proper subject matter of experts.

3 The defendants attempt to support these arguments with the false assumption that Sipe's  
4 opinions are based solely on his opinion as to the credibility of the parties. This is not correct as  
5 was explained in the plaintiffs' opposition to Arakal's motion in limine regarding Sipe.

6 Defendants carefully select certain portions of the deposition transcript of Sipe in a  
7 desperate attempt to lend credibility to their arguments. They conveniently leave out portions of  
8 the deposition transcript, which prove their assumptions to be false, as are the arguments made in  
9 their motion.  
10

11 **2.**

12 **SIPE DID NOT TESTIFY THAT HIS OPINIONS REGARDING THIS CASE**  
13 **WERE BASED SOLELY ON THE CREDIBILITY OF THE PARTIES.**

14 As stated in detail in the opposition to defendant Fr. Arakal motion, Sipe's opinion was  
15 not based on which of the parties he believed were credible. See the attached portions of the  
16 highlighted deposition transcripts page 78, attached as **Exhibit A**.

17 Defendants' preconceived notions about what is going to be testified to by Sipe at the  
18 time of trial is not a proper subject for a motion in limine. "It is a misuse of a motion in limine  
19 to attempt to compel a witness or a party to conform his or her trial testimony to a preconceived  
20 factual scenario based on testimony given during pretrial discovery. One purpose of pretrial  
21 discovery is to pin down the testimony of parties and witnesses which can be used for  
22 impeachment at the time of trial." Kelly v. New West Federal (1996) 49 Cal.App.4th 659.

23 Whether or not the foundation of Sipe's opinion has any weight, is the subject of  
24 impeachment during cross-examination, not the proper subject of a broad motion in limine.  
25



**SIPE IS QUALIFIED TO TESTIFY AS AN EXPERT REGARDING THE CONDUCT OF FR. ILLO AND FR. ARAKAL BECAUSE HE IS NOT ONLY AN EXPERT IN THE CULTURAL, SOCIOLOGICAL AND CELIBATE WORLD OF CATHOLIC CLERICS BUT HE IS ALSO A PSYCHOTHERAPIST.**

Richard Sipe, a former Benedictine Monk, former psychotherapist and currently still a Roman Catholic Priest is a one of the few experts in the world who has studied the sexual behavior of Catholic Clerics. His C.V., which was unchallenged at his deposition (See attached **Exhibit B**).

Sipe testified during his deposition that he has been an expert witness in 215, to 220 sexual abuse cases involving Catholic priests. He also testified that he has reviewed an additional 2000-2800 cases (See highlighted portions of page 18 of Sipe's Deposition transcript attached as **Exhibit C**) involving clergy misconduct.

Sipe then testified that he has authored seven (7) books on the issue of sex, celibacy and sexual abuse of minors by Catholic clergy. These books were a by product of over 40 years of research on this subject. Defense counsel acknowledged during his deposition that his opinions would be based on his specialized knowledge in this area (see highlighted portions of page 40 of Sipe's deposition attached as **Exhibit D**).

Sipe then testifies (without objection) that he is an expert in the celibate sexual "system" unique to the Catholic church (see highlighted portions of page 44 and 45 of Sipe's deposition attached as **Exhibit E**).

Clearly, Sipe, a priest, a therapist and a researcher is qualified to testify as an expert on the subject of the conduct of priests especially when it is in the context of the sexual abuse of minors.





