

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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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
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Stockton, California 95207

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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

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 --

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: Oh, 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 --

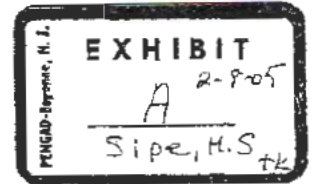
1 MR. MacKOUL: Badgering the witness.
 2 Argumentative.
 3 THE WITNESS: You're asking me, for instance, a
 4 hypothetical. What would happen if 9-11 never happened?
 5 I mean, not only 9-11 in this parish, but 9-11 nationally.
 6 MR. KOZINA: Is this an answer or a question?
 7 A. This is an answer.
 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).

EXHIBIT B

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.
- "To Enable Healing," The Natural Catholic Reporter, September 17, 1993.
- "Celibacy and Imagery: 'Horror Story' in the Making," The National Catholic Reporter, July 2, 1993.
- "Celibacy in Law and Life," Viewpoint, The Tablet (London), June 12, 1993.
- "The Celibacy Question," The Tablet (London), June 5, 1993, (p. 737-738).
- "A House Built on Sand," Viewpoint, The Tablet (London), September 12, 1992, (p. 1118).
- "Chesterton's Brown and Greeley 's Blackie," (with B.C. Lamb), Commonweal, August 14, 1992, (p.18-25).

- "Double-Talk on Celibacy," The Tablet (London), May 16, 1992 , (p. 605-606).
- "Sex and Celibacy," The Tablet (London), May 9, 1992 , (p. 576-577).
- "Spirituality and Integrity," Fellowship of Prayer, Vol. 43, No. 6, December, 1991.
- "Education for Celibacy: An American Challenge," America , May 18, 1991 , (p. 539-548).
- " Newfoundland Report a Church Reform Manifesto," The National Catholic Reporter, September, 21, 1990 .
- "Outpatient Responses to Sexual Problems of Catholic Religious," The Bulletin of the National Guild of Catholic Psychiatrists, San Francisco , California , Vol. 32, 1988, (p. 42-45).
- "The Mental Health Institute at St. John's 1954-1984," The Scriptorium, Vol. 24, Collegeville , Minnesota , 1985.
- "The Psychological Dimension of the Rule of St. Benedict," The American Benedictine Review, The American Benedictine Review, Inc., St. Benedict's Abbey, Atchison, Kansas, December, 1983, Vol. 34:4, (p. 424-435).
- "Memento Mori, *Memento Vivere* and the Rule of St. Benedict," The American Benedictine Review, North Central Publishing Co., St. Paul , Minnesota , Vol. XXV: 1, March, 1974, (p. 96-107).
- Introduction to Conflict in Community, Robert J. McAllister, M.D., St. John's University Press, pp. xiii-xv, 1969.
- "The Introduction of Psychiatry Into a Religious Setting," (with Ivan D. Junk, M.D.), The American Benedictine Review, North Central Publishing Col., St. Paul, Minnesota, Vol. XX:3, September, 1969, (p. 257-271).
- "The Celibate and Community Life," Sisters Today, Sentinel Publishing Co., Collegeville, Minnesota, Vol. 41:4, December, 1969, (p.206-210).
- "The Education of Religious: A Question of Goals," Sisters Today, Sentinel Publishing Co., Collegeville, Minnesota, Vol. 39:7, March, 1968, (p. 337-347).

REVIEWS IN

- 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 21st 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 11th 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 Prophetic 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, John's 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 Benkert), 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"— Wilmington , 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
- Introduction to: Spoils of the Kingdom: Clergy Misconduct and Social Exchange in Religious Life by Anson Shupe, University of Indiana Press, 2005.
- Living the Celibate Life: A Search for Models and Meaning, Triumph Books, Ligouri , Missouri, 2004.
- "The Crisis of Sexual Abuse and the Celibate Agenda of the Church" in Sin Against the Innocents: Sexual Abuse by Priests and the Role of the Catholic Church, Thomas G. Plante, Ph.D., Editor, Westport, CT: Greenwood, 2004.
- Celibacy in Crisis: A Secret World Revisited, Brunner/Routledge, New York , 2003.
- "Celibacy" The Oxford Companion to Christian Thought Adrian Hastings, editor, Oxford University Press, Oxford , 2000.
- "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.
- "Clergy Abuse in Ireland" in Wolves Within the Fold: Religious Leadership and Abuses of Power, Anson Schupe, Editor, Rutgers University Press, New Jersey, 1998.

- Celibacy: A Way of Living, Loving and Serving, Triumph Books, Ligouri, Missouri & Gil/MacMillan, Dublin, Ireland 1997/E.J. Dwyer, Sydney, Australia, 1997.
- Sex, Priests and Power: Anatomy of a Crisis, Brunner/Mazel, New York, 1995, Cassell Publishers, London, 1995.
- "Negotiating Loneliness in the Celibate Process" in Living in the Meantime, (pp. 104-117), Paul Philibert, O.P. Editor. Paulist Press, New York, 1994.
- A Secret World: Sexuality and the Search for Celibacy, Brunner/Mazel, New York, 1990.
- Sexualität und Zölibat, Ferdinand Schöningh, Paderborn, 1992.
- Obedience (Roman Catholicism) p. 795-96; Retreats (Roman Catholicism) p. 1082-83; Religions, Pastoral Care of, p. 1060-1061, in: Dictionary of Pastoral Care and Counseling, Rodney J. Hunter, General Editor, Abingdon Press, Nashville, 1990.
- "Sexual Aspects of the Human Condition"—in Changing View of the Human Condition, Paul Pruyser, Editor, Mercer University Press, 1987.
- Psychiatry, Ministry and Pastoral Counseling, Editor (with C.J. Rowe, M.D.): The Liturgical Press, Collegeville, Minnesota, September, 1983.
- Beyond Crescent Gate, Fifteen American Poems, Walter O. Jahreiss, M.D. (A. W. Richard Sipe, Editor), Garamond/Pridemark, Baltimore, Maryland, 1971.
- 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 C

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

Page 18

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?

Page 19

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?

Page 20

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 Illo?

Page 21

EXHIBIT D

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.

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

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

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

EXHIBIT E

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?

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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?

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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

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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

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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
PRECLUDE REFERENCE TO
CALIFORNIA'S CHILD ABUSE
REPORTING STATUTES

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

22 Bishop Blaire and the Diocese of Stockton are very aware of the problem of child abuse by
23 priests, and, in an effort to protect children, the Diocese instituted mandatory policies regarding

1 reporting of child abuse for its priests and staff in the late 1990's. Every mandatory reporter¹ was
2 required to be familiar with the policy, and to sign an acknowledgment to be placed in the personnel
3 file. As it turns out, not one employee at St. Joseph's parish ever saw the policy, and no mandatory
4 reporter was ever required to sign the acknowledgment. In fact, the Director of Religious Education
5 and personnel manager were unaware of the policy's existence, and at least one instance of child
6 abuse went unreported with the knowledge of the Diocese. As late as 2004, the accused molester,
7 Father Francis himself, was unaware of the policies, had received no training, and never signed the
8 form. Despite being the policymaker in charge of enforcement of policies in the Diocese, Bishop
9 Blaire has no explanation how this could have occurred, instead stating that until the new policies
10 went into place that nobody really knew whether the policies were being enforced.

11 Additionally, when Kathleen Machado was interviewed by Monsignor Ryan in an
12 investigation into Father Francis' conduct she reported that Father Illo had endangered her 2½ year
13 old daughter by holding over a cliff while asking if Kathleen trusted him. This was a clear instance
14 of child abuse, but Monsignor Ryan never reported it either to the authorities as required by statute
15 nor to Bishop Blaire.

16 Defendants wish to exclude any evidence of California's child abuse reporting statutes and
17 the failure of the Diocese and its employees and agents to comply on the grounds that it is irrelevant
18 and unduly prejudicial. Defendants are incorrect.

19 First, the evidence is highly relevant. Penal Code section 11166 states the strong public
20 policy in this state that children are to be protected and that failure to report abuse is so serious as
21 to constitute a crime. In response to the clear and acknowledged problem within the Catholic
22 Church that child abuse has gone unreported and covered up for years, the Diocese of Stockton
23 instituted policies which specifically incorporated the mandatory reporting statutes of the State of
24 California. But, the Diocese, and Bishop Blaire in particular, did nothing to ensure that these

25 ¹Penal Code section 11166 mandates that certain individuals must report suspected child
26 abuse, and criminalizes the failure to report.

1 policies would be enforced nor that his employees would be trained into the law's requirements, and,
2 as a result, abuse went unreported, and perhaps the most formidable deterrent the state could have
3 imposed, penal sanctions, was never communicated to mandatory reporters nor those responsible
4 for administration of the policies. This was grossly negligent behavior on the part of defendants, and
5 it is plaintiffs' contention that this conduct put children at risk and contributed at least in part to their
6 injuries. The testimony has been unequivocal that the employees would have acted much differently
7 on September 11, 2001 had they known of the policies and the law, and this evidence is highly
8 relevant and probative. It goes to direct liability and ratification.

9 The evidence also is not subject to exclusion by Evidence Code section 352. Given the
10 emotional nature of the plaintiffs' charges, and of the evidence necessary to prove them, it is not
11 unanticipated that defendants would attempt to exclude them as unduly prejudicial. "Prejudicial"
12 is not synonymous with "damaging", (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th
13 976, 989-90 [16 Cal.Rptr.2d 787, 792], overruled on other grds., *Lakin v. Watkins Associated Industries*
14 (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 121]), nor does it refer to anything the defendant
15 finds inconvenient. (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998 [62 Cal.Rptr.2d 164]) Evidence is
16 unduly prejudicial when it "uniquely tends to evoke an emotional bias against the party as an
17 individual and which has very little effect on the issues." (*Bihun, supra*, at 989) The fact that the
18 Diocese instituted policies that incorporated provisions of the Penal Code in order to protect children
19 but then, at least at Saint Joseph's Parish in Modesto, chose to ignore them, is highly disturbing but
20 that does not justify restricting the admission of material evidence that is probative of the essential
21 issues in dispute. (*Ibid.*) Although damaging and inconvenient to the defendants, the evidence of its
22 failure to protect children is the very heart of this case.

23 Any evidence of this sort to be introduced by plaintiffs will not take inordinate trial time.
24 It is not necessary to conduct numerous mini-trials to determine the admissibility of the statements,
25 if any; this court will be able to rule promptly from the bench with full knowledge of the context in
26
27

1 which they are being offered. Plaintiffs have a substantial burden to carry in this trial, and must be
2 permitted the opportunity to prove their case.

3 The motion must be denied.

4
5 Dated: 19 February 2005

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Anthony Boskovich
Attorney for plaintiffs

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15 Filed FEB 22, 2005
16 ROSA JUNQUEIRO, CLERK
17 By Charlene Gray
18 DEPUTY

19 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

20 Kathleen Machado as an individual and as)
21 Guardian ad Litem for, Rachel Lomas and)
22 Amber Lomas,)
23 Plaintiffs,)

24 vs.)

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

30 Case No.: CV018440
31 **PLAINTIFFS' OPPOSITION TO**
32 **DEFENDANTS' MOTION IN LIMINE TO**
33 **PRECLUDE JOHNNY SMITHS**
34 **TESTIMONY AND ANY REPORTS**
35 **MADE ABOUT THIS LAWSUIT AT THE**
36 **TIME OF TRIAL.**

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

40 1.

41 **INTRODUCTION**

42 This court has already resolved the issues made in this motion. On February 8, 2004, the
43 court ruled that Johnny Smith could not testify at trial, except as a rebuttal witness for the
44 purposes of impeachment.
45

1 The report given to plaintiffs expert, Sonnie Weedn was not the work product of the
2 plaintiffs' counsel, but were simply the observations of investigator Smith about what he
3 observed when he first attempted to interview Yvonne McLoughlin, the licensed therapist who
4 interviewed Amber Lomas on September 11, 2001.

5 Therefore, defendants work product arguments are moot.

6
7 2.

8 **THE ISSUES RAISED BY THE MOTION HAVE BEEN RESOLVED, DEFENDANT IS**
9 **ATTEMPTING TO MAKE A MOTION RECONSIDERATION IN THE FORM OF A**
10 **MOTION IN LIMINE**

11 The issues stated in this motion have been resolved and this court has ruled upon the
12 scope of Smiths testimony. Plaintiffs have not placed Johnny Smith on their witness list and will
13 be complying with the courts prior ruling with regard to his testimony.

14 This motion is therefore moot.


15 3.

16 **CONCLUSION**

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

18
19 Dated:

2-21-08

20
21 
22 GEORGE J. MACKOUL
23 SABBAH & MACKOUL
24 Attorneys for the Plaintiffs
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12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
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16 v.
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JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
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No. CV 018440
PLAINTIFFS' OPPOSITION TO
MOTION IN LIMINE TO
EXCLUDE EVIDENCE OF
MATTERS WITHIN THE
INTERNAL GOVERNANCE OF
THE CHURCH
Date: 22 February 2005
Time: 1:30 P.M.
Department: 41
Judge: Hon. Elizabeth Humphreys

22 **STATEMENT OF FACTS**

24 Kathleen Machado and her two daughters, Rachel and Amber Lomas, are devout Catholics
25 who had a practice of attending daily mass. They looked upon their priests and Bishop as God's
26 representatives on earth. They trusted their priests as their counselors.

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

1 The plaintiffs got to know and established a close relationship with Father Joseph Illo. The
2 friendship and Christian love was mutual and reciprocated. Father Illo has been described as a
3 "Jekyll and Hyde" personality; he is at times a loving, caring, and charismatic man, while at other
4 times he is given to a vicious temper and capable of unspeakable cruelty. Father Illo has berated
5 several women, exposed an employee's homosexuality to the employee's father, and has admittedly
6 lied to parishioners in order to imply that this gay employee had committed misconduct. Father Illo
7 also attracts needy women, and in the opinion of those close to him, he likes the attention.

8 In about February 2001, defendant Father Francis came to the Diocese of Stockton from
9 Fresno, originally being from India. The only investigation into Father Francis' character was a 4
10 questionnaire that had been sent to his provincial in India. That form cannot be found.

11 Father Francis began to incessantly ask the children and Kathleen if he could come to their
12 house, and began calling Rachel at home when Kathleen was not there. He made most of his
13 attempts through the youngest daughter, the then 7½ year old Kollcen. The family yielded to the
14 pressure and invited Father Francis to the home.

15 Father Francis persisted in his attempt to finagle an invitation while Father Illo was out of
16 the country, and indeed came to the home three times. On one of the visits, he lifted his shirt and
17 showed his stomach, and asked the children to tie a hair around a mole on his neck. On another
18 visit, Father Francis put his collar in his front pants pocket and asked Kollcen to put her hand in his
19 pocket to try to extract it. Father Francis asked the girls to keep his visits secret.

20 On the final visit, Father Francis struck. He began tickling the girls in the living room, out
21 of the sight of Kathleen, and eventually pinned Rachel, then 13, to the floor and grabbed her breast
22 twice, and also inappropriately touched Amber, then age 10, in the thigh and chest area. Rachel
23 screamed for Father Francis to stop, and by the time Kathleen got to the living room, a terrified
24 Rachel ran into her room, followed by Amber. Clearly with a guilty conscience, Father Francis
25 denied any wrongdoing, and Kathleen could simply not believe that God's representative would
26 have molested her girls in her home. Rachel made Amber swear not to tell Kathleen. Father

1 Francis' conduct was classic "grooming" in which a nascent molester begins his assaults. Bishop
2 Blaire acknowledges that this conduct represents a series of "red flags" indicating potential
3 pedophilia that needs investigation.

4 Bishop Blaire and the Diocese of Stockton are very aware of the problem of child abuse by
5 priests, and, in an effort to protect children, the Diocese instituted mandatory policies regarding
6 reporting of child abuse for its priests and staff in the late 1990's. Every mandatory reporter¹ was
7 required to be familiar with the policy, and to sign an acknowledgment to be placed in the personnel
8 file. As it turns out, not one employee at St. Joseph's parish ever saw the policy, and no mandatory
9 reporter was ever required to sign the acknowledgment. In fact, the Director of Religious Education
10 and personnel manager were unaware of the policy's existence, and at least one instance of child
11 abuse went unreported with the knowledge of the Diocese. As late as 2004, Father Francis himself
12 was unaware of the policies, had received no training, and never signed the form. Despite being the
13 policymaker in charge of enforcement of policies in the Diocese, Bishop Blaire has no explanation
14 how this could have occurred, instead stating that until the new policies went into place in late 2002,
15 that nobody really knew whether the policies were being enforced.

16 Amber held her secret in as long as she could, but finally needed to tell somebody. She
17 decided to confide in the man she trusted the most, Father Illo. So, on September 11, 2001, Amber
18 asked to speak with Father Illo, and Kathleen left her with him to discuss her concerns. Amber told
19 Father Illo what had happened, and that she felt uncomfortable around Father Francis. Against
20 Amber's expressed wishes, Father Illo brought Father Francis into the room, and behind closed
21 doors the two men yelled at and berated Amber, calling her a liar, and accusing her mother of only
22 wanting to have sex with Father Illo and being a liar as well. Amber became hysterical. Father Illo
23 then went to get his secretary, Mary Mullins, and brought her into the room, demanding that Amber
24 repeat her story. Amber became visibly more upset, and Mary Mullins has testified that the two

25
26 ¹Penal Code section 11166 mandates that certain individuals must report suspected child
abuse, and criminalizes the failure to report.

1 priests knew that they were browbeating a child and causing her harm, and that they did not care.
2 Ms. Mullins whisked Amber away and called Kathleen.

3 Father Illo had planted the seed among parish staff that Kathleen was stalking him, and had
4 turned the staff against Kathleen. He, along with Father Francis, now desired to retaliate against
5 Kathleen Machado and her daughters in order to cover up the molestation and emotional abuse he
6 had inflicted, and also send a message to any and all who might dare make a report or support
7 Kathleen. There were discussions about what to do with her with defendant Monsignor Richard
8 Ryan, the admitted "alter ego" of defendant Bishop Steven Blaire. Under Canon Law, a person
9 cannot be prohibited from worshiping at any parish.

10 On their own, parish staff decided to begin to harass Kathleen Machado by attempting to
11 force her out of her pew during daily mass in an attempt to have her leave, going so far as to sit on
12 Kathleen. Owen Kummerle, the Business Manager, stated that he did it to simply irritate Kathleen
13 because she was an irritating person. The staff members have testified that this was done on their
14 own without direction from Father Illo. Father Illo knew what was happening and approved of it.
15 Bishop Blaire, as the head of the Diocese, has testified that he feels today that this was a great idea.
16 This conduct caused Kathleen Machado extreme emotional distress.

17 In the meantime, the staff and Father Illo attempted to develop a more formal strategy to
18 expel Kathleen and her family. At the direction of Monsignor Ryan, a plan was developed,
19 including a direction that Father Illo "get in Kathleen's face" in order to get her to leave. Father
20 Illo's temper and vindictiveness were well-known to Monsignor Ryan and his alter ego, Bishop
21 Blaire, so this direction was virtually certain to have explosive consequences given Father Illo's
22 custom and practice of berating those he had differences with.

23 When Kathleen received the letter that she had been asked to leave the parish, she wrote a
24 letter to Bishop Blaire, asking that he look into the situation with Fathers Illo and Francis. Bishop
25 Blaire recognized that the conduct of Father Illo was inappropriate, and that the conduct of Father
26 Francis raised several red flags of sexual abuse, and he ordered two separate investigations, one into
27

1 the conduct of Father Illo, and one into the conduct of Father Francis. Bishop Blaire has testified
2 the investigation into Father Illo was a canonical investigation; the investigation into Father Francis
3 was not a canonical investigation.

4 In the investigation of Father Francis by Monsignor Ryan and Sister Barbara, Amber
5 disclosed the molestations, and Kathleen also reported that Father Illo had held her 2½ year old
6 daughter over a cliff, which was clearly a child abuse. Although Sister Barbara reported the abuse
7 by Father Francis, no report was made by anyone regarding Father Illo's abuse, and in fact in the
8 written report of the interview there is absolutely no mention of the cliff incident. To this day,
9 nothing has been done about that report.

10 Father Francis was immediately removed from public ministry, and Monsignor Ryan began
11 regularly calling the police to inquire into the status of the case. Father Illo, in an attempt to
12 influence the investigation, provided letters to the police from Kathleen Machado, but failed to
13 produce his own letters indicating that he had reciprocated.

14 The girls were interviewed by the Stanislaus County District Attorney's Office, and although
15 the Assistant District Attorney in charge of the case believed an inappropriate touching had
16 occurred, he felt it would be difficult to prove beyond a reasonable doubt that the touching by Father
17 Francis was sexually motivated, and the jury might believe that Kathleen had put the girls up to it,
18 although he personally did not believe that. Bishop Blaire insisted that he needed a letter from the
19 police stating that it was alright to reinstate Father Francis to ministry, and Father Illo and
20 Monsignor Ryan went to the police and convinced the detective to write such a letter. Bishop Blaire
21 has testified that he deferred to the police in his decision to reinstate, and that he never knew that
22 the District Attorney believed that an inappropriate touching had occurred.

23 While all of this was happening, Father Illo was systematically attacking each of Kathleen's
24 friends, making threats regarding their ministries, but also accusing them of being liars as well. His
25 attacks were brutal and direct, and, during each deposition of Kathleen's friends, the witness broke
26 into tears as they recounted Father Illo's conduct toward them.

1 The canonical investigation into Father Illo resulted in a preliminary report finding
2 misconduct on the part of Father Illo, subject to the Bishop's unfettered discretion as to how to
3 proceed. Rather than complete the investigation, Bishop Blaire has testified that he will wait until
4 the civil proceedings have concluded before deciding how to proceed.

5
6 **ARGUMENT**

7
8 **A. NO ECCLESIASTICAL PRIVILEGE APPLIES TO THE CONDUCT OF**
9 **THE DEFENDANTS IN THIS MATTER. THE EVIDENCE CAN BE**
10 **ADMITTED FOR THE LIMITED PURPOSE AS TO RATIFICATION BY**
11 **BISHOP BLAIRE, MONSIGNOR RYAN, AND THE DIOCESE, AS WELL**
12 **AS CUSTOM AND PRACTICE OF FATHER ILLO.**

13 Defendants wish to exclude any evidence regarding attempts to remove plaintiffs from the
14 parish, the threats against plaintiffs' friends, any aspect of the canonical investigation into Father
15 Illo's conduct, and any mention of the so-called Dallas Charter. Defendants' motion in limine
16 reflects a fundamental misunderstanding as to what evidence will be elicited and why, and misstates
17 the law; defendants are focusing on "what" happened, but the relevance and admissibility of the
18 evidence is because of "how" it happened. Further, the motion is vague and factually deficient, thus
19 supplying this court with an inadequate factual basis upon which to make a decision. Because of this,
20 the motion must be denied.

21 Defendants make a broad brush argument that the First Amendment immunizes all internal
22 church conduct. Not so. While religious belief is absolutely protected by the constitution, religious
23 conduct is not. (*Molko v. Holy Spirit Association for the Unification of World Christianity* (1988) 46 Cal.3d
24 1092, 1112-13[252 Cal.Rptr. 122, 132], disapproved on other grds., *Aguilar v. Atlantic Richfield*
25 *Company* (2001) 25 Cal.4th 826, 853, fn. 19 [107 Cal.Rptr.2d 841, 864, fn. 19]) The freedom of the
26 religious to act "remains subject to regulation for the protection of society", (*Cantwell v. Connecticut*
27 (1940) 310 U.S. 296, 303-04 [60 S.Ct. 900, 904]), and the fact that religious belief might justify

1 | conduct does not necessarily immunize that conduct from the sanction of civil law. (*Employment*
2 | *Division, Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 882 [110 S.Ct. 1595,
3 | 1602]) This distinction is reflected in the well-established principle that neutral laws of general
4 | application do not violate the First Amendment simply because they have an incidental effect of
5 | burdening a particular religious practice.² (*City of Boerne v. Flores* (1997) 521 U.S. 507, 513-14 [117
6 | S.Ct. 2157, 2161]; *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 531 [113
7 | S.Ct. 2217, 2226])

8 | As explained in *Jones v. Wolf* (1979) 443 U.S. 595 [99 S.Ct. 3020], “[t]he
9 | neutral-principles approach cannot be said to ‘inhibit’ the free exercise of religion,
10 | any more than do other neutral provisions of state law governing the manner in
11 | which churches own property, hire employees or purchase goods.” (Citation)

12 | If, as the hierarchy defendants urge, conduct is put beyond the reach of
13 | secular laws merely because it is based upon a religious doctrine or practice, the
14 | result would be what has been termed an unacceptable “anomaly in the law, a
15 | constitutional right to ignore neutral laws of general applicability.” (Citation)

16 | It is easy to envision the kinds of “anomalies” that could result from such an
17 | absolutist interpretation of the free exercise clause. For example, laws prohibiting
18 | murder would have no application to human sacrifices performed pursuant to some
19 | religious practice.

20 | Clearly, the framers of our Constitution did not intend religious liberty to
21 | extend that far. Indeed, permitting some individuals to engage in conduct proscribed
22 | by neutral laws that must be observed by everyone else simply because that conduct
23 | emanates from a religious belief might be viewed as the kind of official recognition
24 | of a religion that is prohibited by the establishment clause. (Citation)

(*Smith v. O’Connell* (D.R.I. 1997) 986 F.Supp. 73, 80)

25 | Plaintiffs in this matter are suing the defendants for sexual battery, intentional and negligent
26 | infliction of emotional distress, negligence, defamation, and civil conspiracy. Each is a recognized
27 | tort, and defendants do not claim that they are not amenable to suit in a civil court for their actions.

28 | While judicial sanctioning of tort recovery constitutes state action sufficient
to invoke the same constitutional protections applicable to statutes and other
legislative actions, (Citation), religious groups are not immune from all tort liability.

²Defendants’ argument that the neutral principles doctrine is only applicable in property
disputes is simply wrong. The United States Supreme Court has used the doctrine in several
non-property disputes. (See, e.g., *Smith, supra* [criminalization of peyote]; *Babalu, supra*, [ritual
slaughter of animals])

1 It is well settled, for example, that religious groups may be held liable in tort for
2 secular acts. (Citation) Most relevant here, in appropriate cases courts will recognize
3 tort liability even for acts that are religiously motivated. (Citations)
4 (*Molko v. Holy Spirit Association for the Unification of World Christianity* (1988) 46 Cal.3d 1092, 1114 [252
5 Cal.Rptr. 122, 133-34], disapproved on other grds., *Aguilar v. Atlantic Richfield Company* (2001) 25
6 Cal.4th 826, 853, fn. 19 [107 Cal.Rptr.2d 841, 864, fn. 19])

7 Thus, “religious organizations (and, by implication, members of the clergy) may be held
8 liable for intentional torts where liability can be adjudicated on the basis of neutral principles
9 requiring no inquiry into the validity of a religious belief or practice. This view is consistent with that
10 of the United States Supreme Court, (Citation), and the widespread common law rejection of the
11 “charitable immunity” from tort liability the clergy once enjoyed. (*Richelle L. v. Roman Catholic
12 Archbishop* (2003) 106 Cal.App.4th 257, 277-78 [130 Cal.Rptr.2d 601, 615])

13 Defendants seem to allege, however, that no tort recovery should be allowed for intentional
14 infliction of emotional distress arising out of their actions that occurred after 11 September 2001, and
15 they even go so far as to say that no mention may be made of these actions. Defendants go much
16 too far.

17 Initially, the defendants’ motion is devoid of any facts upon which this court might make a
18 decision. Monsignor Ryan’s declaration establishes that the Roman Catholic Church is a religion
19 with a hierarchy, and nothing more. There is no dispute that Catholicism is a religion. But the
20 motion then goes on to request exclusion of the evidence as “ecclesiastical”, but the motion gives
21 absolutely no evidence as to whether this in fact is true. Absent that, there is no basis on which this
22 court may rule. A motion in limine must point to specific facts that is sought to be excluded, as well
23 as why it should be excluded. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670-71 [56
24 Cal.Rptr.2d 803, 808]) The motion must be denied on this ground alone.

25 Next, even if the motion is determined to sufficiently specific, certain conduct is clearly
26 actionable and outside of the First Amendment protection. Efforts to exclude plaintiffs from the
27 church, with the concomitant threats against any and all who supported them, constitutes
28 impermissible and actionable “shunning”. (See *Bear v. Reformed Mennonite Church* (Pa. 1975) 462 Pa.

1 330 [341 A.2d 105], cited with approval, *Molko, supra*, at 1114 [252 Cal.Rptr. at 133]; *Snyder v.*
2 *Evangelical Orthodox Church* (1989) 216 Cal.App.3d 297, 308-09 [264 Cal.Rptr. 640, 646]) This
3 conduct would fall within the claim for intentional infliction of emotional distress. (*Ibid.*)

4 Finally, even if this court were inclined to disagree with the above arguments, the evidence
5 is admissible to show both ratification by the Diocese and its leaders, Bishop Blaire and Monsignor
6 Ryan, as well as the custom and practice of Father Illo with respect to his temper and how he deals
7 with those who oppose him, as well as the constitutional malice necessary to support a defamation
8 claim.

9 A church and its leaders can be held liable for ratification of bad acts, (*Allard v. Church of*
10 *Scientology of California* (1976) 58 Cal.App.3d 439, 452 [129 Cal.Rptr. 797, 805]; *Nicholson v. Rose* (1980)
11 106 Cal.App.3d 457, 459 [165 Cal.Rptr. 156, 160]), including even sexual abuse. (See *Rita M. v.*
12 *Roman Catholic Archbishop of Los Angeles* (1987) 187 Cal.App.3d 1453, 1461 [232 Cal.Rptr. 685, 691];
13 *Jeffrey Scott E. v. Central Baptist Church* (1988) 197 Cal.App.3d 718, 724 [243 Cal.Rptr. 128, 131-32])

14 "Ratification is a question of fact. The burden of proving ratification is upon the
15 party asserting its existence. But ratification may be proved by circumstantial as well
16 as direct evidence. Anything which convincingly shows the intention of the principal
17 to adopt or approve the act in question is sufficient. (Citation) It may also be shown
18 by implication. "... where an agent is authorized to do an act, and he transcends his
19 authority, it is the duty of the principal to repudiate the act as soon as he is fully
20 informed of what has been thus done in his name, ... else he will be bound by the act
21 as having ratified it by implication." (Citation)" (Citations)
22 (*StreetScenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 242 [126 Cal.Rptr.2d 754,
23 759-60])

24 Here, plaintiffs are attempting to prove that the Diocese and its leaders knew about Father Illo's
25 violent temper and propensity to defame and intentionally injure those who loved and respected him.
26 Plaintiffs have a substantial burden to convince the jury that these august and pious men would
27 tolerate such abuse, and that an organization that wields such a heavy moral authority would
28 condone this conduct. To prevent plaintiffs from presenting this evidence would essentially sanction
the abuse that plaintiffs' experts will say has gone on for centuries. This court cannot allow itself to
become an active participant in that practice.

1 Additionally, the canonical investigation entered into by the church is admissible as evidence
2 of ratification. That investigation determined that Father Illo is an abusive person needing
3 counseling, but Bishop Blaire has decided that he will suspend the canonical investigation and wait
4 until the jury in this matter renders its decision. (See Exhibits to plaintiffs' Opposition to Motion for
5 Continuance) Bishop Blaire has acknowledged in deposition that he knows that Father Illo has
6 abused at least two parishioners: plaintiff Amber Lomas and Jose Munoz, yet he has done nothing
7 to remedy the situation. "A principal's failure to promptly disaffirm an agent's conduct on her behalf
8 constitutes a ratification. (Citations)" (*NORCAL Mutual Insurance Company v. Newton* (2000) 84
9 Cal.App.4th 64, 79 [100 Cal.Rptr.2d 683, 695]) The canonical investigation, concluded in January
10 2003, coupled with the Bishop's failure to act, constitutes clear ratification. Additionally, the Bishop
11 is estopped from claiming that the investigation is protected by the First Amendment because he has
12 waived that privilege; he has explicitly stated that he will wait for the decision of a civil jury before
13 he undertakes what is apparently his canonical obligation. Bishop Blaire and the Diocese cannot
14 have it both ways, and they have made their decision to utilize the civil process rather than the
15 canonical process.

16 Finally, should this court find that there is some constitutional privilege that prevents an
17 action on the conduct, that does not preclude introduction of the evidence for the purpose of
18 showing ratification and pattern and practice. The jury can simply be given a limiting instruction
19 telling them the purpose for which the evidence is being admitted, and further instructing them not
20 to consider the evidence for an improper purpose. That instruction would cure any prejudice that
21 defendants might argue.

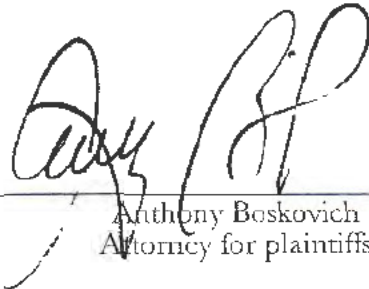
22 Additionally, Father Illo's systematic attack on plaintiffs and their friends are strong evidence
23 of malice, which certainly is relevant to plaintiffs' defamation claim and prayer for punitive damages.
24 (See, e.g., *Brewer v. Second Baptist Church of Los Angeles* (1948) 32 Cal.2d 791, 799 [197 P.2d 713, 718]
25 ["The jury could conclude that Reverend Henderson had developed a strong dislike for plaintiffs.
26 They could also conclude the Reverend Henderson wished to free himself of any criticism by

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1 expelling his opponents from the church. These facts considered with the language of the opening
2 paragraph of the charges read to the church are clearly sufficient to support a finding of a malicious
3 or improper motive for the publication on the part of Reverend Henderson.”]; see also, *McNair v.*
4 *Worldwide Church of God* (1987) 197 Cal.App.3d 363, 376 [242 Cal.Rptr. 823, 833])

5 For these reasons, the motion must be denied.

6
7 Dated: 19 February 2005

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12 Anthony Boskovich
13 Attorney for plaintiffs
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Cs
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

DECLARATION OF ANTHONY
BOSKOVICH IN SUPPORT OF
REQUEST FOR ORDER TO
BIFURCATE ISSUE OF
PUNITIVE DAMAGES AND FOR
ORDER REQUIRING
INDIVIDUAL DEFENDANTS
TO PRODUCE EVIDENCE OF
WEALTH SHOULD THE
JURY DETERMINE THAT
PUNITIVE DAMAGES BE
AWARDED

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

27
28 Declaration of Anthony Boskovich re Request for Order
Bifurcating Punitive Damages and Requesting Evidence of Defendants' Wealth

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

1 Anthony Boskovich declares:

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1. I am an attorney at law admitted to practice before all courts in this state and am one of the attorneys of record for plaintiffs in this matter.

2. Defendant Diocese filed a motion to strike the prayer for punitive damages against it early in this matter and, pursuant to stipulation, an order was entered in this case on 8 January 2003 striking all allegations regarding punitive damages as to the Diocese only. The punitive damages are still alleged as to all other defendants.

3. Discovery has been difficult at best in this matter. There were several disputes regarding written discovery in this matter that required several motions to compel. The court's order on those motions was delayed because of the need for the Honorable Carter Holly to recuse himself during the pendency of those motions.

4. Depositions of defendants and their witnesses could only begin in the fall of 2004 after the written discovery disputes were resolved and documents produced. It was especially difficult to depose Bishop Blaire and Monsignor Ryan due to scheduling conflicts. Because of this, only part of Bishop Blaire's was able to be completed in early October 2004, and the depositions of these defendants could only be completed during the week of 7 February 2005 because of these conflicts.

5. Because of these delays, the transcripts of the depositions of both Bishop Blaire and Monsignor Ryan are not yet available.

6. Plaintiffs did not bring an earlier motion to discover the wealth of defendants earlier in these proceedings because of the delay in the availability of defendants. Additionally, plaintiffs

1 believe that it is more efficient to discover this information only if a jury makes a finding that punitive
2 damages are warranted.

3
4 7. I have indicated to Messrs. Balestracci and Kozina, counsel for the Diocese, that plaintiffs
5 intend to make a motion to reinstate the punitive damages allegations against the Diocese, but
6 cannot do so until the depositions of its top officials, Bishop Blaire and Monsignor Ryan, have been
7 completed. At no time has Mr. Balestracci or Mr. Kozina ever commented, either orally or in
8 writing, that they would oppose such a motion on the basis of lack of timeliness.

9
10 8. Because of defendants' delays in making these defendants available for deposition, the
11 motion to reinstate the allegations will be able to be made only during the trial of this matter.

12
13 I declare under penalty of perjury that the foregoing is true and correct.

14
15 Dated; 20 February 2005

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21 _____
22 Anthony Boskovich
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10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,)
17 **Plaintiffs,)**
18 **vs.)**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
BISHOP STEVEN BLAIRE AND THE DIOCESE)
21 **OF STOCKTON, ET AL.,)**
22 **Defendants.)**
23 **DEFENDANTS' OPPOSITION TO**
PLAINTIFFS' FIFTH MOTION IN
LIMINE TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE, AND/OR
ARGUMENT REGARDING ATTORNEY
MACKOUL'S ALLEGED DISCUSSIONS
WITH PLAINTIFFS TREATING
PSYCHOLOGIST DIANE STEPHENS
OUTSIDE THE PRESENCE OF
DEFENSE COUNSEL
DEPARTMENT: 41
TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
TRIAL DATE: FEBRUARY 22, 2005

24 I
25 ISSUE PRESENTED

26 Plaintiff's motion seeks to preclude defendants from introducing any evidence relating to
27 Attorney MacKoul's discussions with Plaintiffs' treating psychologist outside the presence of
28 Defendants' Opposition To Plaintiffs' Motion In Limine Number Five

1 defense counsel. Defendants FATHER JOSPEH ILLO, MONSIGNOR RICHARD RYAN,
2 BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a
3 Corporation Sole, (hereinafter DEFENDANTS) oppose this motion in its entirety.

4 **II.**

5 **INTRODUCTION/SUMMARY OF ARGUMENT**

6 Plaintiffs' seek to exclude any evidence of Plaintiffs' attorney, George J. MacKoul's
7 discussions with Plaintiffs' treating psychologist, Diane Stephens, outside the presence of
8 defense counsel, during the course of her deposition. Plaintiffs' fail to see the clear relevance of
9 such evidence. Evidence that Plaintiffs' attorney had discussions with an expert witness, during
10 the course of a deposition, outside the presence of defense counsel is highly relevant to address
11 the credibility of that witness and potentially show bias or improper influence.

13 **III.**

14 **ARGUMENT**

15 **A. EVIDENCE REGARDING DISCUSSIONS BETWEEN PLAINTIFFS'**
16 **ATTORNEY AND AN EXPERT WITNESS IS RELEVANT AND ADMISSIBLE**
17 **AS IMPEACHMENT EVIDENCE**

18 Except as otherwise provided by statute, all relevant evidence is admissible. California
19 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
20 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to
21 prove or disprove any disputed fact that is of consequence to the determination of the action.

22 California Evidence Code Section 351.

23 California Evidence Code Section 780 states in pertinent part:

24 "Except as otherwise provided by statute, the court or jury may consider in
25 determining the credibility of a witness any matter that has any tendency in reason
26 to prove or disprove the truthfulness of his testimony at the hearing, including, but
not limited to any of the following:

27 (f) The existence or nonexistence of a bias, interest, or other motive

1 (h) A statement made by him that is inconsistent with any part of his testimony at
2 the hearing.”

3 California Evidence Code Section 721 states in pertinent part:

4 “Subject to subdivision (b), a witness testifying as an expert may be cross-examined to
5 the same extent as any other witness and, in addition, may be fully cross-examined as to
6 (1) his or her qualifications, (2) the subject to which his or her expert testimony relates,
7 and (3) the matter upon which his or her opinion is based and the reasons for his or her
8 opinion.”

9 It is anticipated Diane Stephens will testify during the course of this trial. If she does, she
10 will be subject to cross examination as to their credibility. Wide latitude should be given to
11 counsel in developing facts which show bias, prejudice or interest on the part of a witness.
12 People v. Avelar (1961) 193 Cal.App.2d 631. During the course of Ms. Stephens’ deposition, at
13 one point Plaintiffs’ attorney was questioning her regarding whether or not certain statements had
14 been made to her by KATHLEEN MACHADO. Ms. Stephens, after initially acknowledging
15 such statements had been made, began to question her prior answers and requested a break to
16 review her notes. During the course of this break Plaintiffs’ counsel had an opportunity to
17 converse with Ms. Stephens outside the presence of defense counsel. DEFENDANTS are unsure
18 of the nature or extent of any conversation between Ms. Stephens and Mr. MacKoul, but should
19 be allowed to inquire therein by way of cross examination of Ms. Stephens during the course of
20 this trial. The purpose of such cross examination would be to address the credibility of Ms.
21 Stephens and determine whether or not Mr. MacKoul in any way influenced her testimony. This
22 sort of cross examination is precisely the type permitted by California Evidence Code Sections
23 721 and 780.

24 **B. THE PROBATIVE VALUE OF SUCH EVIDENCE IS NOT SUBSTANTIALLY**
25 **OUTWEIGHED BY SUBSTANTIAL DANGER OF UNDUE PREJUDICE**

26 Plaintiffs argue that any evidence relating to Plaintiffs’ attorney, George J. MacKoul’s
27 discussions with Plaintiffs’ treating psychologist, Diane Stephens, outside the presence of

1 defense counsel, during the course of her deposition is not relevant or admissible for any purpose
2 in this case and should be excluded under California Evidence Code Section 352. This section
3 provides in pertinent part that the court may, in its discretion, exclude evidence if its probative
4 value is substantially outweighed by the probability that its admission will create substantial
5 danger of undue prejudice. Plaintiffs fail to acknowledge the relevance and probative value of
6 this evidence. As explained above, such evidence is admissible to address the credibility of
7 Diane Stephens should she choose to testify during the course of this trial. The high probative
8 value of any potential influence Plaintiffs' attorney may have had on the testimony of Diane
9 Stephens is not substantially outweighed by a danger of undue prejudice and therefore should not
10 be excluded under Section 352.

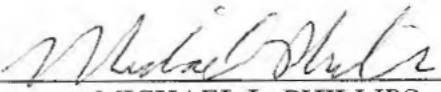
12 **IV.**

13 **CONCLUSION**

14 Evidence regarding George MacKoul's discussions with Plaintiffs' treating psychologist,
15 Diane Stephens, outside the presence of defense counsel, during the course of her deposition is
16 relevant and admissible under California Evidence Code Sections 721 and 780 in order to address
17 the credibility of Ms. Stephens. As such, Plaintiff's motion in limine to exclude such evidence
18 should be denied.
19

20
21 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

22
23 By: 
24 MICHAEL L. PHILLIPS

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10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
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a Corporation Sole
12

13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14
15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,)
17 **Plaintiffs,)**
18 **vs.)**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA) DEPARTMENT: 41**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS**
BISHOP STEVEN BLAIRE AND THE DIOCESE) TRIAL DATE: FEBRUARY 22, 2005
21 **OF STOCKTON, ET AL.,)**
22 **Defendants.)**
23 **)**

24 **I**

25 **ISSUE PRESENTED**

26 Plaintiff's motion seeks to allow Plaintiffs to file a First Amended Complaint in this
27 matter. Defendants FATHER JOSPEH ILLO, MONSIGNOR RICHARD RYAN, BISHOP

28 Defendants' Opposition To Plaintiffs' Motion In Limine Number Nine

FILED
FEB 22 2005 12
DEPUTY CLERK
Trishda Reed
DEPUTY

1 STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a
2 Corporation Sole, (hereinafter DEFENDANTS) opposes this motion in its entirety.

3
4 **II.**

5 **SUMMARY OF ARGUMENT**

6 Plaintiffs have no adequate basis for filing an amended complaint. There is no reasonable
7 excuse for Plaintiffs' delay in seeking to file an amended complaint. Plaintiffs proposed First
8 Amended Complaint essentially seeks to add additional fact which are irrelevant and raise
9 nonjusticiable issues and seeks to add to the nature of the damages sought. Finally,
10 DEFENDANTS will be prejudiced by the filing of Plaintiffs' proposed First Amended Complaint
11 and would necessarily have to seek a continuance of the trial. Plaintiffs' motion is frivolous,
12 amounts to an undue consumption of the court's time, and should be denied.

13
14 **III.**

15 **ARGUMENT**

16 **A. PLAINTIFFS HAVE NO ADEQUATE BASIS FOR FILING AN AMENDED**
17 **COMPLAINT**

18 Plaintiffs are correct in their outline of the factors a court may consider in allowing a
19 party to amend their pleadings. However, they seem to have failed to correctly apply those
20 factors to this action.

21 **1. There Is No Reasonable Excuse For Plaintiffs' Delay**

22 Plaintiffs offer no reasonable excuse for their delay in seeking to file an amended
23 complaint. Plaintiffs attempt to blame their delay on the fact that the depositions of defendants
24 BISHOP STEVEN BLAIRE and FATHER RICHARD RYAN were not conducted until
25 February 9 and 10 of 2005. This excuse is unreasonable. Plaintiffs are, and have been since the
26 inception of this litigation, responsible for prosecuting their claims. This includes conducting all
27

1 discovery they deem to be necessary. Plaintiffs have implied, by way of their motion, to the
2 court that DEFENDANTS some how are responsible for the depositions of BISHOP STEVEN
3 BLAIRE and FATHER RICHARD RYAN not being conducted until recently. This implication
4 is false and misleading. DEFENDANTS have done nothing to prevent the depositions of
5 BISHOP STEVEN BLAIRE and FATHER RICHARD RYAN from being taken. The fact that
6 these depositions were not taken until recently, over 2 years after Plaintiffs' complaint was filed,
7 is a result of Plaintiffs' failure to proficiently prosecute their claims. Once Plaintiffs' noticed the
8 depositions of these individuals their depositions were conducted in a timely manner.
9

10 Furthermore, no new relevant information was ascertained by Plaintiffs during the course
11 of these depositions that would allow the filing of an amended complaint. Plaintiffs' amended
12 complaint seeks to put nonjusticiable issues regarding the internal procedures of the THE
13 ROMAN CATHOLIC BISHOP OF STOCKTON before the court, a matter that will be further
14 addressed, and also seeks to allege general and punitive damages that were either not alleged in
15 their original complaint or were stricken from the complaint by stipulation of the parties.
16

17 Plaintiffs had ample opportunity prior to filing their complaint to evaluate their case and
18 determine the nature and scope of available damages. Plaintiffs chose not to allege any general
19 damages on various causes of action. They are now seeking to amend their complaint to add
20 general damages as compensation for medical care for future psychological damages, according
21 to their motion in limine. It is unclear to DEFENDANTS what new information has been
22 ascertained at this late stage in the litigation indicating that Plaintiffs' will need future medical
23 care. Plaintiffs had ample opportunity to determine, prior to filing their complaint, whether or
24 not they would need future medical care. There is no reasonable excuse for Plaintiffs' failure to
25 seek these damages in their original complaint.
26
27
28

1 Plaintiffs are also trying to reassert punitive damages on various causes of action. This
2 tactic is completely frivolous. As acknowledged by Plaintiffs in their motion in limine, it was
3 stipulated between the parties that punitive damages would be removed from the original
4 complaint pursuant to California Code Of Civil Procedure Section 436(a). If Plaintiffs wanted to
5 seek punitive damages against all named defendants they had ample opportunity to do so and
6 should not have stipulated to have such damages stricken. If punitive damages were being
7 sought, Plaintiffs would also have undergone the appropriate procedures to seek additional
8 discovery regarding DEFENDANTS' wealth and other facts relevant to punitive damages. They
9 did not do so. Plaintiffs should not now be permitted, at their whim, to recant their stipulation
10 and attempt to seek punitive damages on the day of trial.

12 There is no reasonable excuse for Plaintiffs' delay in seeking to amend their complaint.
13 Plaintiffs complaint has been on file for over two years. As held by the court in a case cited by
14 Plaintiffs, City of Stanton v. Cox (1989) 207 Cal.App.3d 1557, 1564, "a party who waits 18
15 months before attempting to amend, and then does so only after trial has commenced, and who
16 offers no excuse for the failure, can hardly complain when the request to amend is denied."

18 **2. The Additional Facts And Legal Theories Are Irrelevant And Raise
19 Nonjusticiable Issues**

20 Plaintiffs are seeking to introduce additional facts regarding the internal policies and
21 procedures of THE ROMAN CATHOLIC BISHOP OF STOCKTON including evidence relating
22 to The Dallas Charter. In addressing the issue of allegations of child sexual abuse by clergy, the
23 National Conference of Catholic Bishops issued the Charter for the Protection of Children and
24 Young People, popularly known as the Dallas Charter. DEFENDANTS anticipate that through
25 the use of additional facts within their amended complaint Plaintiffs attempt to allege, and
26 present evidence in support thereof, of what has been termed clergy malpractice.

1 The court is requested to take judicial notice of Defendants Motion In Limine to Exclude
2 Any Reference to Internal Actions of Church and the declaration of Monsignor Ryan attached
3 thereto.

4 California courts do not recognize a tort of clergy malpractice. In the matter of Nally v.
5 Grace Community Church (1988) 47 Cal.3d 278, the California Supreme Court declined to create
6 such a tort.

7 As was pointed out in Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th
8 257, 269-270

9
10 "Nally is widely relied upon for the proposition that there is no
11 independent tort known as "clerical malpractice," not only by California
12 courts (*Jacqueline R. v. Household of Faith Family Church, Inc.* (2002)
13 97 Cal.App.4th 198 ; *Roman Catholic Bishop v. Superior Court* (1996)
14 42 Cal.App.4th 1556), but by those elsewhere (see, e.g., *F.G. v.*
15 *MacDonell* (1997) 150 N.J. 550, 562, 696 A.2d 697, 703; *Schieffer v.*
16 *Catholic Archdiocese of Omaha* (1993) 244 Neb. 715, 720, 508 N.W.2d
17 907, 911; *Strock v. Pressnell, supra*, 527 N.E.2d 1235, 1238-1239) and
18 by many commentators (see, e.g., O'Reilly & Strasser, *Clergy Sexual*
19 *Misconduct: Confronting the Difficult Constitutional and Institutional*
20 *Liability Issues* (1994) 7 St. Thomas L.Rev. 31, 56 (hereafter *Clergy*
21 *Sexual Misconduct*); Note , *Intentional Infliction of Emotional Distress*
22 *by Spiritual Counselors: Can Outrageous Conduct Be "Free Exercise"?*
23 (1986) 84 Mich.L.Rev 1296, fn. 1; Esbeck, *Tort Claims Against*
24 *Churches and Ecclesiastical Officers: The First Amendment*
25 *Considerations* (1986) 89 W.Va.L.Rev. 1, 78-84.) The fact that that no
26 state or federal court in the United States now recognizes a cause of
27 action for clergy malpractice (see *Dausch v. Rykse* (7th Cir. 1994) 52
28 F.3d 1425, 1432, fn. 4 (conc. opn. of Coffey, J.) [listing state supreme
court cases rejecting a cause of action for clergy malpractice]) reflects
widespread judicial acceptance of the *Nally* view that an action for clergy
malpractice cannot be reconciled with the First Amendment because a
standard of care and its breach could not be established without judicial
determinations as to the training, skill, and standards applicable to
members of the clergy in a wide array of religions holding different
beliefs and practices. Even if a reasonable standard could be devised,
which is questionable, it could not be uniformly applied without
restricting the free exercise rights of religious organizations which could
not comply without compromising the doctrines of their faith. The
application of such a standard would also result in the establishment of
judicially acceptable religions, because it would inevitably differentiate

1 ecclesiastical counseling practices that are judicially acceptable from
2 those that are not.”

3 Plaintiffs’ attempt to introduce facts relating to the Dallas Charter by way of their
4 amended complaint for the purpose of attempting to establish a failure to comply with it violates
5 the established law of California, as well as implicates matters that are clearly outside the
6 jurisdiction of this court.

7 Free Exercise Clauses of the federal and state constitutions severely circumscribe the role
8 that civil courts may play in addressing actions that involve matters of internal church
9 governance since there is substantial danger that the state will become entangled in essentially
10 religious controversies. A hands-off policy known as the ecclesiastical abstention doctrine has
11 been adopted by the Supreme Court in addressing matters of an ecclesiastical nature within a
12 hierarchical church structure. Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S.
13 696.

14 The ecclesiastical abstention doctrine provides that the courts lack jurisdiction to inquire
15 into or determine the correctness of an interpretation of religious text or other decision relating to
16 the internal workings or governance of religious entities, especially those of a hierarchical nature
17 such as the Catholic Church. This issue was specifically addressed by the Appellate Court in
18 1989 at which time they held that civil courts can exercise no jurisdiction over matters which
19 concern “theological controversy, church discipline, ecclesiastical government, or the conformity
20 of the members of the church to the standard of morals required of them” because such matters
21 are strictly and purely ecclesiastical in their character. Higgins v. Maher (1989) 210 Cal.App. 3d
22 1168, 1170. The United States Supreme Court has also addressed this issue on numerous
23 occasions. Specifically, in 1976 the Court held that when hierarchical religious organizations
24 establish their own rules and regulations for internal discipline and government, the U.S.
25
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1 Constitution requires that civil courts accept their decisions as binding upon them. Serbian
2 Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696, 724-725.

3 In summary, the additional facts included in Plaintiffs' proposed First Amended
4 Complaint raise issues that are outside the jurisdiction of this court. The court should not allow
5 Plaintiffs to amend their complaint to include such irrelevant facts and issues.

6 **3. Defendants Will Be Prejudiced If Plaintiffs Are Permitted To File Their**
7 **Proposed First Amended Complaint**

8 DEFENDANTS would be severely prejudiced if Plaintiffs were permitted to file their
9 proposed First Amended Complaint. DEFENDANTS would be placed in the position of
10 defending claims in which the potential damages far exceed those currently sought. Furthermore,
11 if Plaintiffs are permitted to file an amended complaint, DEFENDANTS would necessarily have
12 to file a motion to continue the trial. This would be necessary to allow DEFENDANTS their
13 statutory right under California Code Of Civil Procedure Section 430.40 to challenge the
14 sufficiency of Plaintiffs amended complaint. As held in Darsie v. Darsie (1942) 49 Cal.App.2d
15 491, filing an amended complaint that embodies substantial changes from the original may
16 require defendant to file a new answer or demurrer. In addition, if faced with a punitive damages
17 claim, DEFENDANTS would move to bifurcate the trial as to the issues of liability and damages
18 under California Code Of Civil Procedure Section 597.
19
20

21 IV.

22 **CONCLUSION**

23 Plaintiffs' attempt to file an amended complaint is an attempt to circumvent the rules of
24 civil procedures and evidence in order to place nonjusticiable issues before the court and seek
25 additional, previously stricken, damages. Such tactics could warrant sanctions. As such,
26 Plaintiffs' motion in limine to allow the filing of an amended complaint should be denied.
27

Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By: *Michael L. Phillips*
MICHAEL L. PHILLIPS

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11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
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13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14
15 **KATHLEEN MACHADO AS AN INDIVIDUAL)**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,)

17 **Plaintiffs,**

18 **vs.**

19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
21 **BISHOP STEVEN BLAIRE AND THE DIOCESE)**
OF STOCKTON, ET AL.,)

22 **Defendants.**

CASE No. CV018440

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' EIGHTH MOTION IN
LIMINE TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE, AND/OR
ARGUMENT REGARDING CERTAIN
STATEMENTS MADE BY ANY PERSON
ON THE VIDEOTAPE INTERVIEW OF
AMBER AND RACHEL LOMAS BY THE
STANISLAUS COUNTY DISTRICT
ATTORNEY'S OFFICE**

**DEPARTMENT: 41
TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
TRIAL DATE: FEBRUARY 22, 2005**

23
24 **I**
ISSUE PRESENTED

25
26 Plaintiff's motion seeks to preclude defendants from introducing any evidence relating to
27 certain statements made during an interview of AMBER LOMAS and RACHEL LOMAS by the

28 Defendants' Opposition To Plaintiffs' Motion In Limine Number Eight

FILED

FEB 22 AM 11:11

CLERK
Frederick Reed
DEPUTY

1 Stanislaus County District Attorney's Office. Defendants FATHER JOSPEH ILLO,
2 MONSIGNOR RICHARD RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
3 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole, (hereinafter DEFENDANTS)
4 oppose this motion in its entirety.

5 **II.**

6 **INTRODUCTION/SUMMARY OF ARGUMENT**

7 Plaintiffs' seek to exclude any evidence of statements made by AMBER LOMAS or
8 RACHEL LOMAS during the course of an interview by the Stanislaus County District
9 Attorney's Office regarding whether or not Plaintiffs had retained an attorney. Plaintiffs' fail to
10 see the relevance of such evidence. Any evidence that Plaintiffs had retained an attorney prior to
11 the interview would be relevant and admissible as impeachment evidence to show motive on the
12 part of Plaintiffs.
13

14 **III.**

15 **ARGUMENT**

16 **A. EVIDENCE REGARDING WHETHER OR NOT PLAINTIFFS HAD RETAINED**
17 **AN ATTORNEY PRIOR TO THEIR INTERVIEW BY DEFENDANTS IS**
18 **RELEVANT AND ADMISSIBLE AS IMPEACHMENT EVIDENCE**

19 Except as otherwise provided by statute, all relevant evidence is admissible. California
20 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
21 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to
22 prove or disprove any disputed fact that is of consequence to the determination of the action.
23 California Evidence Code Section 351.

24 California Evidence Code Section 780 states in pertinent part:

25
26 "Except as otherwise provided by statute, the court or jury may consider in
27 determining the credibility of a witness any matter that has any tendency in reason
28 to prove or disprove the truthfulness of his testimony at the hearing, including, but
not limited to any of the following:

- 1 (f) The existence or nonexistence of a bias, interest, or other motive
2 (h) A statement made by him that is inconsistent with any part of his testimony at
3 the hearing.”

4 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
5 subject to cross examination as to their credibility. Wide latitude should be given to counsel in
6 developing facts which show bias, prejudice or interest on the part of a witness. People v. Avelar
7 (1961) 193 Cal.App.2d 631. The fact Plaintiffs had retained an attorney and were going to be
8 seeking damages from DEFENDANTS prior to the interview by DEFENDANTS is highly
9 relevant in addressing the credibility of Plaintiffs.

10 **IV.**

11 **CONCLUSION**

12 Any evidence that Plaintiffs had retained an attorney prior to AMBER LOMAS and
13 RACHEL LOMAS' interview by the Stanislaus County District Attorney's Office is relevant and
14 admissible under California Evidence Code Section 780 as impeachment evidence to show
15 motive on the part of Plaintiffs. As such, Plaintiffs' motion to exclude such evidence should be
16 denied.
17

18
19 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

20
21 By: 

MICHAEL L. PHILLIPS

1 by MONSIGNOR RICHARD RYAN and Sister Barbara. Defendants FATHER JOSPEH ILLO,
2 MONSIGNOR RICHARD RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
3 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole, (hereinafter DEFENDANTS)
4 oppose this motion only to the extent that if any portion of these video taped interviews are
5 deemed admissible, those portions in which Plaintiffs acknowledge having retained an attorney
6 would also be admissible.

7 **II.**

8 **ARGUMENT**

9 DEFENDANTS agree with Plaintiffs that any evidence regarding the opinions or
10 impressions of Plaintiffs' attorney or the content of any communications between Plaintiffs and
11 their attorney are inadmissible, just as the opinions and impressions of the Stanislaus District
12 Attorney regarding the merits of this case would be inadmissible.

13 As to the specific statements made during the taped interview of KATHLEEN
14 MACHADO and AMBER LOMAS by MONSIGNOR RICHARD RYAN and Sister Barbara, it
15 is DEFENDANTS position that those statements in their entirety are not admissible.
16

17 This interview was conducted during the course of an internal investigation by
18 DEFENDANTS and is therefore inadmissible on various grounds. ⁷ The court is requested to
19 take judicial notice of Defendants Motion In Limine to Exclude Any Reference to Internal
20 Actions of Church and the declaration of Monsignor Ryan attached thereto as well as Defendants
21 Motion In Limine to Exclude Evidence of Subsequent Remedial Measures.

22 However, should the court allow evidence of these interviews into evidence, any
23 statements regarding whether or not Plaintiffs had retained an attorney would be admissihle.
24 Evidence that Plaintiffs had retained an attorney prior to the interview would be relevant and
25 admissible as impeachment evidence to show motive on the part of Plaintiffs.
26

1 **A. EVIDENCE REGARDING WHETHER OR NOT PLAINTIFFS HAD RETAINED**
2 **AN ATTORNEY PRIOR TO THEIR INTERVIEW BY DEFENDANTS IS**
3 **RELEVANT AND ADMISSIBLE AS IMPEACHMENT EVIDENCE**

4 Except as otherwise provided by statute, all relevant evidence is admissible. California
5 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
6 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to
7 prove or disprove any disputed fact that is of consequence to the determination of the action.

8 California Evidence Code Section 351.

9 California Evidence Code Section 780 states in pertinent part:

10 "Except as otherwise provided by statute, the court or jury may consider in
11 determining the credibility of a witness any matter that has any tendency in reason
12 to prove or disprove the truthfulness of his testimony at the hearing, including, but
13 not limited to any of the following:

- 14 (f) The existence or nonexistence of a bias, interest, or other motive
15 (h) A statement made by him that is inconsistent with any part of his testimony at
16 the hearing."

17 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
18 subject to cross examination as to their credibility. Wide latitude should be given to counsel in
19 developing facts which show bias, prejudice or interest on the part of a witness. People v. Avelar
20 (1961) 193 Cal.App.2d 631. The fact Plaintiffs had retained an attorney and were going to be
21 seeking damages from DEFENDANTS prior to the interview by DEFENDANTS is highly
22 relevant in addressing the credibility of Plaintiffs.

23 **III.**

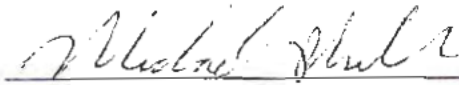
24 **CONCLUSION**

25 DEFENDANTS agree with Plaintiffs that any evidence regarding the opinions or
26 impressions of Plaintiffs' attorney or the content of any communications between Plaintiffs and
27 their attorney are inadmissible. Furthermore, as outlined in Defendants Motion In Limine to
28 Exclude Any Reference to Internal Actions of Church and the declaration of Monsignor Ryan

1 attached thereto as well as Defendants Motion In Limine to Exclude Evidence of Subsequent
2 Remedial Measures it is DEFENDANTS' position that any evidence of the interview with
3 KATHLEEN MACHADO and AMBER LOMAS by MONSIGNOR RICHARD RYAN and
4 Sister Barbara is inadmissible. However, should the court decide differently any evidence that
5 Plaintiffs had retained an attorney prior to the interview would be relevant and admissihle as
6 impcachment evidence to show motive on the part of Plaintiffs.
7

8 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

9
10 By: 
11 MICHAEL L. PHILLIPS

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FILED

FEB 22 11:11

BY Freddie Reed
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13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**
14

15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,)
17 **Plaintiffs,)**
18 **vs.)**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
21 **BISHOP STEVEN BLAIRE AND THE DIOCESE)**
OF STOCKTON, ET AL.,)
22 **Defendants.)**
23 **)**
) DEPARTMENT: 41
) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
) TRIAL DATE: FEBRUARY 22, 2005

24 **I**
25 **ISSUE PRESENTED**

26 Plaintiff's motion seeks to preclude defendants from introducing evidence relating to the
27 physical proximity of KATHLEEN MACHADO to RACHEL LOMAS, AMBER LOMAS, and
28 Defendants' Opposition To Plaintiffs' Motion In Limine Number Four

1 Kollen Lomas at the time of the alleged molestation by FATHER FRANCIS JOSEPH.
2 Defendants FATHER JOSPEH ILLO, MONSIGNOR RICHARD RYAN, BISHOP STEPHEN
3 E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole,
4 (hereinafter DEFENDANTS) oppose that part of Plaintiffs' motion which seeks to exclude any
5 evidence of the physical proximity of KATHLEEN MACHADO to RACHEL LOMAS, AMBER
6 LOMAS, and Kollen Lomas at the time of the alleged molestation and concurs with that part of
7 Plaintiffs' motion requesting a jury visit to the location of the alleged incident.
8

9 **II.**

10 **INTRODUCTION/SUMMARY OF ARGUMENT**

11 Plaintiffs are taking the position that evidence regarding the physical proximity of
12 KATHLEEN MACHADO to AMBER LOMAS, RACHEL LOMAS, and Kollen Lomas is not
13 relevant or admissible for any purpose in this case. Plaintiffs' position overlooks the clear
14 relevance of this evidence for the purpose of addressing the credibility of Plaintiffs.
15

16 The court is requested to take judicial notice of Defendants' Motion In Limine Requesting
17 a Jury Site Visit.

18 Plaintiffs allege in their complaint that on July 25, 2001 defendant FR. FRANCIS
19 ARAKAL intentionally made harmful and offensive contact with plaintiffs AMBER LOMAS
20 and RACHEL LOMAS at their residence, 1816 7th Street, Hughson, California. One of the issues
21 in this litigation is the location and proximity of the individuals present in house at the time of the
22 alleged offensive contact. There is a dispute regarding who was present in the room during the
23 alleged offensive contact and the proximity to that room of the remaining individuals within the
24 house. In order to address the credibility of the witnesses who may testify during the course of
25 this trial, evidence regarding the lay out of the residence where the alleged incidents took place is
26 necessary. DEFENDANTS agree with Plaintiffs that the best way to present such evidence in an
27

1 unbiased manner would be to allow the jury to visit Plaintiffs' residence at some point during the
2 course of this trial.

3 **III.**

4 **ARGUMENT**

5 **A. EVIDENCE OF THE PHYSICAL PROXIMITY OF KATHLEEN MACHADO TO**
6 **AMBER LOMAS, RACHEL LOMAS, AND KOLLEN LOMAS IS RELEVANT**
7 **FOR THE PURPOSE OF AIDING THE JURY IN ADDRESSING THE**
8 **CREDIBILITY OF WITNESSES**

9 Except as otherwise provided by statute, all relevant evidence is admissible. California
10 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
11 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to
12 prove or disprove any disputed fact that is of consequence to the determination of the action.
13 California Evidence Code Section 351. This includes evidence that tend to prove or disprove any
14 material issue raised by the pleadings. Foster v. Keating (1953) 120 Cal. App. 2d 435, 436.

15 California Evidence Code Section 780 states in pertinent part:

16 "Except as otherwise provided by statute, the court or jury may consider in
17 determining the credibility of a witness any matter that has any tendency in reason
18 to prove or disprove the truthfulness of his testimony at the hearing, including, but
19 not limited to any of the following:

- 20 (f) The existence or nonexistence of a bias, interest, or other motive
21 (h) A statement made by him that is inconsistent with any part of his testimony at
22 the hearing."

23 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
24 subject to cross examination as to their credibility. One of the issues that DEFENDANTS
25 anticipate will be raised during the course of this trial is the physical proximity of those people
26 who were present at KATHLEEN LOMAS' residence on the date of the alleged incident.
27 Evidence in the form of photographs of the residence or, even better, a jury visit to the residence,
28 will aid the jury in addressing the credibility of the witnesses who may testify regarding the
proximity of those people present on the date of the alleged incident.

1 1. **The Probative Value Of Such Evidence Is Not Substantially Outweighed By**
2 **Substantial Danger Of Jury Confusion**

3 Plaintiffs argue that any evidence in the form of photographs of Plaintiffs' residence
4 should be excluded under California Evidence Code Section 352. This section provides in
5 pertinent part that the court may, in its discretion, exclude evidence if its probative value is
6 substantially outweighed by the probability that its admission will create substantial danger of
7 undue prejudice or jury confusion. Plaintiffs fail to acknowledge the relevance and probative
8 value of this evidence. As explained above, this evidence is admissible to address the credibility
9 of Plaintiffs should they choose to testify during the course of this trial. The high probative value
10 of this evidence is not substantially outweighed by a danger of undue prejudice or jury confusion
11 and therefore should not be excluded under Section 352. Furthermore, any danger of undue
12 confusion or prejudice can be eliminated by allowing the jury to personally visit the site of the
13 alleged incidents. This will allow the jury to view this evidence in an unbiased manner.

15 **B. THE TRIER OF FACT MAY VIEW THE SITE INVOLVED IN LITIGATION**
16 **AND CONSIDER ANY FINDING THEREFROM IN DETERMINING A**
17 **VERDICT**

18 The trial court may order the jury to view the property that is the subject of the litigation,
19 the place where any relevant event took place, and any object or demonstration relevant and
20 admissible as evidence. California Code of Civil Procedure Section 651(a). Furthermore, it is
21 well-settled law that the trier of fact's view of an area is independent evidence which can be
22 considered in arriving at a conclusion and is substantial evidence in support of findings consonant
23 therewith. Miller v. Johnston (1969) 270 Cal.App.2d 289, 304. In Miller, plaintiff's owned a
24 landlocked parcel and were seeking a continued easement for access over defendant's parcels.
25 The trial judge, in conducting a bench trial, personally observed the land involved in the litigation
26 and made factual finding based on such observations. One such finding was that "It is physically
27 possible but extremely difficulty and impractical to drive a motor vehicle of normal size along
28

1 the true recorded easement from Cloud View Road to the residence of plaintiffs and it would be
2 an extreme hardship on plaintiffs to require them to confine their vehicular movements to the
3 recorded easement, without using triangle B". Miller at 303. This manner of fact finding was
4 upheld on appeal.

5 **IV.**

6 **CONCLUSION**

7 Evidence regarding the physical proximity of KATHLEEN MACHADO to RACHEL
8 LOMAS, AMBER LOMAS, and Kollen Lomas at the time of the alleged molestation is relevant
9 to address the credibility of witness who may testify during the course of this trial. Furthermore,
10 the best manner in which to present this evidence would be a jury visit to Plaintiffs' residence.
11 The trier of fact's view of an area is independent evidence which can be considered in arriving at
12 a conclusion and is substantial evidence in support of findings consonant therewith. This case is
13 one that involved allegations of offensive contact with plaintiffs while at their residence and at
14 issue who was present in the room during the alleged offensive contact and the proximity to that
15 room of the remaining individuals within the house. The jury would greatly benefit from a visit
16 to the involved residence. As such, the court should deny Plaintiffs' motion in limine to the
17 extent it seeks to exclude any evidence of the physical proximity of KATHLEEN MACHADO to
18 RACHEL LOMAS, AMBER LOMAS, and Kollen Lomas at the time of the alleged molestation
19 and order a jury visit to Plaintiffs' residence.
20
21
22

23 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

24
25 By: 
26 MICHAEL L. PHILLIPS

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19 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,

20 a Corporation Sole

21 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

22 **KATHLEEN MACHADO AS AN INDIVIDUAL)**
23 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
24 **LOMAS AND AMBER LOMAS,)**

25 **Plaintiffs,**

26 **vs.**

27 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)**
28 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
29 **BISHOP STEVEN BLAIRE AND THE DIOCESE)**
30 **OF STOCKTON, ET AL.,)**

31 **Defendants.**

32 **CASE No. CV018440**

33 **DEFENDANTS' OPPOSITION TO)**
34 **PLAINTIFFS' THIRD MOTION IN)**
35 **LIMINE TO EXCLUDE ALL)**

36 **REFERENCE TO EVIDENCE AND/OR)**

37 **ALL ARGUMENTS REGARDING)**

38 **AMBER LOMAS AND RACHEL)**

39 **LOMAS' BIOLOGICLA FATHER BEING)**

40 **A VICTIM OF SEXUAL ABUSE AND/OR)**

41 **A PEDOPHILE, INCLUDING FOR)**

42 **IMPEACHMENT)**

43 **DEPARTMENT: 41)**

44 **TRIAL JUDGE: HON. ELIZABETH HUMPHREYS)**

45 **TRIAL DATE: FEBRUARY 22, 2005)**

46 **I**

47 **ISSUE PRESENTED**

48 Plaintiff's motion seeks to preclude defendants from introducing evidence relating to
49 AMBER LOMAS and RACHEL LOMAS' biological father being a victim of sexual abuse

50 Defendants' Opposition To Plaintiffs' Motion In Limine Number Three

FILED

BY Trishda Neel
DEPUTY

1 and/or a pedophile. Defendants FATHER JOSPEH ILLO, MONSIGNOR RICHARD RYAN,
2 BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a
3 Corporation Sole, (hereinafter DEFENDANTS) opposes this motion in its entirety.

4 **II.**

5 **SUMMARY OF ARGUMENT**

6 Plaintiffs are taking the position that any evidence relating to AMBER LOMAS and
7 RACHEL LOMAS' biological father being a victim of sexual abuse and/or a pedophile
8 is not relevant or admissible for any purpose in this case. This position is unfounded and
9 overlooks the clear relevance of such evidence for the purpose of impeachment evidence in
10 addressing the credibility of the Plaintiffs. The fact that AMBER LOMAS and RACHEL
11 LOMAS' biological father may have been the victim of sexual abuse and/or a pedophile himself
12 is relevant to establish that Plaintiffs may have motive to fabricate their claims and is admissible
13 under California Evidence Code Section 780. Furthermore, such evidence was relied upon by
14 Plaintiffs' expert, Sonnie Weedn, relied upon this information in forming her opinions as to
15 AMBER LOMAS and RACHEL LOMAS, thus making inquiry into the information relevant and
16 admissible during the cross examination of Sonnie Weedn, should she testify during the course of
17 this trial.
18

19 **III.**

20 **ARGUMENT**

21 **A. EVIDENCE REGARDING AMBER LOMAS AND RACHEL LOMAS'**
22 **BIOLOGICLA FATHER BEING A VICTIM OF SEXUAL ABUSE AND/OR A**
23 **PEDOPHILE IS RELEVANT AND ADMISSIBLE AS IMPEACHMENT**
24 **EVIDENCE**

25 Except as otherwise provided by statute, all relevant evidence is admissible. California
26 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
27 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to

1 prove or disprove any disputed fact that is of consequence to the determination of the action.

2 California Evidence Code Section 351.

3 California Evidence Code Section 780 states in pertinent part:

4 “Except as otherwise provided by statute, the court or jury may consider in
5 determining the credibility of a witness any matter that has any tendency in reason
6 to prove or disprove the truthfulness of his testimony at the hearing, including, but
7 not limited to any of the following:

- 8 (f) The existence or nonexistence of a bias, interest, or other motive
9 (h) A statement made by him that is inconsistent with any part of his testimony at
10 the hearing.”

11 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
12 subject to cross examination as to their credibility. Wide latitude should be given to counsel in
13 developing facts which show bias, prejudice or interest on the part of a witness. People v. Avelar
14 (1961) 193 Cal.App.2d 631. The fact that the biological father of RACHEL LOMAS and
15 AMBER LOMAS may have been the victim of sexual abuse and/or a pedophile himself is highly
16 relevant in addressing the credibility of Plaintiffs. Facts surrounding the family life and
17 atmosphere in which Plaintiffs lived could establish a motive for Plaintiffs making the claims at
18 issue on this matter and is therefore admissible under California Evidence Code Section 780.

19 Evidence that that AMBER LOMAS and RACHEL LOMAS’ biological father may have
20 been the victim of sexual abuse and/or a pedophile himself is also relevant and admissible
21 because such information was relied upon by Plaintiffs’ expert Sonnie Weedn in forming her
22 opinions about AMBER LOMAS and RACHEL LOMAS.

23 California Evidence Code Section 721 states in pertinent part:

24 “Subject to subdivision (b), a witness testifying as an expert may be cross-examined to
25 the same extent as any other witness and, in addition, may be fully cross-examined as to
26 (1) his or her qualifications, (2) the subject to which his or her expert testimony relates,
27 and (3) the matter upon which his or her opinion is based and the reasons for his or her
28 opinion.

1 The existence of certain facts and whether or not the expert was aware of those facts in
2 forming their opinion is within the proper scope of cross examination of an expert witness.
3 People v. Coddington (2000) 23 Cal.4th 529. During the course of her deposition, Plaintiffs'
4 expert Sonnie Weedn testified that she was told by KATHLEEN MACHADO that the biological
5 father of AMBER LOMAS and RACHEL LOMAS was physically violent with her and the
6 children and had been molested by his mother when he was young. (Deposition of Sonnie
7 Weedn at 22:7-9, 23:7-14; attached as Exhibit 1 to the Declaration of Michael L. Phillips) She
8 further testified that KATHLEEN MACHADO told her there was a restraining order in place by
9 Plaintiffs against the parents of the biological father of AMBER LOMAS and RACHEL
10 LOMAS. (Deposition of Sonnie Weedn at 22:18-20; attached as Exhibit 1 to the Declaration of
11 Michael L. Phillips) Ms. Weedn's also testified that she was told at one point by RACHEL
12 LOMAS that home life when her father was a living hell. (Deposition of Sonnie Weedn at 91:8-
13 9; attached as Exhibit 1 to the Declaration of Michael L. Phillips) Finally, Ms. Weedn's opinions
14 as to RACHEL LOMAS are based on the fact that she was a witness to and perhaps the victim of
15 domestic violence within her family. (Deposition of Sonnie Weedn at 91:23-92:5; attached as
16 Exhibit 1 to the Declaration of Michael L. Phillips)
17
18

19 Plaintiffs' expert Sonnie Weedn was supplied with background information regarding the
20 biological father of RACHEL LOMAS and AMBER LOMAS during her interviews with
21 Plaintiffs and was privy to such information when forming her opinions as to AMBER LOMAS
22 and RACHEL LOMAS. Therefore, under California Evidence Code Section 721 such
23 information can be inquired into during the course of Sonnie Weedn's cross examination.
24

25 **B. THE PROBATIVE VALUE OF SUCH EVIDENCE IS NOT SUBSTANTIALLY**
26 **OUTWEIGHED BY SUBSTANTIAL DANGER OF UNDUE PREJUDICE**

27 Plaintiffs argue that any evidence relating to AMBER LOMAS and RACHEL LOMAS'
28 biological father being a victim of sexual abuse and/or a pedophile is not relevant or admissible
Defendants' Opposition To Plaintiffs' Motion In Limine Number Three

1 for any purpose in this case and should be excluded under California Evidence Code Section 352.
2 This section provides in pertinent part that the court may, in its discretion, exclude evidence if its
3 probative value is substantially outweighed by the probability that its admission will create
4 substantial danger of undue prejudice. Plaintiffs fail to acknowledge the relevance and probative
5 value of evidence relating to AMBER LOMAS and RACHEL LOMAS' biological father being a
6 victim of sexual abuse and/or a pedophile. As explained above, such evidence is admissible to
7 address the credibility of Plaintiffs should they choose to testify during the course of this trial.
8 Furthermore, Plaintiffs' expert Sonnie Weedn was privy to such information in forming her
9 opinion regarding RACHEL LOMAS and AMBER LOMAS, thus making this information
10 relevant and admissible during her cross examination. The high probative value of evidence
11 relating to AMBER LOMAS and RACHEL LOMAS' biological father being a victim of sexual
12 abuse and/or a pedophile is not substantially outweighed by a danger of undue prejudice and
13 therefore should not be excluded under Section 352.
14

15 IV.

16 CONCLUSION

17
18 The fact that AMBER LOMAS and RACHEL LOMAS' biological father may have been
19 the victim of sexual abuse and/or a pedophile himself is relevant to establish that Plaintiffs may
20 have motive to fabricate their claims and is admissible under California Evidence Code Section
21 780. Furthermore, such evidence was relied upon by Plaintiffs' expert, Sonnie Weedn, relied
22 upon this information in forming her opinions as to AMBER LOMAS and RACHEL LOMAS,
23 thus making inquiry into the information relevant and admissible during the cross examination of
24 Sonnie Weedn, should she testify during the course of this trial. As such, Plaintiffs motion in
25 limine to exclude such evidence should be denied.
26

1
2 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

3
4 By: 
MICHAEL L. PHILLIPS

1 FATHER JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, AND THE
2 ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole. I make this declaration based on
3 personal knowledge and, if called to testify, could and would testify consistently herewith.

4 2. Attached as Exhibit 1 is a true and correct copy of pertinent portion of the transcript of the
5 deposition of Sonnie Weedn taken on February 10, 2005. .
6

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed on February 18, 2005 at Stockton, California.

10
11 
12 _____
13 MICHAEL L. PHILLIPS
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1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

2 --o0o--

3 KATHLEEN MACHADO, as an) No. CV 018440
4 individual and as Guardian)
5 ad Litem for RACHEL LOMAS and)
6 AMBER LOMAS,)

6 Plaintiffs,)

7 vs.)

8 FR. JOSEPH ILLO, FR. FRANCIS)
9 JOSEPH, aka FR. FRANCIS ARAKAL,)
10 FR. RICHARD J. RYAN, BISHOP)
11 STEVEN BLAIRE, and THE DIOCESE)
12 OF STOCKTON, et al,)

11 Defendants.)

**CERTIFIED
COPY**

) JN: 14417

13 DEPOSITION OF: SONNEE WEEDN, Ph.D.

14 DATE: FEBRUARY 10, 2005, at 1:10 P.M.

15 DEPOSITION OFFICER: PATRICIA COWARD

16 CSR No. 5142

17 --o0o--

18 TAKEN IN THE OFFICES OF:
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20 2453 Grand Canal Boulevard, Second Floor
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22
23 HILL & McPHERSON
24 CERTIFIED SHORTHAND REPORTERS
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1 Q Okay.

2 A I learned from her that she's 37 years old, and
3 her date of birth is 12-22-1956. I learned from her
4 that she had been married to a man named Rosendo, who is
5 a shop foreman, age 40. And that she herself is a
6 billing representative.

7 And that they divorced in the year 2000 due to
8 domestic violence. And that she claimed he was
9 physically violent with her and the children.

10 She told me that she had three daughters, Rachel,
11 age 16, Amber, age 13, Colleen, age ten. And that she
12 had joint legal custody, and sole physical custody of
13 the children.

14 She said that will the children were supposed to
15 see their father every Wednesday for four hours and
16 every Saturday for four hours, but that he does not
17 exercise his visitation very often. Very seldom.

18 And there's a restraining order against his
19 parents, the children's grandparents, that they are not
20 to come within 50 feet of the girls.

21 MR. KOZINA: These would be the husband's
22 parents?

23 THE WITNESS: The paternal grandparents, yes.

24 MR. KOZINA: Thank you.

25 THE WITNESS: And that her ex-husband agreed to

1 this. She stated that she and her ex-husband are
2 cordial. There's no current obvious animosity between
3 them.

4 MR. COUGHLAN: Did she go into any detail as to
5 why there was a restraining order against the paternal
6 grandparent?

7 A Well, I asked her about that, and I didn't get a
8 very clear answer. She just said that she believed that
9 they were dangerous to the girls; that she believed,
10 although it was not documented, I wrote in my notes, not
11 documented, that his mother had molested him as a child,
12 and that when she asked for there to be a restraining
13 order, he agreed to it without any -- he put up no
14 resistance to that.

15 MR. KOZINA: So Rosendo's mother molested Rosendo.

16 THE WITNESS: She believed that, but there was no
17 documentation of that. She made it very clear that that
18 was not documented. It was simply her belief.

19 MR. COUGHLAN: Had there been any indication of
20 any molestation by Rosendo, the ex-husband, against his
21 own daughters --

22 A No.

23 Q -- as reported by Ms. Machado?

24 A She did not claim that, no.

25 MR. KOZINA: Did you ask her that?

1 students. And she does not have a boyfriend. And she
2 likes it that way.

3 She said that she does not see her dad very much,
4 and she is glad about that. She said with regard to her
5 father, that he is like a big kid, and he acts as if we
6 are idiots, meaning she and the rest of the girls in the
7 family.

8 When he -- and this is her quote from her, "When
9 we -- when he lived with us, it was a living hell. He
10 got mad over stupid things. If they argued," meaning
11 her parents, "he got violent twice," then said that they
12 see him twice a month when he drops off a check to them,
13 and he's pleasant. He does not ask to see them very
14 much, and he does not have a home of his own. He lives
15 with his mother and father.

16 I asked how things were with her mother, and she
17 said, "It's fine with my mother. She supports our
18 activities." Her own activities are FFA, which is
19 Future Farmers of America.

20 She has an interest in animals and sports, and she
21 wants to be a veterinarian when she grows up, and she
22 belongs to 4H.

23 Then she talked to me about Father Francis. Would
24 you like me to say what I learned about that? Is that
25 part of the history?

1 Q Do you have an opinion, Dr. Weedn -- have I
2 interrupted you here?

3 A That's okay, go ahead.

4 Q Do you have an opinion as to the causation, the
5 cause of the diagnoses that you have rendered with
6 regard to Rachel Lomas?

7 A I think the causes -- do I have an opinion. I
8 have an opinion, yes.

9 Q Well, it sounds like this is the first time you've
10 ever been asked that question. Is this something, is
11 this a first, like a first impression of you, by you at
12 this point?

13 A No.

14 Q Okay. Well, what is your opinion with regard to
15 the cause of the diagnoses that you have rendered with
16 regard to Rachel Lomas?

17 A I believe I referred to that in the body of my
18 report. I think that -- I think that what happened for
19 Rachel is that, as I said before, and what the Rorschach
20 would indicate, is that there's long-term stress here,
21 probably beginning with the violence in her home,
22 starting with the domestic violence.

23 And that as a result of the domestic violence that
24 she was witness to between her parents, and my
25 understanding is that from time to time she was the

1 victim of that as well, that she was vulnerable.

2 And I think that what happened with Father Francis
3 and then not feeling protected by Father Illo further
4 traumatized her. That's what I think has happened in
5 this case.

6 MR. KOZINA: Is that even in line with regard to
7 Father Francis and Father Illo, is that even in light of
8 her report to you, that she didn't tell anybody about it
9 for a year-and-a-half after it occurred?

10 THE WITNESS: Right, right.

11 MR. KOZINA: Can you, just for my sense here, tell
12 me, if she didn't report that incident concerning
13 Father Francis to Father Illo or anyone else for a
14 year-and-a-half, how it was that she felt unprotected by
15 Father Illo and others? Is there some way of --

16 THE WITNESS: That's a good question.

17 MR. KOZINA: Yeah.

18 THE WITNESS: And I think I can answer that.

19 MR. MacKOUL: That's a good question.

20 MR. KOZINA: I know.

21 THE WITNESS: First of all, I think you need to
22 understand, and I have explained her psychological
23 makeup, that this young woman is rather introverted to
24 begin with. That is her psychological makeup of
25 longstanding. So she -- she's not an expressive type to