

EXHIBIT A

INDEX TO EXHIBIT A

| Category | Page No |
|--|---------|
| Apostolic Constitution <i>Sacrae Disciplinae Leges</i> | 1 |
| Preface To The Latin Edition | 6 |
| General Norms | 16 |
| Ecclesiastical Norms | 17 |
| Text of Cited Canon Law Provisions | 19 |

APOSTOLIC CONSTITUTION SACRAE DISCIPLINAE LEGES

To our venerable brothers, cardinals, archbishops, bishops, priests, deacons and to the other members of the people of God,

John Paul, bishop, servant of the servants of God as a perpetual record.

During the course of the centuries the Catholic Church has been accustomed to reform and renew the laws of canonical discipline so that in constant fidelity to its divine founder, they may be better adapted to the saving mission entrusted to it. Prompted by this same purpose and fulfilling at last the expectations of the whole Catholic world, I order today, January 25, 1983, the promulgation of the revised Code of Canon Law. In so doing, my thoughts go back to the same day of the year 1959 when my predecessor of happy memory, John XXIII, announced for the first time his decision to reform the existing corpus of canonical legislation which had been promulgated on the feast of Pentecost in the year 1917.

Such a decision to reform the Code was taken together with two other decisions of which the Pontiff spoke on that same day: the intention to hold a synod of the Diocese of Rome and to convoke an ecumenical council. Of these two events, the first was not closely connected with the reform of the Code; but the second, the council, is of supreme importance in regard to the present matter and is closely connected with it.

If we ask why John XXIII considered it necessary to reform the existing Code, the answer can perhaps be found in the Code itself which was promulgated in the year 1917. But there exists also another answer and it is the decisive one: namely, that the reform of the Code of Canon Law appeared to be definitely desired and requested by the same council which devoted such great attention to the Church.

As is obvious, when the revision of the Code was first announced the council was an event of the future. Moreover, the acts of its magisterium and especially its doctrine on the Church would be decided in the years 1962-1965; however, it is clear to everyone that John XXIII's intuition was very true, and with good reason it must be said that his decision was for the long-term good of the Church.

Therefore the new Code which is promulgated today necessarily required the previous work of the council. Although it was announced together with the ecumenical council, nevertheless it follows it chronologically because the work undertaken in its preparation, which had to be based upon the council, could not begin until after the latter's completion.

Turning our minds today to the beginning of this long journey, to that January 25, 1959 and to John XXIII himself who initiated the revision of the Code, I must recognize that this Code derives from one and the same intention, the renewal of Christian living. From such an intention, in fact, the entire work of the council drew its norms and its direction.

If we now pass on to consider the nature of the work which preceded the promulgation of the Code and also the manner in which it was carried out, especially during the pontificates of Paul VI and John Paul I, and from then until the present day, it must be clearly pointed out that this work was brought to completion in an outstandingly collegial spirit. This applies not only in regard to the material drafting of the work, but also to the very substance of the laws enacted.

This note of collegiality eminently characterizes and distinguishes the process of developing the present Code; it corresponds perfectly with the teaching and the character of the Second Vatican Council. Therefore not only because of its content but also because of its very origin, the Code manifests the spirit of this council in whose documents the Church, the universal "sacrament of salvation" (dogmatic constitution on the Church *Lumen gentium*, nn. 1, 9, 48), is presented as the people of God and its hierarchical constitution appears based on the college of bishops united with its head.

For this reason, therefore, the bishops individually and as episcopates were invited to collaborate in the preparation of the new Code so that by means of such a long process, by as collegial a method as possible, juridical formulae would gradually mature which would later serve for the use of the entire Church.

Experts chosen from all over the world also took part in all these phases of the work, specialists in theology, history and especially canon law.

To one and all of them I wish to express today my sentiments of deep gratitude.

In the first place there come before my eyes the figures of the deceased cardinals who presided over the preparatory commission: Cardinal Pietro Ciriaci who began the work, and Cardinal Pericle Felici who, for many years, guided the course of the work almost to its end. I think then of the secretaries of the same commission: Monsignor Giacomo Violardo, later cardinal, and Father Raimondo Bidagor, S.J., both of whom in carrying out this task poured out the treasures of their doctrine and wisdom. Together with them I recall the cardinals, archbishops, bishops and all those who were members of that commission, as well as the consultants of the individual study groups engaged during these years in such a difficult work, and whom God in the meantime has called to their eternal reward. I pray to God for all of them.

I am pleased to remember also the living, beginning with the present pro-president of the commission, our venerable brother Archbishop Rosalio Castillo Lara. For a very long time he has done excellent work in a task of such great responsibility. I pass then to our beloved son, Monsignor William Onclin, whose devotion and diligence have greatly contributed to the happy outcome of the work.

I finally mention all the others in the commission itself, whether as cardinal members or as officials, consultants and collaborators in the various study groups, or in other offices who have given their appreciated contribution to the drafting and the completion of such a weighty and complex work.

Therefore, in promulgating the Code today, I am fully aware that this act is an expression of pontifical authority and therefore is invested with a primatial character. But I am also aware that this Code in its objective content reflects the collegial solicitude of all my brothers in the episcopate for the Church.

Indeed, by a certain analogy with the council, it should be considered as the fruit of a collegial collaboration because of the united efforts on the part of specialized persons and institutions throughout the whole Church.

A second question arises concerning the very nature of the Code of Canon Law.

To reply adequately to this question one must mentally recall the distant patrimony of law contained in the books of the Old and New Testament from which is derived the whole juridical-legislative tradition of the Church, as from its first source.

Christ the Lord, indeed, did not in the least wish to destroy the very rich heritage of the law and the prophets which was gradually formed from the history and experience of the people of God in the Old Testament, but he brought it to completion (cf. Mt. 5:17) such that in a new and higher way it became part of the heritage of the New Testament. Therefore, although in expounding the paschal mystery St. Paul teaches that justification is not obtained by the works of the law but by means of faith (cf. Rom. 3:28; Gal. 2:16), he does not thereby exclude the binding force of the Decalogue (cf. Rom. 13:28; Gal. 5:13-25, 6:2), nor does he deny the importance of discipline in the Church of God (cf. I Cor. 5 and 6).

Thus the writings of the New Testament enable us to understand even better the importance of discipline and make us see better how it is more closely connected with the saving character of the evangelical message itself.

This being so, it appears sufficiently clear that the Code is in no way intended as a substitute for faith, grace, charisms, and especially charity in the life of the Church and of the faithful. On the contrary, its purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to love, grace and charisms, it at the same time renders their organic development easier in the life of both the ecclesial society and the individual persons who belong to it.

As the Church's principal legislative document founded on the juridical-legislative heritage of revelation and tradition, the Code is to be regarded as an indispensable instrument to ensure order both in individual and social life, and also in the Church's own activity. Therefore, besides containing the fundamental elements of the hierarchical and organic structure of the Church as willed by her divine founder or as based upon apostolic, or in any case most ancient, tradition, and besides the fundamental principles which govern the exercise of the threefold office entrusted to the Church itself, the Code must also lay down certain rules and norms of behavior.

The instrument which the Code is fully corresponds to the nature of the Church,

especially as it is proposed by the teaching of the Second Vatican Council in general and in a particular way by its ecclesiological teaching. Indeed, in a certain sense this new Code could be understood as a great effort to translate this same conciliar doctrine and ecclesiology into canonical language. If, however, it is impossible to translate perfectly into canonical language the conciliar image of the Church, nevertheless the Code must always be referred to this image as the primary pattern whose outline the Code ought to express insofar as it can by its very nature.

From this, certain fundamental criteria are derived which should govern the entire new Code within the limits of its specific matter and of the language appropriate to that material.

It could indeed be said that from this there is derived that note of complementarity which the Code presents in relation to the teaching of the Second Vatican Council, in particular with reference to the two constitutions, the dogmatic constitution *Lumen gentium* and the pastoral constitution *Gaudium et spes*.

Hence it follows that what constitutes the substantial newness of the Second Vatican Council, in line with the legislative tradition of the Church, especially in regard to ecclesiology, constitutes likewise the newness of the new Code.

Among the elements which characterize the true and genuine image of the Church we should emphasize especially the following: the doctrine in which the Church is presented as the people of God (cf. dogmatic constitution *Lumen gentium*, chapter 2) and hierarchical authority as service (cf. *ibid.*, chapter 3); the doctrine in which the Church is seen as a communion and which therefore determines the relations which are to exist between the particular churches and the universal Church, and between collegiality and the primacy; likewise the doctrine according to which all the members of the people of God, in the way suited to each of them, participate in the threefold priestly, prophetic and kingly office of Christ, to which doctrine is also linked that which concerns the duties and rights of the faithful and particularly of the laity; and finally, the Church's commitment to ecumenism.

If, therefore, the Second Vatican Council has drawn both new and old from the treasury of tradition, and the new consists precisely in the elements which I have enumerated, then it is clear that the Code should also reflect the same note of fidelity in newness and of newness in fidelity, and conform itself to this in its own subject matter and in its own particular manner of expression.

The new Code of Canon Law appears at a moment when the bishops of the whole Church not only are asking for its promulgation, but are crying out for it insistently and almost with impatience.

As a matter of fact, the Code of Canon Law is extremely necessary for the Church. Since the Church is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the

functions divinely entrusted to it, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined; in order, finally, that common initiatives undertaken to live a Christian life ever more perfectly may be sustained, strengthened and fostered by canonical norms.

Finally, by their very nature canonical laws are to be observed. The greatest care has therefore been taken to ensure that in the lengthy preparation of the Code the wording of the norms should be accurate, and that they should be based on a solid juridical, canonical and theological foundation.

After all these considerations it is naturally to be hoped that the new canonical legislation will prove to be an efficacious means in order that the Church may progress in conformity with the spirit of the Second Vatican Council and may every day be ever more suited to carry out its office of salvation in this world.

With a confident spirit I am pleased to entrust these considerations of mine to all as I promulgate this fundamental body of ecclesiastical laws for the Latin Church.

May God grant that joy and peace with justice and obedience obtain favor for this Code, and that what has been ordered by the head be observed by the body.

Trusting therefore in the help of divine grace, sustained by the authority of the blessed apostles Peter and Paul, with certain knowledge, in response to the wishes of the bishops of the whole world who have collaborated with me in a collegial spirit, and with the supreme authority with which I am vested, by means of this Constitution, to be valid forever in the future, I promulgate the present Code as it has been set in order and revised. I command that for the future it is to have the force of law for the whole Latin Church, and I entrust it to the watchful care of all those concerned in order that it may be observed. So that all may more easily be informed and have a thorough knowledge of these norms before they have juridical binding force, I declare and order that they will have the force of law beginning from the first day of Advent of this year 1983, and this notwithstanding any contrary ordinances, constitutions, privileges (even worthy of special or individual mention), or customs.

I therefore exhort all the faithful to observe the proposed legislation with a sincere spirit and good will in the hope, that there may flower again in the Church a renewed discipline and that consequently the salvation of souls may be rendered ever more easy under the protection of the Blessed Virgin Mary, Mother of the Church.

Given at Rome, January 25, 1983, from the Vatican Palace, the fifth year of my pontificate.

John Paul II

PREFACE TO THE LATIN EDITION

From the time of the primitive Church it has been customary to collect the sacred canons into one book to facilitate a knowledge of them as well as their use and observance especially by sacred ministers, since "no priest is permitted to be ignorant of the sacred canons" as Pope Celestine warned in a letter to the bishops of Apulia and Calabria (July 21, 429; cf. Jaffe, 2 n. 371; Mansi IV, col. 469). His words are echoed by the Fourth Council of Toledo (633), which prescribed the following after the restoration of ecclesiastical discipline in the kingdom of the Visigoths once the Church had been freed from Arianism:

"Priests are to know the sacred scripture and the canons" because "ignorance, the mother of all errors, is especially to be avoided by priests of God" (can. 25; Mansi X, col. 627).

In fact during the first ten centuries nearly everywhere there flourished countless collections of ecclesiastical laws. These private collections contained norms issued especially by the councils and the Roman Pontiffs as well as other norms taken from lesser sources. In the middle of the twelfth century, this mass of collections and norms, not infrequently contradicting one another, was put in order again through the private initiative of the monk Gratian. This concordance of laws and collections, later called the *Decretum Gratiani*, constituted the first part of that significant collection of laws of the Church which, in imitation of the *Corpus Iuris Civilis* of the Emperor Justinian, was called the *Corpus Iuris Canonici* and contained the laws which had been passed during two centuries by the supreme authority of the Roman pontiffs with the assistance of experts in canon law called glossators. Besides the Decree of Gratian, in which the earlier norms were contained, the Corpus consists of the *Liber Extra* of Gregory IX, the *Liber Sextus* of Boniface VIII, the *Clementinae*, i.e. the collection of Clement V promulgated by John XXII, to which are added the *Extravagantes* of this pope and the *Extravagantes communes*, decretals of various Roman pontiffs never gathered in an authentic collection. The ecclesiastical law which this Corpus embraces constitutes the classical law of the Catholic Church and is commonly called by this name.

To this corpus of law of the Latin Church corresponds to some extent the *Syntagma canonum* or oriental corpus of canons of the Greek Church.

Subsequent laws, especially those enacted by the Council of Trent during the time of the Catholic Reformation and those issued later by various dicasteries of the Roman Curia, were never digested into one collection. This was the reason why during the course of time legislation outside the *Corpus Iuris Canonici* constituted "an immense pile of laws piled on top of other laws." The lack of a systematic arrangement of the laws and the lack of legal certainty along with the obsolescence of and lacunae in many laws led to a situation where church discipline was increasingly imperiled and jeopardized.

Therefore during the preparatory period prior to the First Vatican Council, many bishops

asked that a new and sole collection laws be prepared to expedite the pastoral care of the people of God in a more certain and secure fashion.

Although this task could not be implemented through conciliar action, the Apostolic See subsequently addressed certain more urgent disciplinary issues through a new organization of laws. Finally, Pope Pius X, at the very beginning of his pontificate, undertook this task when he proposed to collect and reform all ecclesiastical laws and determined that the enterprise be carried out under the leadership of Cardinal Pietro Gasparri.

The first issue to be resolved in such a significant and difficult undertaking was the internal and external form of the new collection. It was decided to forego the method of compilations of laws whereby individual laws would have been expressed in the extensiveness of the original text; rather the modern method of codification was chosen. Hence texts containing and proposing a precept were expressed in a new and briefer form. However, all of the material was organized in five books which substantially imitated the system of Roman law institutes on persons, things and actions. The work took twelve years with the collaboration of experts, consultors and bishops throughout the Church. The character of the new Code was clearly enuntiated in the beginning of canon 6: "The Code generally retains the existing discipline although it introduces appropriate changes."

Therefore it was not a case of enacting a new law but rather a matter of arranging in a new fashion the operative legislation at that time. After the death of Pius X, this universal, exclusive, and authentic collection was promulgated on May 27, 1917 by his successor Benedict XV; it took effect on May 19, 1918.

Everyone hailed the universal law of this Pio-Benedictine Code, which made a significant contribution to the effective promotion of pastoral ministry throughout the Church, which in the meantime was experiencing new growth. Nevertheless, both the external situation of the Church in a world which had experienced sweeping changes and significant shifts in customs within a few decades as well as progressive internal factors within the ecclesiastical community necessarily brought it about that a new reform of canon law was increasingly more imperative and was requested. The Supreme Pontiff John XXIII clearly recognized the signs of the times, for when he first announced the Roman Synod and the Second Vatican Council, he also announced that these events would be a necessary preparation for undertaking the desired renewal of the Code.

Shortly after the Ecumenical Council had begun, the Commission for the Revision of the Code of Canon Law was established on March 28, 1963 with Cardinal Pietro Ciriaci as president and Monsignor Giacomo Violardo as secretary. However, the cardinal members of the Commission in a meeting with the president on November 12 of that same year agreed that the true and proper efforts of the Commission should be deferred and should commence only at the conclusion of the Council. The reform was to be carried out according to the decisions and principles to be determined by that same Council. Meanwhile on April 17, 1964 Paul VI added seventy consultors to the Commission

established by his predecessor John XXIII; he subsequently named other cardinal members and consultants from all over the world to participate in the expediting of the project. On February 24, 1965 the Supreme Pontiff named Rev. Raimondo Bidagor, S.J. the new secretary of the Commission since Monsignor Violardo had been promoted to the office of secretary of the Congregation for the Discipline of the Sacraments; on November 17 of the same year the pope appointed Monsignor filliam Oncliu as adjunct secretary of the Commission. After the death of Cardinal Ciriaci, Archbishop Pericle Felici, former general secretary of Vatican Council II, was named pro-president on February 21, 1967. On June 26 of that same year he became a member of the Sacred College of Cardinals and subsequently assumed the office of president of the Commission. Since Father Bidagor ceased functioning as secretary of the Commission on November 1, 1973 on the occasion of his eightieth birthday, Most Reverend Rosalio Castillo Lara, S.D.B., titular bishop of Praeausa and coadjutor bishop of Trujillo, Venezuela, was named the new secretary of the Commission. On May 17, 1982 he was appointed pro-president of the Commission upon the premature death of Cardinal Felici.

On November 20, 1965, just before the closing of the Second Vatican Council, there was a solemn session of the Commission in the presence of the Supreme Pontiff Paul VI, at which were present the cardinal members of the Commission, the secretaries, consultants and officials of the Secretariat appointed in the meantime.

This session publicly inaugurated the work of the Code Commission. The allocution of the Supreme Pontiff laid the foundations of the whole enterprise to a certain extent. It was recalled that canon law flows from the nature of the Church, that it is rooted in the power of jurisdiction entrusted to the Church by Christ, and that its purpose is to be viewed in terms of the care of souls in view of external salvation. Furthermore, the character of church law was illustrated; its necessity was vindicated against the more common objections; the history of the progress of law and its collections was alluded to; and especially there was highlighted the urgent need of a new reform of the law to respond to the ongoing need of appropriately adapting church discipline to changing circumstances.

The Supreme Pontiff further indicated to the Commission two elements which should underly the whole revision effort. First of all it was not simply a matter of a new organization of the laws as had occurred at the time of the Pio-

Benedictine Code; but rather it was also and especially a matter of reforming the norms to accommodate them to a new mentality and new needs even if the old law was to supply the foundation for the work of revision. Careful attention was to be paid to all the decrees and acts of the Second Vatican Council since they contain the main lines of legislative renewal either because norms were issued which directly affected new institutes and ecclesiastical discipline, or because it was necessary that the doctrinal riches of the Council, which contributed so much to pastoral life, have their consequences and necessary impact on canonical legislation.

Repeatedly in allocutions, precepts and decisions during the following years, the two above mentioned elements were recalled to the minds of the Commission members by the

Supreme Pontiff, who continued to oversee the whole enterprise from on high and assiduously pursue it.

If the subcommissions or study groups were to carry on their work in a methodical fashion, it was necessary above all that there be identified and approved certain principles which would serve as guidelines during the process of revising the whole Code. The central committee of consultors prepared the text of a document, which, at the request of the Supreme Pontiff, was submitted to the examination of a general session of the synod of bishops in October 1967. The following principles were approved nearly unanimously.

1. In renewing the law the juridic character of the new Code, which the social nature of the Church requires, is to be retained. Therefore the Code is to furnish norms so that the members of the Christian faithful in living the Christian life may share in the goods offered by the Church to lead them to eternal salvation. Hence, in view of this end, the Code must define and protect the rights and obligations of each person towards others and towards the ecclesiastical society to the extent that these rights and obligations pertain to divine worship and the salvation of souls.
2. There is to be a coordination between the external forum and the internal forum, which is proper to the Church and has been operative for centuries, so as to preclude any conflict between the two.
3. To foster the pastoral care of souls as much as possible, the new law, besides the virtue of justice, is to take cognizance of charity, temperance, humaneness and moderation, whereby equity is to be pursued not only in the application of the laws by pastors of souls but also in the legislation itself.

Hence unduly rigid norms are to be set aside and rather recourse is to be taken to exhortations and persuasions where there is no need of a strict observance of the law on account of the public good and general ecclesiastical discipline.

4. In order that the Supreme Legislator and the bishops may collaborate in the care of souls and may exercise the pastoral office in a more positive fashion, those faculties to dispense from general laws which until now have been extraordinary are to become ordinary with reservations to the supreme power of the universal Church or other higher authorities only in those areas which require an exception on account of the common good.

5. Careful attention is to be given to the greater application of the so-called principle of subsidiarity within the Church. It is a principle which is rooted in a higher one because the office of bishops with its attached powers is a reality of divine law. In virtue of this principle one may defend the appropriateness and even the necessity of providing for the welfare especially of individual institutes through particular laws and the recognition of a healthy autonomy for particular executive power while legislative unity and universal and general law are observed. On the basis of the same principle, the new Code entrusts either to particular laws or to executive power whatever is not necessary for the unity of the

discipline of the universal Church so that appropriate provision is made for a healthy "decentralization" while avoiding the danger of division into or the establishment of national churches.

6. On account of the fundamental equality of all members of the Christian faithful and the diversity of offices and functions rooted in the hierarchical order of the Church, it is expedient that the rights of persons be appropriately defined and safeguarded. This brings it about that the exercise of authority appears more clearly as service, that its use is more clearly reinforced, and that abuses are removed.

7. In order that such objectives may be appropriately implemented, it is necessary that particular attention be given to the organization of a procedure which envisions the protection of subjective rights. Therefore in renewing the law attention should be paid to those elements which are most especially lacking in this area, i.e. administrative recourses and the administration of justice.

To achieve this it is necessary that the various functions of ecclesiastical power be clearly distinguished, i.e. the legislative, administrative, and judicial functions. What individual functions are to be exercised by which governmental organs is also to be defined.

8. The principle of territoriality in the exercise of ecclesiastical government is to be revised somewhat, for contemporary apostolic factors seem to recommend personal jurisdictional units. Therefore the new Code is to affirm the following principle: generally speaking the portions of the people of God to be governed are to be determined territorially; however, if it is advantageous, other factors can be admitted as criteria for determining a community of the faithful, at least along with territoriality.

9. As an external, visible and independent society, the Church cannot renounce penal law. However, penalties are generally to be *ferendae sententiae* and are to be inflicted and remitted only in the external forum. *Latae sententiae* penalties are to be reduced to a few cases and are to be inflicted only for the most serious offenses.

10. Finally, as is admitted by all, the new systematic arrangement of the Code required by the revision process can only be sketched at the outset but cannot be defined and determined precisely. Therefore the new organization of the Code will have to be pursued only after a sufficient revision of its individual parts, in fact only after nearly the whole work has been completed.

From these principles which ought to guide the process of revising the Code, it is quite clear that there is a need to apply everywhere the doctrine of the Church expressed by the Second Vatican Council, especially its determination that attention is to be paid not only to the external social dimensions of the Mystical Body of Christ but also and especially to its internal life.

And in point of fact the consultors were guided by these principles in drafting the new text of the Code.

Meanwhile a January 15, 1966 letter of the cardinal president of the Commission to the presidents of the conferences of bishops asked the bishops of the whole Catholic world to express their concerns and advice regarding the law to be drafted and the best way of structuring relationships between the conferences of bishops and the Commission so as to maximize their cooperation for the good of the Church. Furthermore, the bishops were also asked to send to the Secretariat of the Commission the names of canonical experts in their respective regions who in the judgment of the bishops were the most distinguished in terms of canonical expertise; the special competence of these experts was also to be indicated. The consultors and their collaborators could be selected and named from these individuals. Actually, at the very beginning and throughout the working of the Commission, besides its cardinal members the following collaborated in the drafting of the new Code of Canon Law: bishops, priests, religious, laity, experts in canon law, theology, pastoral practice, and civil law from all over the Catholic world. During the whole revision process 105 cardinals, 77

archbishops and bishops, 73 secular presbyters, 47 religious presbyters, 3 religious women and 12 lay persons from 5 continents and 31 countries served as members, consultors and other types of collaborators with the Commission.

Even before the last session of the Second Vatican Council, the consultors of the Commission were gathered in a private session on May 6, 1965, in which, with the consent of the Holy Father, the Commission president submitted three fundamental questions for their study. It was asked first whether one or two codes, i.e. Latin and Oriental, were to be drafted; it was also asked what methodology was to be followed in the drafting process or how the Commission and its organs were to proceed; finally, it was asked what would be an appropriate division of labor among the various subcommissions, which would be functioning simultaneously. Reports prepared by three groups established to deal with these questions were forwarded to all the Commission members.

The cardinal members of the Commission met for the second time on November 25, 1965 to discuss these same questions and respond to certain proposals (dubia) formulated concerning them.

A principle regarding the systematic organization of the new Code to be proposed to the synod of bishops was drawn up from a volum of the central committee of consultors, which had met on April 3-7, 1967. After the meeting of the synod, it was deemed appropriate to establish in November, 1967 a special committee of consultors to study the systematic organization of the Code. At a meeting of this committee at the beginning of April, 1968, all agreed on not incorporating in the Code properly liturgical laws, norms on beatification and canonization processes, and norms on the external relations of the Church. All agreed as well that in the part on the people of God there would be placed norms on the juridic status of all members of the Christian faithful and a distinct treatment of the powers and faculties which pertain to the exercise of the different functions and offices. Finally all agreed that the structure of the books of the Pio-Benedictine Code could not be maintained in its integrity.

During the third meeting of the cardinal members of the Commission on May 28, 1968, they substantially approved a temporary arrangement according to which the study groups already established were organized in a new way: "the systematic organization of the Code," "general norms," "the sacred hierarchy," "institutes of perfection," "laity," "physical and moral persons in general," "marriage," "sacraments other than marriage," "the ecclesiastical magisterium," "the patrimonial law of the Church," "processes," "penal law."

The issues dealt with by the study group on "physical and juridic persons" (it was subsequently called this) were later incorporated in the book on "general norms." Furthermore it was deemed appropriate to establish a study group on "sacred places and times and divine worship." In view of their broader competence, the names of some other study groups were changed: the group on "the laity" was later called the group on "the rights and associations of the faithful and the laity"; the group on "religious" was later called the group on "institutes of perfection" and finally the group on "institutes of life consecrated through the profession of the evangelical counsels."

The principal features of the method followed during the more than sixteen year revision process are to be briefly recalled. The consultors of the individual groups fulfilled their significant duties with the greatest dedication, considering only the good of the Church either in preparing written observations on the parts of their own schemata, or in discussing various issues at meetings in Rome at determined times, or in examining the animadversions, observations and opinions on their schemata which were forwarded to the Commission. The procedure was as follows. To each of the consultors, who numbered from eight to fourteen on the individual study groups, was assigned a certain issue which was to be studied in view of the revision process, with the present Code as the point of departure.

After an examination of the questions, each consultor was to transmit a written opinion to the Secretariat of the Commission as well as a copy to the relator and, if time permitted, to all the members of the study group. The consultors of the study group met in Rome according to a predetermined schedule. With the relator leading the discussions, all the questions and opinions were considered until a text of canons was approved, at times after a process of voting on individual parts, and drafted in schema form. During the session the relator was aided by an official who functioned as an actuary.

The number of meetings for each study group was greater or lesser depending on the concrete issues, and the work was carried on for years.

Especially during the latter stages of the process, certain mixed study groups were established so that consultors from different groups could meet and discuss issues which directly pertained to several groups and had to be resolved through common counsel.

After the drafting of some schemata was completed by the study groups, the Supreme Legislator was asked to give some concrete indications of the subsequent steps to be taken in continuing the work. According to the norms handed down at the time, those

steps were as follows.

The schemata together with an explanatory report were sent to the Supreme Pontiff, who determined whether they were to be forwarded for consultation purposes. After this permission was obtained, the printed schemata were submitted to the examination of the universal episcopate and other consultative organs (namely, the dicasteries of the Roman Curia, ecclesiastical universities and faculties, and the Union of Superiors General) in order that they might express their opinion within a prudently determined time frame—not less than six months.

At the same time, the schemata were also forwarded to the cardinal members of the Commission so as to enable them to make their general or particular observations at this stage of the process.

The order in which the schemata were sent is as follows:

1972—the schema on administrative procedure;

1973—the schema on sanctions in the Church;

1975—the schema on the sacraments;

1976—the schema on the procedure for the protection of rights or processes;

1977—the schema on institutes of life consecrated by the profession of the evangelical counsels, the schema on general norms, the schema on the people of God, the schema on the Church's teaching office, the schema on sacred times and places and divine worship, and the schema on the patrimonial law of the Church.

Undoubtedly the revised Code could not have been appropriately prepared without the inestimable and continuous cooperation afforded the Commission by numerous very valid animadversions especially of a pastoral character offered by bishops and conferences of bishops. The bishops submitted very many written animadversions, either general ones on the schemata considered as a whole or particular ones on individual canons.

Of great benefit also were those general and particular animadversions submitted by the sacred congregations, tribunals and other institutes of the Roman Curia, based on their experience in the central government of the Church. This was also true for the scientific and technical proposals and suggestions offered by ecclesiastical universities and faculties reflecting different schools and ways of thinking.

The study, examination and collegial discussion of all the animadversions, general and particular, which were forwarded to the Commission constituted a weighty and veritably immense burden which lasted seven years. The Secretariat of the Commission took pains carefully to organize and synthesize all the animadversions, proposals and suggestions

which, after they had been forwarded to the consultors and carefully examined by them, were subsequently collegially discussed in working sessions conducted by the ten study groups.

Every animadversion was considered with the utmost care and diligence. This was true even in the case of animadversions contradicting one another (which frequently happened). Due consideration was given not only to their sociological importance (namely, the number of consultative organs and persons who proposed them), but especially to their doctrinal and pastoral value, their coherence with the doctrine and implementing norms of the Second Vatican Council, the pontifical magisterium, and their necessary coherence with the juridic canonical system when examined from a specifically technical and scientific standpoint. In fact, as often as it was a case of a doubtful matter or when questions of special importance were debated, the opinion of the cardinal members of the Commission was sought during one of their plenary sessions. In other cases in view of the specific matter under discussion, the Congregation for the Doctrine of the Faith and other dicasteries of the Roman Curia were consulted. Finally, many corrections and changes were incorporated in the canons of the early schemata at the request or suggestion of the bishops and other consultative organs, so that some schemata were entirely renewed or changed.

After all the schemata had been reworked, the Secretariat of the Commission and the consultors undertook a further weighty task. It was a matter of seeing to an internal coordination of all the schemata, of ensuring a uniform terminology throughout especially from a technical-juridic standpoint, of drafting canons in brief and elegant formulations, and finally of definitively determining a systematic organization so that all of the schemata, prepared by distinct study groups, could be integrated into one completely harmonious Code.

The new systematic organization which, as it were, spontaneously emerged slowly during the revision process, is based on two principles, one of which is fidelity to the more general principles already determined by the central committee, the other of which is its practical usefulness so that the new Code can be easily understood and used not only by experts but also by pastors and indeed by all members of the Christian faithful.

The new Code therefore consists of seven books which are entitled: General Norms, The People of God, The Teaching Function of the Church, The Sanctifying Function of the Church, The Temporal Goods of the Church, Sanctions in the Church, and Processes. Even if the different rubrics which precede the individual books of the old and new Code appear to indicate sufficiently the differences between the two systems, nonetheless the systematic innovations of the new Code are much more evident in light of its parts, sections, titles and rubrics. But it is certain that the new organization not only corresponds better to the proper matter and character of canon law than the old organization, but also, and what is of greater importance, the new is more in keeping with the ecclesiology of the Second Vatican Council and those principles flowing from it which were proposed at the very outset of the revision process.

On June 29, 1980, the solemnity of the blessed Apostles Peter and Paul, the printed schema of the whole Code was presented to the Supreme Pontiff, who decided it was to be forwarded to the cardinal members of the Commission for their de-

finite examination and judgment. In order to highlight even more the participation of the whole Church in the last phase of the revision process, the Supreme Pontiff determined that other members be added to the Commission, cardinals and even bishops selected from the whole Church, conferences of bishops or councils or groups of conferences of bishops proposing candidates. Thus the expanded Commission numbered seventy-four members. At the beginning of 1981 they forwarded many animadversions which subsequently were subjected to a careful examination, diligent study and collegial discussion by the Secretariat of the Commission, with the help of consultors endowed with special expertise in the individual issues being discussed. A synthesis of all the animadversions together with the responses given by the Secretariat and the consultors was forwarded to the members of the Commission in August, 1981.

A plenary session was convoked by order of the Supreme Pontiff to deliberate on the entire text of the new Code and to cast a definitive vote on it. The session took place October 20-28, 1981 in the aula of the synod of bishops. There was a discussion of six questions of particular weight and importance as well as of other questions proposed at the request of at least ten Fathers. At the end of the plenary session, the Fathers unanimously responded *placet* (affirmatively) to the following question: whether it pleased the Fathers that, after the examination during the plenary session of the schema of the Code and the emendations already introduced, the same schema along with the changes which had received a majority vote during the plenary session was worthy of being presented as soon as possible to the Supreme Pontiff, who would issue the Code at a time and in a way which seemed best. Consideration was also to be given to other animadversions which had been presented as well as to a certain polishing of the text regarding its style and Latinity (which tasks were entrusted to the president and the Secretariat).

The entire text of the Code thereby reworked and approved was enlarged by the addition of canons from the schema on the Fundamental Law of the Church which had to be inserted in the Code in light of the material with which they dealt. After the Latin style of the text was further polished, it was printed and given to the Supreme Pontiff on April 22, 1982 with a view toward promulgation.

The Supreme Pontiff, however, personally reviewed this latest schema with the help of certain experts and in consultation with the pro-president of the Pontifical Commission for the Revision of the Code of Canon Law. After mature consideration the Supreme Pontiff decreed that the new Code was to be promulgated on January 25, 1983, i.e., the anniversary of the first announcement by Pope John XXIII of the undertaking of the Code's revision.

Since after nearly twenty years the pontifical commission established for this purpose has felicitously completed the difficult task entrusted to it, there is now available to pastors

and other members of the Christian faithful the most recent law of the Church, which is characterized by simplicity, precision, elegance and true legal science. Furthermore, since it is fully pervaded by charity, equity, humanity and a true Christian spirit, it attempts to correspond to the divinely given external and internal characteristics of the Church. It also seeks to take cognizance of the conditions and needs of the contemporary world. But if on account of the excessively swift changes in contemporary human society certain elements of the new law become less perfect and require a new review, the Church is endowed with such a wealth of resources that, not unlike prior centuries, it will be able to undertake the task of renewing the laws of its life.

Now, however, the law can no longer be unknown. Pastors have at their disposal secure norms by which they may correctly direct the exercise of the sacred ministry. To each person is given a source of knowing his or her own proper rights and duties. Arbitrariness in acting can be precluded. Abuses which perhaps have crept into ecclesiastical discipline because of a lack of legislation can be more easily rooted out and prevented. Finally, all the works, institutes and initiatives of the apostolate may progress expeditiously and may be promoted since a healthy juridic organization is quite necessary for the ecclesiastical community to live, grow and flourish. May our most gracious God grant this through the intercession of the Blessed Virgin Mary, the Mother of the Church, her spouse St. Joseph, Patron of the Church, and Saints Peter and Paul.

GENERAL NORMS

Can. 1 The canons of this Code regard only the Latin Church.

Can. 2 For the most part the Code does not define the rites which must be observed in celebrating liturgical actions. Therefore, liturgical laws in force until now retain their force unless one of them is contrary to the canons of the Code.

Can. 3 The canons of the Code neither abrogate nor derogate from the agreements entered into by the Apostolic See with nations or other political societies. These agreements therefore continue in force exactly as at present, notwithstanding contrary prescripts of this Code.

Can. 4 Acquired rights and privileges granted to physical or juridic persons up to this time by the Apostolic See remain intact if they are in use and have not been revoked, unless the canons of this Code expressly revoke them.

Can. 5 §1. Universal or particular customs presently in force which are contrary to the prescripts of these canons and are reprobated by the canons of this Code are absolutely suppressed and are not permitted to revive in the future. Other contrary customs are also considered suppressed unless the Code expressly provides otherwise or unless they are centenary or immemorial customs which can be tolerated if, in the judgment of the ordinary, they cannot be removed due to the circumstances of places and persons.

§2. Universal or particular customs beyond the law (*praeter ius*) which are in force until

now are preserved.

Can. 6 §1. When this Code takes force, the following are abrogated:

1/ the Code of Canon Law promulgated in 1917;

2/ other universal or particular laws contrary to the precepts of this Code unless other provision is expressly made for particular laws;

3/ any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code;

4/ other universal disciplinary laws regarding matter which this Code completely reorders.

§2. Insofar as they repeat former law, the canons of this Code must be assessed also in accord with canonical tradition

ECCLESIASTICAL LAWS

Can. 7 A law is established when it is promulgated.

Can. 8 §1. Universal ecclesiastical laws are promulgated by publication in the official commentary, *Acta Apostolicae Sedis*, unless another manner of promulgation has been prescribed in particular cases. They take force only after three months have elapsed from the date of that issue of the *Acta* unless they bind immediately from the very nature of the matter, or the law itself has specifically and expressly established a shorter or longer suspensive period (*vacatio*).

§2. Particular laws are promulgated in the manner determined by the legislator and begin to oblige a month after the day of promulgation unless the law itself establishes another time period.

Can. 9 Laws regard the future, not the past, unless they expressly provide for the past.

Can. 10 Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is effected.

Can. 11 Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the efficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age.

Can. 12 §1. Universal laws bind everywhere all those for whom they were issued.

§2. All who are actually present in a certain territory, however, are exempted from universal laws which are not in force in that territory.

§3. Laws established for a particular territory bind those for whom they were issued as well as those who have a domicile or quasi-domicile there and who at the same time are actually residing there, without prejudice to the prescript of Can. 13.

Can. 13 §1. Particular laws are not presumed to be personal but territorial unless it is otherwise evident.

§2. Travelers are not bound:

1/ by the particular laws of their own territory as long as they are absent from it unless either the transgression of those laws causes harm in their own territory or the laws are personal;

2/ by the laws of the territory in which they are present, with the exception of those laws which provide for public order, which determine the formalities of acts, or which regard immovable goods located in the territory.

§3. Transients are bound by both universal and particular laws which are in force in the place where they are present.

Can. 14 Laws, even invalidating and disqualifying ones, do not oblige when there is a doubt about the law. When there is a doubt about a fact, however, ordinaries can dispense from laws provided that, if it concerns a reserved dispensation, the authority to whom it is reserved usually grants it.

Can. 15 §1. Ignorance or error about invalidating or disqualifying laws does not impede their effect unless it is expressly established otherwise.

§2. Ignorance or error about a law, a penalty, a fact concerning oneself, or a notorious fact concerning another is not presumed; it is presumed about a fact concerning another which is not notorious until the contrary is proven.

Can. 16 §1. The legislator authentically interprets laws as does the one to whom the same legislator has entrusted the power of authentically interpreting.

§2. An authentic interpretation put forth in the form of law has the same force as the law itself and must be promulgated. If it only declares the words of the law which are certain in themselves, it is retroactive; if it restricts or extends the law, or if it explains a doubtful law, it is not retroactive.

§3. An interpretation in the form of a judicial sentence or of an administrative act in a particular matter, however, does not have the force of law and only binds the persons for whom and affects the matters for which it was given.

Can. 17 Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure,

recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.

Can. 18 Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.

Can. 19 If a custom or an express prescript of universal or particular law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons.

Can. 20 A later law abrogates, or derogates from, an earlier law if it states so expressly, is directly contrary to it, or completely reorders the entire matter of the earlier law. A universal law, however, in no way derogates from a particular or special law unless the law expressly provides otherwise.

Can. 21 In a case of doubt, the revocation of a pre-existing law is not presumed, but later laws must be related to the earlier ones and, insofar as possible, must be harmonized with them.

Can. 22 Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

TEXT OF CITED CANON LAW PROVISIONS

Can. 221 §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.

§2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.

Can. 277 §1. Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God by which sacred ministers can adhere more easily to Christ with an undivided heart and are able to dedicate themselves more freely to the service of God and humanity.

§2. Clerics are to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful.

§3. The diocesan bishop is competent to establish more specific norms concerning this matter and to pass judgment in particular cases concerning the observance of this

obligation.

Can. 285 §1. Clerics are to refrain completely from all those things which are unbecoming to their state, according to the prescripts of particular law.

§2. Clerics are to avoid those things which, although not unbecoming, are nevertheless foreign to the clerical state.

§3. Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power.

§4. Without the permission of their ordinary, they are not to take on the management of goods belonging to lay persons or secular offices which entail an obligation of rendering accounts. They are prohibited from giving surety even with their own goods without consultation with their proper ordinary. They also are to refrain from signing promissory notes, namely, those through which they assume an obligation to make payment on demand.

Can. 290 Once validly received, sacred ordination never becomes invalid. A cleric, nevertheless, loses the clerical state:

1/ by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination;

2/ by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination;

3/ by rescript of the Apostolic See which grants it to deacons only for grave causes and to presbyters only for most grave causes.

Can. 483 §1. Besides the chancellor, other notaries can be appointed whose writing or signature establishes authenticity for any acts, for judicial acts only, or for acts of a certain case or affair only.

§2. The chancellor and notaries must be of unimpaired reputation and above all suspicion. In cases in which the reputation of a priest can be called into question, the notary must be a priest.

Can. 977 The absolution of an accomplice in a sin against the sixth commandment of the Decalogue is invalid except in danger of death.

Can. 1324 §1. The perpetrator of a violation is not exempt from a penalty, but the penalty established by law or precept must be tempered or a penance employed in its place if the delict was committed:

1/ by a person who had only the imperfect use of reason;

- 2/ by a person who lacked the use of reason because of drunkenness or another similar culpable disturbance of mind;
- 3/ from grave heat of passion which did not precede and hinder all deliberation of mind and consent of will and provided that the passion itself had not been stimulated or fostered voluntarily;
- 4/ by a minor who has completed the age of sixteen years;
- 5/ by a person who was coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience if the delict is intrinsically evil or tends to the harm of souls;
- 6/ by a person who acted without due moderation against an unjust aggressor for the sake of legitimate self defense or defense of another;
- 7/ against someone who gravely and unjustly provokes the person;
- 8/ by a person who thought in culpable error that one of the circumstances mentioned in ¶ can. 1323, nn. 4 or 5 was present;
- 9/ by a person who without negligence did not know that a penalty was attached to a law or precept;
- 10/ by a person who acted without full imputability provided that the imputability was grave.

§2. A judge can act in the same manner if another circumstance is present which diminishes the gravity of a delict.

§3. In the circumstances mentioned in §1, the accused is not bound by a latae sententiae penalty.

Can. 1378 §1. A priest who acts against the precept of ¶ can. 977 incurs a latae sententiae excommunication reserved to the Apostolic See.

§2. The following incur a latae sententiae penalty of interdict or, if a cleric, a latae sententiae penalty of suspension:

1/ a person who attempts the liturgical action of the Eucharistic sacrifice though not promoted to the sacerdotal order;

2/ apart from the case mentioned in §1, a person who, though unable to give sacramental absolution validly, attempts to impart it or who hears sacramental confession.

§3. In the cases mentioned in §2, other penalties, not excluding excommunication, can be

added according to the gravity of the delict.

Can. 1387 A priest who in the act, on the occasion, or under the pretext of confession solicits a penitent to sin against the sixth commandment of the Decalogue is to be punished, according to the gravity of the delict, by suspension, prohibitions, and privations; in graver cases he is to be dismissed from the clerical state.

Can. 1389 §1. A person who abuses an ecclesiastical power or function is to be punished according to the gravity of the act or omission, not excluding privation of office, unless a law or precept has already established the penalty for this abuse.

§2. A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty.

Can. 1395 §1. A cleric who lives in concubinage, other than the case mentioned in □ can. 1394, and a cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue is to be punished by a suspension. If he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state.

§2. A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

Can. 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

Can. 1718 §1. When it seems that sufficient evidence has been collected, the ordinary is to decide:

1/ whether a process to inflict or declare a penalty can be initiated;

2/ whether, attentive to □ can. 1341, this is expedient;

3/ whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

Can. 1719 The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.

Can. 1720 If the ordinary thinks that the matter must proceed by way of extrajudicial decree:

1/ he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;

2/ he is to weigh carefully all the proofs and arguments with two assessors;

3/ if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cann. 1342-1350, setting forth the reasons in law and in fact at least briefly.

Can. 1721 §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of 1502 and 1504.

§2. The promoter of justice appointed to the higher tribunal acts as the petitioner before that tribunal.

Can. 1722 To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

Can. 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does

not appoint an advocate personally.

Can. 1724 §1. At any grade of the trial the promoter of justice can renounce the trial at the command of or with the consent of the ordinary whose deliberation initiated the process.

§2. For validity the accused must accept the renunciation unless the accused was declared absent from the trial.

Can. 1725 In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last.

Can. 1726 If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.

Can. 1727 §1. The accused can propose an appeal even if the sentence dismissed the accused only because the penalty was facultative or because the judge used the power mentioned in cann. 1344 and 1345.

§2. The promoter of justice can appeal whenever the promoter judges that the repair of scandal or the restoration of justice has not been provided for sufficiently.

Can. 1728 §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

Can. 1740 When the ministry of any pastor becomes harmful or at least ineffective for any cause, even through no grave personal negligence, the diocesan bishop can remove him from the parish.

Can. 1741 The causes for which a pastor can be removed legitimately from his parish are especially the following:

1/ a manner of acting which brings grave detriment or disturbance to ecclesiastical communion;

2/ ineptitude or a permanent infirmity of mind or body which renders the pastor unable to fulfill his functions usefully;

3/ loss of a good reputation among upright and responsible parishioners or an aversion to

the pastor which it appears will not cease in a brief time;

4/ grave neglect or violation of parochial duties which persists after a warning;

5/ poor administration of temporal affairs with grave damage to the Church whenever another remedy to this harm cannot be found.

Can. 1742 §1. If the instruction which was carried out has established the existence of one of the causes mentioned in □ can. 1740, the bishop is to discuss the matter with two pastors selected from the group established for this purpose in a stable manner by the presbyteral council at the proposal of the bishop. If the bishop then judges that removal must take place, he paternally is to persuade the pastor to resign within fifteen days, after having explained, for validity, the cause and arguments for the removal.

§2. The prescript of □ can. 682, §2 is to be observed for pastors who are members of a religious institute or a society of apostolic life.

Can. 1743 A pastor can submit a resignation not only purely and simply but also conditionally, provided that the bishop can accept it legitimately and actually does accept it.

Can. 1744 §1. If the pastor has not responded within the prescribed days, the bishop is to repeat the invitation and extend the useful time to respond.

§2. If the bishop establishes that the pastor received the second invitation but did not respond even though not prevented by any impediment, or if the pastor refuses to resign without giving any reasons, the bishop is to issue a decree of removal.

Can. 1745 If the pastor opposes the cause given and its reasons and alleges reasons which seem insufficient to the bishop, the bishop, in order to act validly, is:

1/ to invite the pastor to organize his objections in a written report after he has inspected the acts, and offer any proofs he has to the contrary;

2/ when any necessary instruction is completed, to consider the matter together with the same pastors mentioned in □ can. 1742, §1, unless others must be designated because those pastors are unavailable;

3/ finally, to establish whether the pastor must be removed or not and promptly to issue a decree on the matter.

Can. 1746 After the pastor has been removed, the bishop is to make provision either for an assignment to some other office, if he is suitable for this, or for a pension as the case warrants and circumstances permit.

Can. 1747 §1. The removed pastor must refrain from exercising the function of pastor,

vacate the rectory as soon as possible, and hand over everything belonging to the parish to the person to whom the bishop has entrusted the parish.

§2. If, however, the man is sick and cannot be transferred elsewhere from the rectory without inconvenience, the bishop is to leave him the use, even exclusive use, of the rectory while this necessity lasts.

§3. While recourse against a decree of removal is pending, the bishop cannot appoint a new pastor, but is to provide a parochial administrator in the meantime.

Can. 1748 If the good of souls or the necessity or advantage of the Church demands that a pastor be transferred from a parish which he is governing usefully to another parish or another office, the bishop is to propose the transfer to him in writing and persuade him to consent to it out of love of God and souls.

Can. 1749 If the pastor does not intend to submit to the counsel and persuasions of the bishop, he is to explain the reasons in writing.

Can. 1750 Notwithstanding the reasons alleged, if the bishop decides not to withdraw from his proposal, he is to consider the reasons which favor or oppose the transfer with two pastors selected according to the norm of can. 1742, §1. If he then decides to implement the transfer, however, he is to repeat the paternal exhortations to the pastor.

Can. 1751 §1. When this has been done, if the pastor still refuses and the bishop thinks that the transfer must be made, he is to issue a decree of transfer, establishing that the parish will be vacant after the lapse of a set time.

§2. If this period of time has passed without action, he is to declare the parish vacant.

Can. 1752 In cases of transfer the prescripts of can. 1747 are to be applied, canonical equity is to be observed, and the salvation of souls, which must always be the supreme law in the Church, is to be kept before one's eyes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

DOCUMENT(S) SERVED:

DECLARATION OF VLADIMIR F. KOZINA IN SUPPORT OF FR. JOSEPH ILLO, MSGR., RICHARD J. RYAN, BISHOP STEVEN BLAIRE AND ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE'S MOTION IN LIMINE TO EXCLUDE INTERNAL GOVERNANCE EVIDENCE

NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540
Fax: (508)495-4115

ANTHONY BOSKOVICH, ESQ.
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210
Fax: (408)286-5170

PAUL N. BALESTRACCI, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020
Fax: 948-4910

MICHAEL COUGHLAN, ESQ.
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219
Fax: 957-5338

xx BY FACSIMILE Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of execution of this document, as set forth below.

 BY MAIL. I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____ *BY PERSONAL DELIVERY.* I caused such document to be delivered to the party in said action by delivering a true copy thereof to the law offices of the person listed above where indicated (By Personal Service).

// BY EXPRESS MAIL; Overnight Delivery. I caused a true copy thereof to be delivered by depositing for collection on this same date, a sealed envelope addressed to the person(s) at the address(es) set forth above, into a depository box of the overnight service listed next to each address, at Stockton, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Served and executed on March 1, 2005, at Stockton, California.



SHERI SIGMAN

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

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

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' REPLY TO
 SUPPLEMENTAL
 INFORMATION AND REQUEST
 FOR JUDICIAL NOTICE RE
 MOTION TO EXCLUDE
 EVIDENCE OF MATTERS
 WITHIN THE INTERNAL
 GOVERNANCE OF THE
 CHURCH AND SUBSEQUENT
 REMEDIAL MEASURES

Date: 2 March 2005
 Time: 10:00 A.M.
 Department: 41
 Judge: Hon. Elizabeth Humphreys

24 //
 25 //
 26 //

27
 28 Plaintiffs' Reply to Supplemental Information
 re Internal Church Governance and Subsequent Remedial Measures

cy
 Filed MAR 1 2005
 ROSA JUNGUEIRO, CLERK
 By Charlene Gray
 DEPUTY

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

1 Defendants come to this court with a Request for Judicial Notice and supplemental
2 information in the form of portions of deposition transcripts that ask more questions than they
3 answer.

4 First, the Request for Judicial Notice is inappropriate. Defendants claim without any citation
5 to any authority and with no supporting declarations that Canon Law of the Latin Rite of the
6 Roman Catholic Church is the "law of an organization of foreign nations and of foreign nations and
7 public entities in foreign nations." (Evid. Code § 452¹, subd. (f)) Are defendants claiming that Canon
8 Law is the law of a foreign nation? If so, where is the foundation for that fact? Perusing the papers,
9 there is none; defendants have not established the necessary foundational fact that Canon Law is the
10 law of a nation. There is no question that the Vatican is a nation, but the First Amendment does not
11 protect the Vatican as a country. (See generally, *Americans United for Separation of Church and State v.*
12 *Reagan* (3rd Cir. 1986) 786 F.2d 194) And, California courts do not judicially notice canon law.
13 (*Archdiocese of Milwaukee v. Superior Court (Paine)* (2003) 112 Cal.App.4th 423, 449 [5 Cal.Rptr.3d 134,
14 169-70])

15 Additionally, defendants cite to provisions of canon law, but do not provide copies or any
16 other information by which this court or plaintiffs might review these provisions. "The burden is on
17 the party seeking judicial notice to provide sufficient information to allow the court to take judicial
18 notice. (Citation)" (*Ross v. Creel Printing & Publishing Company* (2002) 100 Cal.App.4th 736, 744 [122
19 Cal.Rptr.2d 787, 792]) Here, defendants explain their interpretations of Canon Law, but the Canons
20 themselves are nowhere to be found, and there is no indication of reliability of the arguments of
21 counsel because there is no indication that counsel is competent in Canon Law. Thus, under the
22 provisions of Evidence Code section 453, the court should not take judicial notice because
23 insufficient information was given to this court to meaningfully determine if the material is properly
24 judicially noticed.

25
26 _____
27 ¹Defendants' citation to Evidence Code section 451 is in error.

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

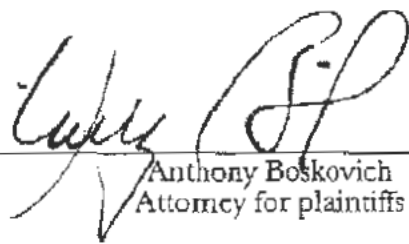
1 Next, defendants supply without explanation pages of deposition testimony, but do not state
 2 what they want excluded. Is it this testimony? Is it the general subject matter? What is it? This
 3 court cannot possibly rule, as plaintiffs argued in their initial opposition, based upon the material
 4 presented. Additionally, are defendants asking that all actions by the defendants in the canonical
 5 process be excluded, such as the fact that they undertook an investigation at all, and that they
 6 removed Father Arakal from public ministry during the pendency of the investigation? Plaintiffs
 7 suspect that defendants will want to introduce facts beneficial to them while excluding the evidence
 8 that hurts them, but that, of course, would violate plaintiffs' constitutional right to a fair trial.

9 With respect to any First Amendment argument, and in addition to what plaintiffs have
 10 already argued, plaintiffs are not intruding on the fundamentally protected freedom of a church to
 11 choose its ministers. Defendants have not and cannot argue that allowing its priests to continue to
 12 abuse children and intentionally inflict emotional distress on its parishioners for retaliatory purposes
 13 is a method of selecting clergy. ((*Bollard v. The California Province of the Society of Jesus* (9th Cir. 1999) 196
 14 F.3d 940, 947-48)

15 As a general proposition, as argued in the discovery motions and plaintiffs' opposition to this
 16 motion, the relevant inquiry is to whether somehow the admission of particular evidence requires
 17 the jury "to evaluate religious doctrine or the 'reasonableness of religious practices' ..." (*Bollard v. The*
 18 *California Province of the Society of Jesus* (9th Cir. 1999) 196 F.3d 940, 950; cited with approval, *Ewig v.*
 19 *Calvin Presbyterian Church* (2004) 375 F.3d 951, 957) It is perfectly acceptable and constitutional for a
 20 jury to "make secular judgments about the nature and severity of the harassment and what measures,
 21 if any, were taken ... to prevent or correct it. The limited nature of the inquiry ... can prevent a wide-
 22 ranging intrusion into sensitive religious matters. (*Ibid.*) Plaintiffs simply are not intruding into nor
 23 questioning any religious doctrine or practice; they are simply attempting to prove tortious and
 24 illegal conduct and the defendants' retaliatory conduct and the superiors' ratification of the bad acts,
 25 and to allow defendants to hide behind an illusory First Amendment shield would in essence prevent
 26 all plaintiffs from ever proving misconduct by church superiors.

1 Therefore, for the reasons expressed here, as well as those in the initial opposition, the motion
2 must be denied.

3
4 Dated: 28 February 2005

5
6
7
8 
9
10 Anthony Boskovich
11 Attorney for plaintiffs
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

Law Offices of
ANTHONY BOSKOVICH
28 North First Street, 6th Floor
San Jose, California 95113-1210

Phone (408) 286-5150
Facsimile (408) 286-5170

FAX TRANSMITTAL LETTER

SENDING TO:

Name: Honorable Elizabeth Humphreys @ 209-468-2903
Michael Coughlan @ 209-957-5338
Vladimir Kozina @ 209-473-4818

NUMBER OF PAGES (including trans. letter): 5

SENDING FROM: Law Offices of Anthony Boskovich / Pam

Date: March 1, 2005

Name of Case: Machado v. Ilo, et al.

Plaintiffs' Reply to Supplemental Information and Request for Judicial
Notice re Motion to Exclude Evidence of Matters Within the Internal Governance
of the Church and Subsequent Remedial Measures

If you have any problems with the receipt of this fax, or if you did not receive all of the pages, please
contact Pam, at (408)286-5150 immediately. THANK YOU!!!!

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

²
03/03/05 09:00 AM 41 met at Stockton, California
Date Dept

Hon. Elizabeth Humphreys
Judge

CV018440 KATHLEEN MACHADO ET AL
VS
FR. JOSEPH ILLO ET AL

Clerk: Charlene Gray
Reporter/Tape: _____
Bailiff: _____
Interpreter: _____

[PLTF] Kathleen Machado

 [DEFT] Joseph Illo

 [DEFT] Francis Joseph AKA Joseph Arakai
 [DEFT] Richard Ryan

ANTHONY BOSKOVICH
GEORGE J MACKOUL
VLADIMIR F KOZINA
PAUL BALESTRACCI
MICHAEL D COUGHLAN
PAUL BALESTRACCI

Nature of proceedings: Jury trial;

Hearing held
 Matter is continued to Mar 3, 2005
 Dropped Granted Denied

in Dept. 41 due to

This matter not heard this day due to illness of Judge Humphreys.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

02/25/05 10:00 AM 41 met at Stockton, California
 Date Dept

Hon. Elizabeth Humphreys

 Judge

| | |
|---|--|
| CV018440 KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL | Clerk: Charlene Gray Reporter/Tape: Carrie Dall Bailiff: CA - N. Moua Interpreter: |
| [PLTF] Kathleen Machado [DEFT] Joseph Illo [DEFT] Francis Joseph AKA Joseph Arakal [DEFT] Richard Ryan | ANTHONY BOSKOVICH ✓ GEORGE J MACKOUL ✓ VLADIMIR F KOZINA ✓ PAUL BALESTRACCI MICHAEL D COUGHLAN ✓ PAUL BALESTRACCI |

Nature of proceedings: Jury trial;

Hearing held

Matter is continued to _____ in Dept. due to _____

Dropped Granted Denied

The Court and Counsel discuss the jury question. ^{note -} Counsel are to meet and confer to finalize the questionnaire. The Court and Counsel also discussed disposing of the questionnaires post trial.

The Court and Counsel continue discussing the motions in limine by Defendants Father Joseph Illo, Monsignor Richard J. Ryan, Bishop Stephen E. Biaire and The Roman Catholic Bishop of Stockton, a Corporation Sole. The Court rules on the motions in limine as follows:

#16) - to preclude the use of unverified pleadings as substantive evidence is granted. No opposition.

#17) - to exclude any testimony and Johnny Smith and any product of investigation. The court takes the motion under submission.

Continued on pg. 2

Pg. 2 of 2-25-05 Minute Order
CV018440

#18) - regarding A. W. Richard Sipes. Counsel may conduct an E. C. 402 hearing before testimony.

#19) - regarding Sonnee D. Weedn, PhD. Counsel may conduct an E. C. 402 hearing before testimony.

#20) - to exclude evidence of Wealth is granted.

#21) - to exclude testimony from or evidence prepared by plaintiffs' expert Thomas Doyle. The Court reserves; Mr. Doyle's deposition to be taken before March 2, 2005.

#22) - to exclude evidence of subsequent remedial measures is taken under submission.

Further Jury Trial is continued to March 2, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

1 MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
VLADIMIR F. KOZINA, ESQ.
4 CA State Bar No. 095422
MICHAEL L. PHILLIPS, ESQ
5 CA State Bar No. 232978

6 NEUMILLER & BEARDSLEE
A Professional Corporation
7 P.O. Box 20
Stockton, CA 95201-3020
8 Telephone: (209)948-8200
PAUL N. BALESTRACCI
9 CA State Bar No. 083987

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

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,) DEFENDANTS' OPPOSITION TO
17) PLAINTIFFS' TENTH MOTION IN
Plaintiffs,) LIMINE
18)
vs.) DEPARTMENT: 41
19) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA) TRIAL DATE: FEBRUARY 22, 2005
20 FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)
BISHOP STEVEN BLAIRE AND THE DIOCESE)
21 OF STOCKTON, ET AL.,)
22 Defendants.)
23)

24 I

25 ISSUE PRESENTED

26 Plaintiff's motion seeks to preclude defendants from introducing any evidence regarding
27 KATHLEEN MACHADO coaching, fabricating, or conspiring with her children regarding the

cy
Filed FEB 25 2005

ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

1 allegations of sexual abuse as revenge against FATHER JOSEPH ILLO, as well as any evidence
2 regarding AMBNER LOMAS or RACHEL LOMAS fabricating or being coached into the
3 fabrication of the allegations of sexual abuse to affect their relationship with FATHER ILLO.
4 Defendants FATHER JOSPEH ILLO, MONSIGNOR RICHARD RYAN, BISHOP STEPHEN
5 E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole,
6 (hereinafter DEFENDANTS) opposes this motion in its entirety.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

SUMMARY OF ARGUMENT

Plaintiffs are essentially taking the position that any evidence regarding possible
motivations for Plaintiffs' allegations is not relevant or admissible for any purpose in this case.
This position is unfounded and overlooks the clear relevance of such evidence for the purpose of
addressing the credibility of the Plaintiffs.

III.

ARGUMENT

A. EVIDENCE THAT PLAINTIFFS MAY HAVE FABRICATED THE
ALLEGATIONS CONTAINED WITHIN THEIR COMPLAINT IS RELEVANT
FOR THE PURPOSE OF ADDRESSING THE CREDIBILITY OF PLAINTIFFS

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

California Evidence Code Section 780 states in pertinent part:

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

(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 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
4 subject to cross examination as to their credibility. A long line of precedent beginning as early as
5 1939 has held that a witness' bias, prejudice, interest, and hostility, or friendship towards the
6 other parties are subjects for cross examination. People v. Payton (1939) 36 Cal.App.2d 41, 96.
7 Furthermore, wide latitude should be given to counsel in developing facts which show bias,
8 prejudice or interest on the part of a witness. People v. Avelar (1961) 193 Cal.App.2d 631.

9 Plaintiffs point to California Evidence Code Section 403(a) as a bar to evidence regarding
10 Plaintiffs' motivation or bias. They further attempt to exclude such evidence based on the fact
11 that defendant FATHER FRANCIS ARAKAL's previously retained expert could not testify to
12 any studies that would support DEFENDANTS' theory of motivation and bias. These two
13 arguments fail. In addressing the foundational requirements under California Evidence Code
14 Section 403 as to credibility evidence, the court held in People v. Sergill (1982) 138 Cal.App.3d.
15 34, 40,

17 “whether or not evidence tendered to affect the credibility of a witness is admissible
18 depends on a preliminary ruling by the trial court that such evidence would be sufficient
19 to sustain a finding that the witness' credibility is, indeed, affected thereby. (Evid.Code,
20 §403; Granville v. Parsons (1968) 259 Cal.App.2d 298, 304, 66 Cal.Rptr. 149.) If a
21 *reasonable* trier of fact could believe that the evidence would be sufficient to have a
22 *reasonable* tendency to prove or disprove the witness' credibility, then the evidence is
23 relevant and should be admitted. (See *ibid.*)”

24 There is no requirement that expert testimony be put forth to support a theory addressing
25 the credibility of a witness. As explained by the court in People v. Sergill, the only foundational
26 requirement for evidence offered to address the credibility of a witness is a preliminary finding
27 by the court that the proffered evidence has a reasonable tendency to prove or disprove the
28 witnesses' credibility.

1 Evidence that the allegations contained within Plaintiffs' complaint may have been
2 fabricated for the purpose of seeking revenge against FATHER ILLO or to affect Plaintiffs'
3 relationship with FATHER ILLO without doubt has a reasonable tendency to prove or disprove
4 Plaintiffs' credibility. As such, this evidence should be admitted to allow DEFENDANTS the
5 opportunity to address the credibility of Plaintiffs should they choose to testify during the course
6 of this trial.

7 **B. THE PROBATIVE VALUE OF SUCH EVIDENCE IS NOT SUBSTANTIALLY**
8 **OUTWEIGHED BY A THE PROBABILITY THAT ITS ADMISSION WILL**
9 **CREATE SUBSTANTIAL DANGER OF UNDUE PREJUDICE**

10 Plaintiffs argue that any evidence regarding Plaintiffs' possible motivation for the
11 allegations contained in their complaint should be excluded under California Evidence Code
12 Section 352. This section provides in pertinent part that the court may, in its discretion, exclude
13 evidence if its probative value is substantially outweighed by the probability that its admission
14 will create substantial danger of undue prejudice. Plaintiffs fail to acknowledge the relevance
15 and probative value of this evidence. As explained above, this evidence is admissible to address
16 the credibility of Plaintiffs should they choose to testify during the course of this trial. Given the
17 allegations contained in Plaintiffs' complaint, many of the issues in this case are going to be
18 decided by the jury based on their assessment of the credibility of the witnesses. As such, any
19 evidence as to possible bias or motivation of witnesses, including plaintiffs should they choose to
20 testify, is highly probative. The high probative value of evidence regarding the possible
21 motivation and bias behind Plaintiffs' allegations is not substantially outweighed by a danger of
22 undue prejudice and therefore should not be excluded under Section 352.

24 ///

26 ///

27 ///

IV.

CONCLUSION

Evidence regarding the possible motivation and bias behind Plaintiffs' allegations is admissible to address the credibility of Plaintiffs should they choose to testify during the course of this trial. As such, Plaintiffs motion in limine to exclude such evidence should be denied.

Dated: February 24, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By: 
MICHAEL L. PHILLIPS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
2 Vladimir F. Kozina, Esq., SB No. 95422
2453 Grand Canal Blvd., Second Floor
3 Stockton, California 95207-8253
4 Telephone: (209) 477-3833 Fax (209) 473-4818

cy
Filed FEB 25 2005
ROSA JUNQUEIRO, CLERK

3 **Neumiller & Beardslee**
4 Paul N. Balestracci, Esq. SB No. 83987
5 Post Office Box 20
6 Stockton, CA 95201-3020
7 Telephone: (209) 948-8200 Facsimile: (209) 948-4910

By Charlene Gray
DEPUTY

8 Attorneys for: Bishop Stephen Blaire, Msgr. Richard Ryan, Fr. Joseph Illo,
9 Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

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

11 **KATHLEEN MACHADO INDIVIDUALLY AND AS
12 GUARDIAN AD LITEM FOR RACHEL LOMAS AND
13 AMBER LOMAS**

No. CV 018440

14 Plaintiff,

**FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
15 BISHOP STEVEN BLAIRE, AND
16 ROMAN CATHOLIC BISHOP OF STOCKTON, A
CORPORATION SOLE' S SUPPLEMENTAL
17 INFORMATION AND REQUEST FOR JUDICIAL
18 NOTICE RE: EXCLUDE EVIDENCE OF MATTERS
19 WITHIN THE INTERNAL GOVERNANCE OF THE
20 CHURCH AND SUBSEQUENT REMEDIAL ACTIONS**

21 vs.

22 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, A.K.A.
23 FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,
24 BISHOP STEVEN BLAIRE, AND THE DIOCESE OF
25 STOCKTON , ET AL,**

**DATE: FEBRUARY 22, 2005
26 TIME: 1:30 PM
27 DEPT: 41**

28 Defendants.

29 COME NOW defendants FR. JOSEPH ILLO, MNSGR. RICHARD J. RYAN, BISHOP STEVEN BLAIRE, AND
30 ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE (INCORRECTLY NAMED HEREIN AS THE
31 DIOCESE OF STOCKTON) and requests that the court undertake, in its consideration of the above motions
32 in limine, in addition to the transcript outtakes, attached as Exhibit A hereto, the court is requested to
33 take judicial notice of the following provisions of the Canon Law of the Latin Rite of the Roman
34 Catholic Church, that is an organization of the sovereign entity Vatican City State, in its determination

1 concerning the exclusion of matters contained within the canonical investigations related to the
2 allegations underlying this litigation pursuant to Evidence Code section 452, that provides:

3 “Judicial notice may be taken of the following matters to the extent that they are not
4 embraced within Section 451:

5 (f) The law of an organization of nations and of foreign nations and public entities in
6 foreign nations.”
7

8 PROVISIONS OF THE CANON LAW OF THE ROMAN CATHOLIC CHURCH (1983)

9 1. Investigation of Complaints

10 When a bishop receives a complaint that a priest or deacon has engaged in sexual misconduct with a
11 minor child, this complaint should be discreetly investigated at once. The Code of Canon law provides
12 a basis for an investigation in chapter I, "The Preliminary Investigation," of Book VII, Part IV, "The
13 Penal Process." These canons (cc. 1717 - 1719) offer wide discretion to the bishop in the investigation
14 of complaints. The second chapter, "The Course of the Process," (cc. 1720-1728) outlines the manner
15 of proceeding if the preliminary investigation shows that there is probability that a canonical delict was
16 committed.
17

18 If the bishop follows the basic procedures outlined in cc. 1717 1719 he need not move to the
19 next phase, a trial. He may simply want to go on record indicating that the canons provide for a process
20 whereby complaints may be investigated. The canons to provide has a mechanism for protection of the
21 rights of the faithful (cf. canon 221).
22

23 2. Canonical Delicts

24 For those bound to perpetual continence and in sacred orders, a number of canonical delicts
25 (crimes) may be committed in the course of sexual misconduct. Canon 277 refers to the cleric s
26 obligation of perfect continence as well as his obligation to act and relate prudently to persons.

27 -canon 285, 1: the obligation to shun anything that is unbecoming the clerical state.
28

1 -canon 1395: this canon refers to offenses against the sixth commandment by clerics. It deals
2 with concubinage and sexual concourse with women and related scandal In the first paragraph and with
3 other related offenses, including those involving force, threats and offenses with children. The canon
4 sets no specific penalties but merely refers to "just penalties not excluding dismissal from the clerical
5 state."

6 canon 1387: solicitation in the confessional. A priest who solicits in the confessional or under
7 the pretext of confession for a sexual act is to be punished with penalties up to and including dismissal
8 from the clerical state.

9 canon 1378: this canon refers to canon 977 (the absolution of a partner in a sexual sin is invalid
10 except in case of danger of death). A priest who commits this delict is automatically excommunicated
11 and the absolution is reserved to the Holy See.

12 canon 1389: this canon deals with the general abuse of ecclesiastical office or power. The crime
13 is to be punished in relation to its severity. Clerics who have sexual concourse with women, men or
14 children are obviously liable to canonical penalties since such actions constitute the matter for
15 canonical crimes. There are other issues related to these crimes however and the fact of commission of
16 a crime should not be isolated as the major issue.

17 The canonical legislation on sexual misconduct indicates that such actions are contrary to the
18 cleric s essential obligations. The law makes no distinction between performance of such acts while
19 carrying out ecclesiastical duties and those perpetrated at other times. These actions are contrary to the
20 cleric s very way of life and consequently he is obliged at all times.

21 **3. Canonical Penalties Applicable**

22 Although canonical penalties are ordinarily applied at the conclusion of a trial or process, the
23 unique nature of certain forms of sexual misconduct, especially sexual abuse of minor children, should
24 preclude such an approach under most circumstances.

25 In certain cases, the perpetrator might find himself excommunicated automatically, such as
26 when he absolves an accomplice. The preferred method of applying appropriate canonical penalties in
27
28

1 such cases would be by way of administrative decree, issued by the Bishop, The penalty referred to is
2 suspension of the priest from all sacred functions, ecclesiastical offices and duties.

3 **Administrative Leave:** after the initial report has been made and the Ordinary has decided that
4 an investigation is justified, he should proceed according to cc. 1717-1719. The canons provide for a
5 kind of "administrative leave" (canon 1722) whereby the priest or deacon may be asked to leave his
6 residence and cease all public ministerial functions

7 Suspension as a canonical penalty may be imposed by decree for a period of time, following the
8 procedures outlined in the Code, or it may be imposed perpetually but not by decree. A perpetual or
9 indefinite suspension can be imposed only after a canonical trial. In any case, suspension should only
10 be used after the priest or deacon's guilt has been determined. If the accused is convicted and
11 imprisoned, he could well be suspended for the duration of his incarceration.

12 **Removal from office:** Although removal from office (associate, pastor, etc.) or transfer is not a
13 penal procedure but an administrative procedure the law provides for such actions if the ordinary
14 believes that he has sufficient reason and that it redounds to the good of the faithful. Canons 1740-1752
15 set out in detail this procedure as well as the recourse
16 against a decree or removal or transfer.

17 Canon 290 states that although sacred ordination, once validly received never becomes invalid,
18 a cleric (priest, deacon or even bishop) loses the clerical state in three instances:

- 19 - when a judgement of a court or administrative decree declares the ordination to be invalid
20 - when laicization is lawfully imposed as a penalty
21 - when laicization is imposed by rescript of the Holy See.

22 Declaration of the invalidity of ordination is extremely rare and quite difficult to prove since it
23 involves the intentionality of both the recipient of holy orders and that of the ordaining prelate.

24 Allegations of lack of fitness for celibacy would not constitute solid basis to pursue such a matter.

25 Dated: 2-25-05

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

26 By  _____
27 Vladimir F. Kozina

Bishop Blaire Deposition Volume 1

23:1 MR. BOSKOVICH: Q. I would say that in your
--
2 in your position as the bishop of the diocese --
3 A. Yes, yes.
4 Q. -- do you have the authority -- I'm going
to
5 use canonical authority, because I think your
counsel
6 brings up a very good point -- that I think you
could
7 exclude, you know, under the law, under civil law
you
8 could exclude anybody.
9 MR. BALESTRACCI: Right.
10 MR. BOSKOVICH: Q. Under civil law, under
11 canonical law, do you have the authority to exclude
any
12 person from the premises of a Catholic church?
13 A. Yes.

23:20 MR. BOSKOVICH: Q. And I apologize, Your
21 Excellency, because I am not an expert on canon law
and
22 when I try to read it I become very confused and
I'm
23 just trying to learn here on -- under what
circumstances
24 is it your understanding that you -- that you would
be
25 allowed to exclude a person from -- from a Catholic
24: 1 church?
2 A. Well, the bishop can issue an interdict is
what
3 it's called canonically.
4 Q. Okay.
5 A. And I'd have to go back to the canon law
books
6 to review all the circumstances.
25: 5 Q. All right. And who made the decision to
6 reinstate him?
7 A. I did.

8 Q. Okay. You and you alone?
9 A. In consultation with Monsignor Ryan.
10 Q. All right. During that meeting --
11 A. Excuse me?
12 Q. I'm sorry.
13 A. I cannot remember if our review board was
in
14 existence at that time, but if it were in
existence, I
15 would have consulted with them.
16 Q. All right. And is that the review board
that
17 is referred to in the diocese policy regarding
sexual
18 abuse?
19 A. Yes.
20 Q. Now, during that meeting that you had with
21 Father Illo, Monsignor Ryan, Father Arakal, were
you
22 shown a letter from Detective Bali from the Hughson
23 Police stating that -- that the charges against
Father
24 Arakal were groundless --
25 A. Well, I don't remember if it was in that
26: 1 meeting, but I saw that letter.
2 Q. -- and that he could be reinstated
immediately?
3 Did that letter -- do you remember seeing
that
4 letter?
5 A. Yes.
6 Q. Did that letter have any effect or impact
on
7 your decision to reinstate Father Arakal?
8 A. Yes.
9 Q. What effect did it have?
10 A. That there were no -- that they were not
11 pursuing the case any longer and that once -- once
that
12 was determined, we made the decision to reinstate
him.
13 Q. Did you have an understanding as to why
the
14 district attorney decided not to pursue the case?
15 A. There was not sufficient evidence to
pursue the
16 case.

17 Q. Okay. How do you know that?
18 A. I believe that's what was said in the
letter.
19 Q. Okay. Did the church do anything on its
own to
20 determine what -- what evidence there was of the --
to
21 support the allegations made by the -- by Amber and
22 Rachel Lomas?
23 A. We did a canonical investigation --
preliminary
24 investigation we call it.
25 Q. All right. Did you ever interview in the
27: 1 canonical investigation the girls?
2 A. I did not.
3 Q. Did anybody?
4 A. Monsignor Ryan did -- conducted the
5 investigation.
6 Q. And he interviewed the girls?
7 A. He conducted several interviews. You'd
have to
8 check to see who all he interviewed.
9 Q. Okay. Does Monsignor Ryan have any
special
10 training in -- in interviewing potential victims of
11 sexual abuse?
36:12 A. I did not make a final determination because
13 the investigation was not ever completed.
14 Q. Okay. Why was it not ever completed?
15 A. The reason it was not completed is because
16 Kathleen Machado never validated her testimony in --
-
17 when they conduct these canonical investigations,
18 they -- they interview people and then they send
them to
19 them and ask them to make any corrections,
20 verifications, sort of like what you said here at
the
21 beginning of this, of which she did not.
22 And meanwhile, before it was completed, I
23 believe she instituted legal action and so that --
it
24 was never finished, so I never made a final
25 determination. A canonical investigation has to be
37: 1 completed before the bishop makes a determination.

38: 5 A. Well, the reason I'm hesitating is I believe
6 she was told it was important to respond and there
was
7 no response.

8 Q. Okay. I'll represent to you that Father
9 Skillin asked for it, and in his own notes, perhaps
in
10 the Animadversiones, that he said that because she
had a
11 lawyer, he decided not to follow up.

12 Would that -- would that in a canonical
13 investigation be an appropriate decision for Father
14 Skillin to make?

15 A. I am not a canon lawyer. That was the
decision
16 he made. He was the investigator. I was not the
17 investigator.

18 Q. Was Father Skillin ever told that you were
not
19 going to make a final determination because
Kathleen
20 Machado did not validate her -- her statement?

21 A. No.

22 Q. Before you told this -- gave this
testimony
23 today that no -- that no decision was made because
of
24 that, had you told anybody else in the world that
was
25 why no decision had been made?

39: 1 A. When I received -- yes, when I received
the
2 canonical investigation, I made a determination the
--
3 the investigation was not completed so I could make
no
4 final determination.

5 Q. I will represent to you that I have gone
6 through these documents four times and I see no
notation
7 in any document that indicates that, number one,
you did
8 not make a final determination and, number two, as
to
9 why.

10 Are there any documents which would so

11 indicate?
12 A. No.
13 Q. Who did you communicate your decision to
not to
14 issue a final decision?
15 A. For sure I told Monsignor Ryan.
16 Q. Okay. And anybody else?
17 A. I don't recall whether I told Father
Skillin.
18 I may very well have, I don't recall.
19 Q. All right. Now, you also stated that you
20 didn't make a final decision because there was a
lawsuit
21 that was instituted.
22 A. (Witness nods head).
23 Q. Now, this lawsuit was instituted in
September
24 of 2002. The final report is in January of 2003,
25 January 6th, 2003.
40: 1 Why didn't you stop the investigation once
you
2 knew there was a lawsuit?
3 A. I didn't see a reason for stopping the
4 investigation when -- when the investigation was
5 presented to me. It was not completed and I
determined
6 not to pursue it because litigation had been
instituted.
7 I didn't stop it because law -- I didn't stop it
because
8 litigation had been instituted, but once an
incomplete
9 investigation was given to me, I determined to wait
to
10 see what the outcome of this would be.
11 Q. Do you have any intention of -- okay.
12 How does the canonical investigation tie
in
13 with the civil investigation, or the civil lawsuit?
14 A. Well, they are two separate
investigations.
15 Q. And my understanding is, is that the
church
16 fights fairly rigorously to keep the canonical
17 investigations out of the public view, is that
correct,
18 that -- I mean, that the canonical investigation is

19 considered to be private; is that right?
20 A. Well, there's a confidentiality connected
with
21 it, yes.
22 Q. So, for example, I can't walk into a
diocese
23 and say I'd like to see every canonical
investigation
24 you have done?
25 A. No.
41: 1 Q. And the law that you are using, the laws
in the
2 two systems are -- civil law and the canon law are
3 totally separate, correct?
4 A. They are separate.
5 Q. So the canonical finding or what was being
6 alleged was whether Father Illo had somehow
harassed and
7 defamed the character of Kathleen Machado and her
8 family, correct?
9 A. I'm sorry, say that again.
10 Q. The -- the canonical investigation is
regarding
11 allegations of harassment and defamation of
character
12 raised by Kathleen Machado against Father Illo,
correct?
13 That's what it was about?
14 A. Yes, they were about those allegations,
all
15 right.

41:20 A. I believe this is a preliminary
investigation
21 and a preliminary investigation is just to
determine
22 whether there's some credibility to the
allegations.
23 Q. Why is it called a final report?
24 A. I think it's called a final report because
he
25 finished his report. He did all that he could do,
all
42: 1 they could do.
2 Q. Okay. A final report of the preliminary
3 investigation?

4 A. Yes.
5 Q. What is the next step after the preliminary
6 investigation?
7 A. The bishop makes a determination whether
or not
8 there is credibility to the allegations, and then
once
9 you determine there's credibility, then you do a
full,
10 complete investigation.
11 Q. How is the full and complete investigation
12 different from the preliminary investigation?
13 A. It's much more thorough. You need to have
--
14 for a preliminary investigation, you only need to
have
15 some probability and in a -- and in a full
investigation
16 you need to have, I believe, a moral certitude.
17 Q. Okay. In a preliminary investigation, are
18 there -- are there findings and recommendations
made by
19 the investigators?
20 A. Well, in this case there was.
21 Q. Is that -- is that appropriate?
22 A. I'm not a canon lawyer. I can't answer
that
23 question.

45-10 MR. BOSKOVICH: Q. Okay. One last question
on
11 the canonical investigation and I'll move on, Your
12 Excellency.
13 Do you have any intention of making a
final
14 determination?
15 A. When all of this is finished, I will go
back
16 to -- to see if -- how to close it. I intend to
close
17 it. You can't leave it open forever.
18 Q. Okay. Has Father Illo expressed any
concern
19 about the fact that this has been held open for so
long?

20 A. No.

47: 6 Q. Okay. What was -- as you sit here today, what

7 is your understanding of the allegations that -- that

8 have been made by Amber and Rachel Lomas against Father

9 Francis?

10 A. My understanding is that they are accusations

11 of abuse.

12 Q. Anything more specific?

13 A. No, just that they are accusations of child

14 abuse.

15 Q. All right. Do you believe the allegations?

16 A. Obviously I do not believe them, because I 17 reinstated him in ministry, and I did that after the

18 canonical investigation and after the police indicated

19 that it was -- I forget how their statement read, but it

20 was to the effect that there was no credible evidence to

21 support the allegations.

90: 23 Q. I'm asking, do you have the power to disapprove

24 any employee in a parish?

25 A. That's a good question.

91: 1 MR. BALESTRACCI: If you know. If you don't...

2 THE WITNESS: I have the power to do just about

3 anything in the diocese as long as I follow canonical

4 procedures.

114: 17 MR. BALESTRACCI: If I can interject, I do want

18 to continue my objection as to the inquiry in the

19 canonical process. I don't want to prevent him
from
20 answering questions. I want to preserve that
objection
21 continually and through trial.

121:17 Q. Okay. Did you direct anybody to speak with
18 Father Joseph about the fact that he attributed
19 something to you that you apparently feel very
strongly

20 about that you would never do?

21 MR. BALESTRACCI: Mischaracterizes his
22 testimony.

23 MR. BOSKOVICH: I don't think it --

24 MR. BALESTRACCI: I don't think he said he
25 feels strong about it.

122: 1 MR. BOSKOVICH: I don't think it
2 mischaracterizes his tone, though, or his facial
3 expression.

4 MR. BALESTRACCI: It mischaracterizes his
5 testimony, but you can answer the question, sir.

6 THE WITNESS: You know, I'm trying to
think
7 when I wrote that, and I think I wrote that when --
when

8 we were putting the papers together for the
canonical
9 investigation, but I'm not positive of that.

What's the
10 date on there, 3-23?

11 MR. BOSKOVICH: '02.

12 THE WITNESS: '02.

129:10 Do you have an understanding of why those
11 reports or those documents were generated?

12 A. Yes.

13 Q. Why were they generated?

14 A. Because Monsignor Ryan wanted to get the
facts
15 of what happened that day.

16 Q. All right. Was this a canonical
investigation?

17 A. No.

18 Q. All right. Termed an internal
investigation
19 by -- by the diocese?

20 A. Yes.

136-5 Q. Okay. "When diocesan personnel is accused
of
6 an act of child abuse, in addition to compliance
with
7 all civil" -- I'm on number 3 now -- "in addition
to
8 compliance with all civil law requirements, a
canonical
9 investigation will be conducted in accordance with
10 applicable provisions of canon law and following
which
11 outline the process for the application of an
12 ecclesiastical penalty."

13 Did that happen?

14 A. Yes.

15 Q. When did the canonical investigation
begin?

16 A. It's in there. You have to look at it and
see.

17 Q. April of 2002?

18 MR. BALESTRACCI: I'm going to object to
that
19 as a misstatement.

20 MR. BOSKOVICH: Q. When did the canonical
21 investigation start?

22 MR. BALESTRACCI: About what?

23 MR. MACKOUL: It's in the document.

24 MR. BOSKOVICH: About the abuse.

25 MR. BALESTRACCI: About what abuse?

137: 1 MR. BOSKOVICH: Q. About the suspected --
of

2 the allegation that Amber Lomas made on September
11th,

3 when did the canonical investigation begin?

151-4 Q. Okay. But you are satisfied with the
15 investigation?

16 A. I am satisfied that Monsignor Ryan was
doing

17 everything he possibly could to get to the bottom
of

18 what happened.

19 Q. But that's not my question, and I really

20 apologize if I seem like I'm rude. My question is:
Are
21 you satisfied with the investigation?
22 A. Yes.
23 Q. You have every fact that you believe you
need
24 to make a decision on this incident?
25 MR. BALESTRACCI: I think he's already
152: 1 testified that he doesn't. He's waiting for this
2 lawsuit to end.
3 MR. BOSKOVICH: I'm talking about
September
4 11th, 2001 --
5 MR. MACKOUL: Are you talking canonical or
6 noncanonical? I don't know what you talking about.
7 MR. BOSKOVICH: Q. When did you first
come to
8 the opinion that the incident of September the 11th
of
9 2001 was -- that the allegations were unfounded?
10 A. I never came to the conclusion that the
11 allegations were unfounded.
12 Q. Okay. How about untrue?
13 A. What allegations?
14 Q. Of abuse.
15 MR. COUGHLAN: That assumes facts not --
16 MR. BALESTRACCI: I'll object.
17 MR. COUGHLAN: That assumes facts not in
18 evidence.
19 MR. BALESTRACCI: There is no allegation
of
20 abuse on September 11th.
21 MR. BOSKOVICH: You don't think so?
22 MR. BALESTRACCI: I don't think so.
23 MR. COUGHLAN: The testimony has been that
the
24 girl went in and said she felt uncomfortable. You
are
25 asking the bishop to determine whether or not her
153: 1 feelings of uncomfortable were unfounded?
2 Asks for speculation and assumes facts not
in
3 evidence.

Bishop Blaire Deposition Volume 2

169: 7

MR. BOSKOVICH: Q. I want to first revisit

--

8 if you recall in our last session we discussed an
9 allegation that was made during the interview of
the
10 canonical investigation that was conducted by
Monsignor
11 Ryan and Sister Barbara that Kathleen Machado had
held a
12 child over a cliff or Father Illo had held a child
over
13 the cliff.

199: 1 Q.

What was known in the parish we can
dispute,
2 you know, and will, but it seems that Kathleen
Machado
3 wrote you a letter January 9th of 2002. There were
a

4 series of letters --

5 A. Yes.

6 Q. -- then there was a canonical
investigation.

7 And I think everybody agrees that the first time
that
8 anybody in the -- in the chancery or the diocese, I
9 apologize for not knowing the words, where there
was
10 allegation made at your -- or I'm not going to say
at

11 your level, but at that level was in May of 2002.

12 Do you have an explanation as to why --
that

13 after that point, and up until the date of the
Father

14 Arakal's deposition, nobody showed him the
policies? He

15 stated he was unaware of them.

16 MR. KOZINA: If you know. If you don't
know,

17 you don't know.

18 THE WITNESS: I don't know.

202: 1 Q.

I've never seen a priest's personnel file
as it

2 exists, and I know that you were only required to
turn
3 over certain things --
4 A. Uh-huh.
5 Q. -- with respect to civil and any canonical
6 things would not have been turned over. In
general, are
7 priests' personnel files thick documents, are they
thin,
8 I mean --
9 A. Some are very thin and some are very
thick.
10 Q. Okay. Now, for example, we -- just to
give you
11 an example, we have a stack of about maybe a half
an
12 inch of complaint letters regarding Father Illo.
13 A. Uh-huh.
14 Q. Do those complaint letters go into the
15 personnel file?
16 A. Yes.
17 MR. BOSKOVICH: All right. I'm just
trying to
18 get a handle without violating any canonical issues
as
19 to what goes into a personnel file. All right.
Good
20 enough, thank you.

249: 2 Q. Okay. When we last spoke, the canonical
3 investigation that was -- let me see if I can
remember
4 how to say it correctly, is the preliminary
5 investigation was -- had been completed by Father
6 Skillin and the canonical investigation had not
been
7 completed by you. Has it been completed yet?
8 A. No.
9 Q. Are you --
10 MR. KOZINA: Which one?
11 MR. BOSKOVICH: This is Father Skillin's.
12 THE WITNESS: There's only one canonical
13 investigation.
14 MR. KOZINA: Okay.
15 MR. BOSKOVICH: Q. There were two.

Monsignor

16 Ryan -- remember Monsignor Ryan and Sister Barbara
did a
17 canonical investigation into -- into Father
Arakal's
18 conduct, but that was closed.
19 MR. KOZINA: Okay. But, Counsel, I think
we
20 need to make it clear, Monsignor Ryan talked about
that,
21 that is a pre -- like a preliminary --
22 THE WITNESS: Well, it was not an official
23 canonical investigation. The only official
canonical
24 investigation was the one that Father Skillin and
Sister
25 Beverly did.

252: 1 MR. BOSKOVICH: Q. All right. Now, is
what
2 happened with Father Arakal that was done by Sister
3 Barbara a lesser kind of investigation than a
canonical
4 investigation?
5 A. No, it was a preliminary investigation
where
6 you -- you -- you look to see if there's some merit
to
7 taking action or actually initiating a formal
8 investigation.
9 Q. I will -- okay. I am not meaning to be
10 argumentative, I am truly trying to understand.
11 A. Yes, okay.
12 Q. It would seem that in the minds of the
diocese,
13 if the charge against Father Arakal was more
serious
14 than the charge against Father Illo, because the
charge
15 against Father Arakal was sexual abuse, but it
seems
16 that the investigation -- the more formal
investigation
17 was for the lesser of the two?
18 MR. KOZINA: Okay, that is argumentative.
19 MR. BOSKOVICH: But I'm just telling you
what

20 I'm thinking.
21 THE WITNESS: Oh, that's easy to explain.
22 MR. BOSKOVICH: I'm just trying to find
out
23 why.
24 MR. KOZINA: Can you explain that?
25 THE WITNESS: Yeah.
253: 1 MR. BOSKOVICH: I was explaining my --
2 MR. KOZINA: It's okay, Tony.
3 THE WITNESS: When --
4 MR. KOZINA: More coffee?
5 THE WITNESS: When there is an accusation
of
6 child abuse, the obligation, if -- is to report it
to
7 the authorities, and so that's why -- this letter
came
8 in to me, point number one. And then the
conversation
9 that went on with the grandfather and Monsignor
Ryan,
10 better look into this. This -- this is something
new.
11 This has not been in our -- this is something in
the
12 past six months that was never actually brought
forward.
13 MR. BOSKOVICH: Q. Okay.
14 A. So the first thing you have to do is you
have
15 to have a preliminary investigation to see if
there's
16 something really to all this.
17 Q. Okay.
18 A. So Monsignor Ryan, Sister Barbara
interviewed
19 the grandfather, Kathleen Machado, and Amber.
20 Q. All right.
21 A. There was uncertainty, but that -- once,
even
22 if there's uncertainty, there was an accusation
there so
23 it was reported to child protection and to --
24 Q. I understand.
25 A. -- to the police.
254: 1 Q. I understand.
2 A. And then the police were left to do the

3 investigation, so we did not do any formal
investigation

4 on that. We left it to the police to do the
5 investigation.

6 Q. Understood. Is it also true, because I'm
7 trying to understand it, that with respect to the
8 allegations against the Father Illo on September
11th,

9 those facts were more fully developed for you
rather

10 than the allegation of sexual abuse, which was just
the

11 accusation, that -- that it was appropriate to open
a

12 canonical investigation -- go to the further step
13 because more was known?

14 A. Well, I wouldn't say further, that was the
15 appropriate step to take.

16 Q. All right.

17 A. In regard to she had made these other
18 accusations against Father Illo and so the
appropriate

19 thing would be to do an internal investigation, and
what

20 we would call a canonical investigation. That is
the

21 way you proceed in the church. There's a canonical
22 process when you have, in this case, a parishioner
and

23 pastor.

256:14 Q. So you have to make the decision as to what
to

15 do with parish priests where allegations are made
16 against them on the basis of things that you don't
17 personally see, correct?

18 A. That's right. You have to look at all the
19 circumstances as best as you can, find -- and
that's why

20 we did a canonical investigation.

21 Q. Okay. Well, let me ask you this. If you
had

22 a -- oh, gosh, I want to say it the right way -- if
you

23 have -- if you have a priest that's abusive, and I
don't

24 mean sexually abusive, I just I mean a person who -

257:13 A. A bishop can't remove a pastor from a parish.

14 Q. Okay. Who can do that?

15 A. He can -- he has to have a canonical process.

16 There's a team, you have a couple priests that are part

17 of a team that can go out and investigate. You have to

18 follow a process.

19 Q. You had mentioned earlier due process when we

20 were talking -- and we never zeroed in, so the priest

21 has a right to due process under canon law?

22 A. Yeah, you know we don't -- there's no --

23 there's nothing in church law about punishing people.

24 Everything is -- everything you do is to always try to

25 help the person to improve.

258: 1 Q. Okay. That sounds like juvenile law, okay.

2 A. Well, they don't function that way, I go down

3 to juvenile.

4 Q. The law is written that it's all for

5 rehabilitation and not for punishment, which makes us

6 wonder why there's a California Youth Authority, but --

7 MR. KOZINA: It's extreme rehabilitation.

8 MR. BOSKOVICH: Q. -- that's another story. I

9 understand, so it has to go through that process?

10 A. (Witness nods head).

304:24 Q. Okay. Now, after -- as a part of the canonical

25 investigation, Father Skillin looked into the, and I

305: 1 came up with -- with pew squeeze from the

2 Animadversiones, but he didn't use that exact term, but

3 it was equally cute --

4 A. Yeah.

5 Q. -- what he said.

6 Have you reviewed that canonical investigation?

7 A. Yes.

8 Q. Are you still of the opinion that Kathleen Machado was being disruptive at mass?

9

10 A. I'd have to go back and read it. All I said to

11 you is if she were sitting there with her sunglasses on

12 and talking to her children, being disruptive there in

13 the front pew, then I would have done what they did.

14 Q. All right.

15 A. Talk about your hypothetical questions.

16 Q. Absolutely. And would you agree that if it

17 turned out that -- that it wasn't true that she was

18 being disruptive --

19 A. Uh-huh.

20 Q. -- that what happened to her was unfair?

21 A. Well, I think they just sat there.

Whoever

22 arrives in church first has the privilege of sitting

23 where they want to sit.

24 Q. I understand that. But my understanding,

25 again, not as a regular church goer --

306: 1 A. Uh-huh.

2 Q. -- that in daily mass seems to be more of

3 assigned seating.

4 A. No, there is no assigned seating.

308: 5 MR. BOSKOVICH: Q. Okay. Let's go further.

6 If Kathleen Machado -- and the purpose of the canonical

7 investigation was to determine --

8 A. Uh-huh.

9 Q. -- facts and one -- I think the underlying

10 facts that Father Skillin and ultimately you would have

11 to determine is was she being disruptive or not.

12 A. Uh-huh.

13 Q. That's sort of a preliminary fact, but if it

14 were to turn out that she was not being disruptive and

15 that parish staff were, you know, had some ax to grind

16 with her, but had nothing to do with her behavior at

17 mass, would you agree that the December 22nd letter of

18 2001 asking her to worship elsewhere would be unfair?

19 MR. KOZINA: Well --

20 THE WITNESS: The letter --

21 MR. KOZINA: Excuse me. It assumes -- it

22 assumes that is the --
23 THE WITNESS: That's what I was thinking.
24 MR. KOZINA: -- that is the only single act
25 that supports that letter.
309: 1 MR. BOSKOVICH: Good.
2 THE WITNESS: That's exactly what I was going
3 to say. In a letter -- that letter does not represent
4 just that, it represents the whole experience that he's
5 having with her.
6 MR. BOSKOVICH: Q. What was the other -- what
7 were the other parts of the experience as you know them
8 that -- that caused -- was the impetus for the December
9 22nd, 2001 letter?
10 A. That she was constantly pursuing him, hanging
11 around the parish causing trouble. She should just go
12 elsewhere and not be disruptive of the community.
13 And -- and he has the right to do that. If -- if she
14 is -- if she is pursuing him, if she is causing trouble
15 there in the parish, if she is being disruptive, that he
16 has the right to ask her to go elsewhere.
17 Q. But not force her to go elsewhere?
18 A. You can't force anybody to do anything. He
19 wanted to get -- he wanted to get a -- a --
20 Q. A restraining order.
21 A. A restraining order and we did not feel that
22 was the right thing to do.
23 Q. Monsignor Ryan testified that under canon law
24 the pastor cannot force a person to worship elsewhere.
25 A. That is correct.
310: 1 Q. Okay.
2 MR. KOZINA: I think he testified to that
3 already.
4 THE WITNESS: But if a person is being
5 disruptive -- a disruptive force in the parish, you have
6 a right to ask them to go elsewhere.

~~326-23~~ A. Into his conduct -- well, it says on here
24 meeting between Father Illo and Amber. I think it
was
25 the understanding to look into that situation, but
I --

327: 1 I think you are right, we were probably
concentrating

2 more on -- on what transpired between Kathleen
Machado
3 and Father Illo.

4 Q. Okay. Great. All right.

5 A. But I don't think it specifically excluded

--

6 Q. Right.

7 A. -- any aspect of what happened on that
day.

8 Q. Right. And that investigation hasn't been
9 concluded, so let me -- let me ask you this.

10 If you go -- if you went through the --
the
11 canonical investigation conducted by Father Skillin
and
12 then looked at it and says, jeez, they didn't make
any
13 investigation with respect to Father Arakal's
conduct on
14 September 11th, do you have the authority to go to
15 Father Skillin and say I want you to at least
address
16 this?
17 A. I do.
18 MR. BOSKOVICH: Okay. I'll mark this as
19 Exhibit 9. Seems like March 15th was a very
prolific
20 day for letters.
21 (Exhibit 9 marked)
22 MR. BOSKOVICH: Q. This is a letter dated
23 March 15th, 2002 to Deanna Watson from you.
24 Do you recognize this letter?
25 A. Yes, uh-huh.
328: 1 Q. It says, "I received your letter of
January
2 30th, 2002. I have read it very carefully and will
3 follow up in an appropriate manner as set forth in
the
4 code of canon law."
5 What does that mean?
6 A. That means that I was -- this is when I
had
7 made the determination to investigate all these
specific
8 accusations that Kathleen had on her letter.
9 Q. Now, Monsignor Ryan testified that Deanna
10 Watson had written her letter and that he had
written
11 her twice for a response, and because she did not
12 respond, he was going to do nothing further.
13 A. Uh-huh.
14 Q. Is that inconsistent with your letter here
of
15 March 15th?
16 A. I don't think so.
17 Q. Okay. Can you tell me why it's
consistent? I
18 just don't understand.

19 A. That I was probably trying -- when I
opened the
20 investigation, I was trying to probably bring
everything
21 up-to-date.
22 Q. Okay. Okay.
23 A. To at least let people who had written to
me --
24 I think I wrote two or three of these kind of
letters
25 just to let people know that this is not just
hanging
329: 1 fire, that this is being looked into.
2 Q. Okay.
3 MR. KOZINA: This is housekeeping. This
is
4 part of the same number 8, right, this envelope?
5 MR. BOSKOVICH: Yeah.
6 MR. KOZINA: It has number 52 down here.
Oh, I
7 see what that is. This is a page number.
8 MR. BOSKOVICH: Yeah, here. We have got
to
9 keep ours separate, Your Excellency, to go to him.
10 MR. KOZINA: Thanks for clarifying that
for me.
11 THE WITNESS: Oh, I see.
12 MR. BOSKOVICH: Yeah, they are going to go
to
13 the court reporter.
14 THE WITNESS: It goes to the court
reporter.
15 MR. BOSKOVICH: Yeah, leave them right
there.
16 That's great. I'll put mine over here so we don't
mix
17 these up. Yeah, Mr. Kozina, a lot of these letters
18 appear multiple times and the one that I happened
to
19 find on that one had the envelope stapled to it so
the
20 envelope is unimportant.
21 MR. KOZINA: Well, we're going to show him
22 something, if you might, I'm going to show him,
this is
23 part of the exhibit that we were at.
24 THE WITNESS: Uh-huh, I don't know.

25 MR. KOZINA: I don't know --
330: 1 MR. BOSKOVICH: Q. Do you want to point
2 something out?
3 A. No.
4 MR. KOZINA: No, I just pointed it out to
him,
5 because I needed to clarify something.
6 MR. BOSKOVICH: What number were you on?
7 MR. KOZINA: This is number 8.
8 (Exhibit 10 marked)
9 MR. BOSKOVICH: Q. Okay. Let me show you
what
10 I have marked now as Exhibit 10 to your deposition,
11 which is a letter dated April 29th of 2002 --
12 MR. KOZINA: I'm just counting how many we
have
13 left to go through.
14 MR. BOSKOVICH: I'm not going to go
through all
15 of them.
16 Q. -- is a letter to you from Kathleen
Machado --
17 from you to Kathleen Machado dated April 29th of
2002.
18 Do you recognize that letter?
19 A. Yes.
20 Q. Why did it take a month from the date of
21 Kathleen's letter to you?
22 MR. KOZINA: Counsel, I'll refer you to
your
23 own Exhibit Number 8 and take a look at the
envelope,
24 the date it was mailed --
25 MR. COUGHLAN: Postmarked.
331: 1 MR. KOZINA: -- and the date it was
received.
2 MR. BOSKOVICH: Well, there you go, there
you
3 go. You have an explanation, that ends that
question.
4 MR. KOZINA: I thought I was --
5 MR. BOSKOVICH: Perfect.
6 MR. KOZINA: Yeah, okay.
7 MR. BOSKOVICH: Perfect.
8 THE WITNESS: Uh-huh.
9 MR. BOSKOVICH: Q. Now, down at the
bottom it

24 Q. All right. What we -- what I will tell
you is
25 that the last document that was turned over to us
was
30: 1 this Decree Concluding the Prior Investigation.
2 A. Uh-huh.
3 Q. It is dated July the 19th of 2002. I
4 apologize, when I read it I didn't understand it,
okay,
5 because there's a lot of, I guess, better words to
put
6 up, lingo, you know, that I'm sure has, you know,
7 profound meaning, okay, in the canon law but I
don't
8 understand it.
9 So when he closed -- when he concluded the
10 prior investigation, that did not conclude -- I
think
11 your testimony --
12 A. That did not necessarily -- would not
13 necessarily conclude. I would have to read it
again and
14 see what it says.

69-12 A. I think if they wanted it and subpoenaed the
13 tape, I think my knowledge of current civil law
14 proceedings is that in most cases a judge would say
he
15 wanted it handed over to him to see if it was
relevant.
16 And if he thought it was relevant, he would allow
the
17 other side to see it.

18 Q. Would that be consistent with canon law or
was
19 this tape supposed to stay --
20 A. Technically in canon law it's supposed to
be
21 extremely confidential.

22 Q. All right. I want to talk a little bit on
23 canon law as well. Remember the statements -- my
24 understanding is that you -- when you spoke with
Mary
25 Mullins at St. Joseph's right after September 11th
you
70: 1 asked that certain statements, and I believe Sister

2 Beverly referred to them as depositions be made.
Is
3 that correct, written statements, did you ask --

Deposition of Fr. Arakal

157:22 Q. Did you have any understanding whether those

23 witness statements were made under a promise of
24 confidentiality?

25 A. I don't know.

158: 1 Q. Had you ever seen -- been involved in canonical

2 investigation before?

3 A. No.

4 Q. Did you have any -- did you feel uncomfortable

5 looking at these witness statements or Mary Mullins'

6 witness statements?

7 A. I did not.

8 Q. Did you ask Mary Mullins for permission?

9 A. No.

10 Q. Does Mary Mullins know if you reviewed her
11 witness statement?

12 A. I don't know.

13 Q. Do you know whether Father Illo asked anybody's

14 permission if they could look at the witness statements?

15 A. I don't know.

16 Q. Did you ever tell Monsignor Ryan during the

17 canonical investigation in 2002 that you had seen the

18 witness statements?

19 MR. BALESTRACCI: I'm going to object to
20 mischaracterizing the statements that were created

in
21 the wake of the September 11th incident with statements

22 which may have been incorporated later in the canonical

23 proceeding so, I mean, I don't want you to have the

24 wrong idea and I don't want him to be misled.

159:7 Q. But you did see Mary Mullins' statement?
8 A. Yeah.
9 Q. And did you read it?
10 A. Yes.
11 Q. And did you see that before you were
12 interviewed by Monsignor Ryan in the canonical
13 investigation?
14 A. Before?
15 Q. Before.
16 A. Yeah.
17 Q. Did you tell Monsignor Ryan that you had
seen
18 the -- or Mary Mullins' statement before he
interviewed
19 you?
20 A. No.

Deposition of Owen Kummerle

91:11 Q. All right. Now, I want to ask you some
12 questions about canonical investigations, and only
13 that -- well, no, actually Father Illo's office,
was it
14 open?
15 A. Most of the time.
16 Q. He had file cabinets?
17 A. Yes.

124:11 A. Well, the staff got together and decided
that
12 we were going to sit up front to prevent Kathleen
from
13 sitting up front.
14 Q. And did anybody suggest that?
15 A. I don't know who might have initiated it.
16 Q. Was it Father Illo?
17 A. No.
18 Q. I will tell you that --
19 A. I don't think so.
20 Q. -- in a statement in the canonical
21 investigation Father Illo stated that he encouraged
it.
22 Does that refresh your recollection that -

23 that it was encouraged by Father Illo?
24 A. I don't know. I mean, I think staff was
aware
25 of -- staff meaning Rosario, Jackie, Mary, myself
that
125: 1 was probably the four that were possibly involved
in
2 that. And I don't know who -- who suggested it,
but
3 when it was suggested we kind of all agreed on it
and
4 said, well, okay let's give it a try.

125:23 MR. BOSKOVICH: I have been calling it the
pew

24 squeeze.
25 A. That's all right, I understand what you
are
126: 1 referring to.
2 Q. What Father Skillin called the staff
squeeze --
3 A. Yeah.
4 Q. -- in his canonical Animadversiones? They
5 called it the staff squeeze, between that time what
was
6 she doing that was irritating, other than staring
at
7 Father Illo?
8 A. I think that was it.

144:17 Q. Okay. Did you ever come to learn that a
18 canonical investigation was opened?
19 A. No.

Depositor of A.W. Sipes

21:16 This is the final report of the canonical
17 investigation. In here there are letters from
Kolleen and
18 Father -- the pastor, Father Joseph.

Machado Deposition

165:11 MR. KOZINA: Just for the record, Exhibit 1
is a
12 two-page letter dated November 1999. It also bears
the
13 stamp MAC 109.
14 MR. MacKOUL: Yeah, that's part of the
production
15 in the canonical matter. I'm sorry. I think --
16 MR. KOZINA: I think it was also produced
in
17 response to the Request for Production.
18 MR. MacKOUL: I'm sorry. The MAC numbers
go for
19 the entire MAC production by the church, which
includes
20 the canonical investigation.
21 MR. KOZINA: Take as much time as you need
to
22 review that.
23 MR. MacKOUL: Please read it carefully.
Take
24 your time.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

02/24/05 10:00 AM 41 met at Stockton, California
 Date Dept

Hon. Elizabeth Humphreys

 Judge

CV018440 KATHLEEN MACHADO ET AL
 VS
 FR. JOSEPH ILLO ET AL

[PLTF] Kathleen Machado

 [DEFT] Joseph Illo

 [DEFT] Francis Joseph AKA Joseph Arakal
 [DEFT] Richard Ryan

Clerk: Charlene Gray
 Reporter/Tape: Carrie Dall
 Bailiff: CA - Nhia Moua
 Interpreter: _____

ANTHONY BOSKOVICH
 GEORGE J MACKOUL
 VLADIMIR F KOZINA
 PAUL BALESTRACCI
 MICHAEL D COUGHLAN
 PAUL BALESTRACCI

Nature of proceedings: Jury trial;

- Hearing held
- Matter is continued to _____ in Dept. _____ due to _____
- Dropped Granted Denied

The Court and counsel convene to discuss procedures and the motion in limine regarding the trial in this case. The court informs counsel of courtroom procedures during trial.

Mr. Kozina makes a verbal motion that non-party witnesses be excluded from the courtroom until they testify. The motion is granted.

The Court and counsel discuss witness intimidation. No action is taken at this time.

The rulings of the Court on Plaintiffs' motions in limine are as follows:

#9 - to allow the First Amended Complaint to be filed against the Defendants which Conforms to the Discovered Facts to Date is granted. The Court allows the Complaint to correct the name of the defendant the Diocese of Stockton to the Roman Catholic Bishop of Stockton, a corporation sole. Mr. Kozina's request for d 30 days to response to the Amended Complaint is denied. Appropriate evidence re: the amendment will be allowed at the trial. Continued on page 2.

pg. 2 of 2-24-05 Minute Order
CV018440

#1) - to exclude all reference to & the introduction of personal letter by plaintiffs...to defendant Fr. Joseph Illo is denied. Objections may be made during trial.

#2) - to exclude any evidence of a prior or pending automobile accident claim involving any of the plaintiffs is granted. Unopposed.

#3) - to exclude all evidence...re: Amber & Rachel Lomas' biological father being a victim of sexual abuse is granted by stipulation.

#4) - to exclude all evidence ...re: Kathleen Machado's physical proximity and photographs evidence proximity...at the time of the alleged molestation is denied. Objections will be considered at trial. Photographs must be exchanged 24 hours before using them during the trial.

#5) - to exclude all evidence ... re: Attorney MacKoul's alleged discussion with plaintiffs' treating psychologist...outside presence of defense counsel is denied.

#6) - to exclude all evidence ... re: plaintiff's contact with & support from victim advocacy groups is granted. Unopposed.

#7) - to exclude all evidence ... re: certain statements made by any person on the audiotaped interview of Kathleen Machado & Amber Lomas by Fr. Richard Ryan & Sister Barbara, including for the purpose of cross-examination is granted in part and denied in part. The children may be asked if they have an attorney, but may not be asked questions regarding any communication with an attorney.

#8) - to exclude all evidence ... re: certain statements made by any person on the videotape interview of Amber & Rachel Lomas by the Stanislaus Co. Dist. Attorney's office is granted in part and denied in part. See explanation for Plaintiff's motion in limine #7.

#10) - to exclude all evidence ... re: Kathleen Machado coaching, fabricating or conspiring with her childre the allegation of sexual abuse set forth in the complaint ... will be heard February 25, 2005.

The Court rules on Defendant Fr. Francis Arakal Joseph's motions in limine as follows (numbered by the Court):

#1) - regarding testimony of A. W. Richard Sipes is granted. Mr. Sipes, after the qualification process, may testify to his observations or specific facts. He may not testify as to his speculations or conjectures.

#2) - regarding opinions of Deputy District Attorney Nate Baker is granted. The lack of criminal prosecution is irrelevant to this case.

The Court rules on the motions in limine of Defendants Father Joseph Illo, Monsignor Richard J. Ryan, Bishop Stephen E. Blaire and the Roman Catholic Bishop of Stockton, a Corporation Sole as follows (numbered by the Court):

- #1) - to limit evidence and witnesses to those designated is withdrawn by counsel.
- #2) - to preclude any opinion testimony from Thomas Doyle regarding the conduct of Father Joseph Illo or Father Francis Arakal. The Court requires that the deposition of Thomas Doyle be taken between today (Feb. 24, 2005) and March 2, 2005 as required by the Code.
- #3) - to preclude any opinion testimony for Richard Sipe re: the conduct of Father Joseph Illo or Father Francis Arakal. Objection is to be brought up in appropriate context.
- #4) - to exclude evidence of matters within the internal governance of the church. The Court reserves on ruling on this motion until the Court can review specific deposition testimony.
- #5) - to require an Evidence Code section 402 hearing prior to any testimony on matters unrelated to the specific facts of this case is withdrawn. All counsel are responsible for explaining to witnesses the objection process during trial.
- #6) - requesting jury selection by questionnaire and individual voir dire. The individual voir dire part of the motion is withdrawn by counsel. Potential jurors will complete a questionnaire.
- #7) - requesting a jury site visit is withdrawn by counsel.
- #8) - to exclude evidence of wealth is granted.
- #9) - to exclude evidence related to Dallas Charter & alleged clergy malpractice is granted to the extent of clergy malpractice. If the Dallas Charter becomes relevant and the witness can lay the foundation for it, the witness may testify concerning it.
- #10) - to preclude any reference to inappropriate touching of any sort by defendants as to Amber Loinas is withdrawn.
- #11) - to preclude any argument, evidence or comments by plaintiffs re: a remedy other than monetary damages is granted. No opposition.
- #12) - to preclude any reference to California's abuse reporting statutes is granted. No one will testify regarding the law or the penal aspect of case and the consequences.
- #13) - to preclude similar injury argument to jury is granted.
- #14) - to exclude insurance is granted.
- #15) - to preclude any reference to or discussion of prior unrelated comments by Father Illo. Objections are to be made at the time of trial.

Further Jury Trial is continued to February 25, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

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

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

cy
Filed FEB 24 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 RE
OPINION OF NATE BAKER
Date: 24 February 2005
Time: 10:00 A.M.
Department: 41
Judge: hon. Elizabeth Humphreys

22 Defendant Father Arakal brings this motion in limine to exclude the testimony of Deputy
23 District Attorney Nate Baker on the grounds that his opinion invades the province of the jury and
24 that reasons for not bringing charges against Father Arakal are irrelevant. Father Arakal is incorrect.

25 This motion is curious at best. Defendants Father Illo, Monsignor Ryan, Bishop Blaire, the
26 Diocese, and Father Arakal himself, disclosed Mr. Baker as an expert witness. Mr. Baker has not

28 Opposition to Motion in Limine
to Exclude Testimony of Nate Baker

1 | been withdrawn as an expert, either formally or informally. The Bishop and the Diocese, as well as
2 | Father Arakal himself, are touting the fact that a criminal investigation was done in which no charges
3 | were brought against Father Arakal. Bishop Blaire, as well as Father Arakal, are relying upon a
4 | letter written by Detective Don Bali stating that there was insufficient evidence in which to bring
5 | charges against Father Arakal and advising the Bishop that it was safe to reinstate Father Arakal into
6 | ministry where he once again would be allowed to deal with children. But now Father Arakal wants
7 | to exclude the testimony of the person who made the decision not to prosecute and who in fact
8 | instructed Detective Bali not to prosecute, and they want to exclude his reasons for doing so. The
9 | reason for this is very simple: Mr. Baker will testify that he believed that inappropriate touching had
10 | occurred but that he did not believe that he could prove beyond a reasonable doubt that it was
11 | sexually motivated, and also because he thought a jury might become confused by the alleged
12 | relationship between Ms. Machado and Father Illo and thereby believe that Ms. Machado had
13 | coerced the girls into making a false report, although he personally did not believe that was the case.

14 | In essence, therefore, defendant Arakal wants to have the jury hear all that is favorable to
15 | him, and leave the jury with the impression that the authorities thought that there was no basis for
16 | the girls' claims, which simply is not true. If the jury is to hear that charges were not filed and that
17 | a letter was written by a detective with an explanation, then they must be allowed to hear the entire
18 | story. In fact, due process requires it.

19 | "The right to such a hearing is one of 'the rudiments of fair play', (Citation), assured
20 | to every litigant by the Fourteenth Amendment as a minimal requirement."
21 | (Citation) 'The reasonable opportunity to meet and rebut the evidence produced by
22 | his opponent is generally recognized as one of the essentials of these minimal
23 | requirements, (Citations), and the right of cross-examination has frequently been
24 | referred to as another. (Citations) 'The classic statement of the rule applicable to
25 | such proceedings is found in *Interstate Commerce Commission v. Louisville & Nashville*
26 | *Railroad Company* (1913) 227 U.S. 88 [33 S.Ct. 185, 57 L.Ed. at page 434]: "All parties
27 | must be fully apprised of the evidence submitted or to be considered, and must be
28 | given opportunity to cross-examine witnesses, to inspect documents, and to offer
evidence in explanation or rebuttal. In no other way can a party maintain its rights
or make its defense."
(Kaiser Company, Inc. v. Industrial Accident Commission (1952) 109 Cal.App.2d 54, 59 [240 P.2d 57, 60];
cited with approval, *Rucker v. Workers' Compensation Appeals Board* (2000) 82 Cal.App.4th 151, 158 [97
Cal.Rptr.2d 852, 857])

1 "The search for truth is not served but hindered by the concealment of relevant and material
2 evidence. Although our system of administering ... justice is adversary in nature, a trial is not a game.
3 Its ultimate goal is the ascertainment of truth, and where furtherance of the adversary system comes
4 in conflict with the ultimate goal, the adversary system must give way to reasonable restraints
5 designed to further that goal...." (*In re Ferguson* (1971) 5 Cal.3d 525, 531 [96 Cal.Rptr. 594]) "... Our
6 courts are not gambling halls but forums for the discovery of the truth." (*People v. Geiger* (1984) 35
7 Cal.3d 510, 520, [199 Cal.Rptr. 45]) Plaintiffs could argue that the decision not to prosecute is
8 irrelevant and should be excluded, but have chosen not to do so. Defendants cannot have it both
9 ways. Either the criminal investigation comes in – in its entirety — or it is excluded — in its entirety.
10 There can be no middle ground.

11 Finally, Mr. Baker could not be called to testify as to the innocence or guilt of Father Arakal;
12 that is for the jury, and self-evident. The motion is thus unnecessary in that regard.

13 This evidence also is not subject to exclusion by Evidence Code section 352. "Prejudicial"
14 is not synonymous with "damaging", (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th
15 976, 989-90 [16 Cal.Rptr.2d 787,792], overruled on other grds., *Lakin v. Watkins Associated Industries*
16 (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 121]), nor does it refer to anything the defendant
17 finds inconvenient. (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998 [62 Cal.Rptr.2d 164]) Evidence is
18 unduly prejudicial when it "uniquely tends to evoke an emotional bias against the party as an
19 individual and which has very little effect on the issues." (*Bihun, supra*, at 989) But here, plaintiffs are
20 attempting to thwart an emotional bias against them should the jury learn that no charges were
21 pressed agaionst Father Arakal. Although damaging and inconvenient to the defendants, the
22 evidence that Nate Baker intends to give is critical to the fairness of the trial.

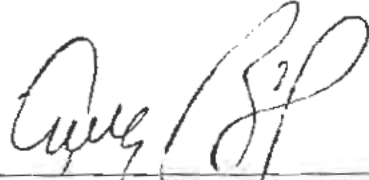
23 Any evidence of this sort to be introduced by plaintiffs will not take much trial time. It is not
24 necessary to conduct numerous mini-trials to determine the admissibility of the statements, if any;
25 this court will be able to rule promptly from the bench with full knowledge of the context in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

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

1 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: 23 February 2005

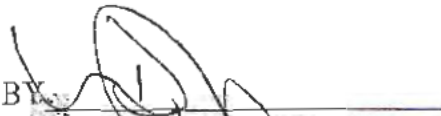
6
7
8 
9
10 _____
11 Anthony Boskovich
12 Attorney for plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- 1 6. Norman Schmidt, M.D.
- 2 7. Anthony Machado
- 3 8. Owen Kummerle
- 4 9. Anna Lopez
- 5 10. Deputy Don Bali
- 6 11. Jackie Tucker
- 7 12. Mary Mullins
- 8 13. Dianne Stevens, MFCC
- 9 14. Fr. Joseph Ilo
- 10 15. Dan Rosenblatt
- 11 16. Linda Gentile'
- 12 17. Sonnee Weedn, PhD.
- 13 18. Melisa Souza
- 14 19. Debbie Greco
- 15 20. Mary Smyth
- 16 21. Rick Dinubilo
- 17 22. William Capiello, M.D.
- 18 23. Pat Fiori
- 19 24. Susan Fiori
- 20 25. Ana Marie DeVilliers, M.D.
- 21 26. Connie Azevedo
- 22 27. Eva Capiello
- 23 28. Carmcn Skeen
- 24
- 25
- 26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 29. Teresa Peterson
- 30. Ruben Peterson
- 31. Pam Dinubilo
- 32. Sujay Netness
- 33. Lorraine Ottobani
- 34. Edward Hough
- 35. Linda Gillum
- 36. Tom Hallcraft
- 37. Mike Perine
- 38. Sue Brock
- 39. Peter Goye
- 40. Carol Goye
- 41. Natalie Wagner
- 42. Jean Smith
- 43. Marian Shewfelt
- 44. Marion Schewfelt
- 45. Marsha Herman
- 46. Peter Herman

DATED: 2/24/05

BY: 
MICHAEL D. COUGHLAN
Attorney for Defendant,
FR. FRANCIS ARAKAL JOSEPH

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

02/22/05 01:30 PM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date Dept

Judge

CV018440 KATHLEEN MACHADO ET AL
VS
FR. JOSEPH ILLO ET AL

Clerk: Charlene Gray
Reporter/Tape:
Bailiff:
Interpreter:

- [PLTF] Kathleen Machado
- [DEFT] Joseph Illo
- [DEFT] Francis Joseph AKA Joseph Arakal
- [DEFT] Richard Ryan

- ANTHONY BOSKOVICH
- GEORGE J MACKOUL
- VLADIMIR F KOZINA
- PAUL BALESTRACCI
- MICHAEL D COUGHLAN
- PAUL BALESTRACCI

NO APPEARANCES

- Jury Trial Court Trial Unlawful Detainer

Hearing held

Cause is continued to 2-24-05 @ 10 am in Dept. 41 due to

No Court available this day. Parties to stand by and remain in contact with the Courtroom Clerk.

Matter dropped from calendar Case settled No appearance

Cause ordered assigned to Dept.

Witness(es) ordered to return on the above date.

The following witness(es) are ordered to return on the above date:

Other Orders of the Court:

Motion's in limine to be argued 2-24-05 @ 10 am
in Dept. 41. Counsel notified by phone.

Clerk's Office to send notice.