

IN THE CIRCUIT COURT OF WILL COUNTY
TWELFTH JUDICIAL CIRCUIT

DAVID RUDOFSKI,)
)
Plaintiff,)
)
vs.)
)
THE ROMAN CATHOLIC DIOCESE OF)
JOLIET, INC., a Trust, and)
FATHER JAMES BURNETT,)
)
Defendants.)

No. 2007-L-283

John J. Spina
CLERK, CIRCUIT COURT
WILL COUNTY, ILLINOIS
WILL COUNTY COURT HOUSE

2011 JAN 27 PM 1:06

FILED

NOTICE OF MOTION

To: See Attached Services List

PLEASE TAKE NOTICE that on February 2, 2011, at 9:00 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Michael Powers in the Will County Courthouse Annex, Room 311, located at 57 N. Ottawa Street, Joliet, IL and then and there present **Diocese Motion to Enter a Written Discovery Order and to Enter a Contempt Order to Perfect an Appeal Pursuant to Supreme Court Rule 304(b)(5)**, copies of which are attached hereto.

PROOF OF SERVICE

The undersigned hereby certifies that a copy of this Notice and attached Motion were sent via Federal Express to the attorneys listed on that attached service list on January 27, 2011.

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Rudofski v. Roman Catholic Diocese of Joliet, et al.
Case No. 07 L 283

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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

DAVID RUDOFSKI,

Plaintiff,

vs.

THE ROMAN CATHOLIC DIOCESE OF
JOLIET, a Trust; FR. JAMES BURNETT,

Defendants.

No. 07 L 283

CLERK, CIRCUIT COURT
WILL COUNTY, ILLINOIS
WILL COUNTY COURT ANEXY

John J. Spina

2011 JAN 27 PM 1:06

FILED

**DIOCESE MOTION TO ENTER A WRITTEN DISCOVERY ORDER
AND TO ENTER A CONTEMPT ORDER TO PERFECT AN APPEAL
PURSUANT TO SUPREME COURT RULE 304(b)(5)**

NOW COMES, the Defendant Roman Catholic Diocese of Joliet, Inc., a Trust, (the “Diocese”) by James C. Byrne of Spesia & Ayers, and Joseph M. Laraia of Laraia, Harrison & Laraia, P.C., its attorneys, and respectfully moves the Court to enter a written order encompassing the Court’s rulings of November 23, 2010 and December 14, 2010, which pertain to the Plaintiff’s Motion to Compel Discovery and the discovery to be produced by the Diocese herein, and to enter an order of contempt against the Diocese for its respectful refusal to comply with said Order in the production of the information and documents set forth therein so that an appeal can be taken from said Order, pursuant to Supreme Court Rule 304(b)(5). In support of this Motion, the Diocese states as follows:

1. The Plaintiff submitted Interrogatories, and a Request for Production of Documents, upon the Diocese.
2. The Diocese provided answers and made objections to certain of Plaintiff’s Interrogatories and Production Request.

3. The Plaintiff filed a Motion to Compel the Diocese to answer the Interrogatories and produce the documents objected to by the Diocese.

4. The Diocese filed a Response to Plaintiff's Motion to Compel; the Plaintiff filed a Reply and the parties filed Memoranda of Law in support of their respective positions.

5. The Court heard argument, on Plaintiff's Motion to Compel, on November 23, 2010 and rendered its rulings on said date requesting the parties to submit an Order that encompassed the Court's ruling. **A transcript of said hearing, and the Court's rulings, are attached hereto as Exhibit A.**

6. Thereafter, the Plaintiff submitted his proposed Order and the Diocese submitted its proposed Order to each other and to the Court, and on **December 14, 2010**, the Court decided not to enter either order presented by the parties and made further rulings set forth in **the transcript of said hearing, which is attached thereto as Exhibit B.**

**THAT PART OF THE COURT ORDER
REGARDING DOCUMENTS THAT THE DIOCESE WILL PRODUCE
PURSUANT TO THE COURT ORDER (AND NOT BY AGREEMENT)**

7. The Diocese will produce and comply with that part of the Discovery Order as follows:

- a) All records regarding Father James Burnett, which are his entire priest file, secret archive records pertaining to him, if any, investigative files of Bishop Kaffer, investigative files of Diocese of Joliet of outside investigators, Review Committee records, background checks of witnesses and alleged victim, all subject to Privilege Logs.

- b) All allegations of sexual abuse of minors by Diocesan Priests and Religious Order Priests that worked or served in ministry in a Diocese parish, or other Diocesan entity that was governed by the Diocese of Joliet, in which the alleged sexual abuse occurred before November 20, 1982, and was also reported to the Diocese prior to November 20, 1982, including all ministry assignments of those priests, and also including any secret archive files, if any, investigative files of Bishop Kaffer or outside investigators and background checks of witnesses or claimants.
- c) Any and all written policies of the Diocese of Joliet that predated November 20, 1982 pertaining to priest sexual abuse with minors.
- d) A list of all lawsuits against the Diocese for priest sexual abuse with minors wherein the sexual abuse is alleged to have occurred prior to November 20, 1982.

**THAT PART OF THE COURT ORDER REGARDING DOCUMENTS
THAT THE DIOCESE OBJECTS TO AND WILL NOT PRODUCE
UNLESS AND UNTIL ORDERED BY A REVIEWING COURT**

8. The documents which the Court has ordered, on November 23rd and December 14, 2010, for the Diocese to produce, and which the Diocese respectfully refuses to produce, include the following:

- I. **Allegations of sexual misconduct by priests with adults** that occurred prior to November 20, 1982 regardless of when said conduct was reported to the Diocese, which would include the following:
 - (a) Allegations against all Diocesan priests from 1949 to the present;

- (b) Allegations against all Religious Order priests from 1949 to the present who worked in a Diocesan parish or Diocesan facility;
- (c) Allegations that were found to be reasonably credible by the Diocese and allegations that were found to be reasonably non-credible by the Diocese, or false, if those determinations were made;
- (d) The entire priests' files of said other priests and not only those portions of the files that pertain to allegations of sexual misconduct with adults.
- (e) The **Diocese's Secret Archive files**, if any, that pertain to said allegations of sexual misconduct of priests with adults;
- (f) The investigation files of **Bishop Kaffer**, if any that pertain to allegations of sexual misconduct of priests with adults;
- (g) The investigation files of the Diocese's **outside investigators**, if any including Steve Kirby & Kirby Associates, that pertain to allegations of sexual misconduct of priests with adults;
- (h) **Diocesan Review Committee records**, if any that pertain to allegations of sexual misconduct of priests with adults;
- (i) **Background checks of witnesses or claimants**, if any that pertain to allegations of sexual misconduct with adults;
- (j) Allegations of sexual misconduct with adults, if any, of **Bishop Dan Ryan** that took place while he was an official of the Diocese of Joliet provided that the allegations occurrence was prior to November 20, 1982, but were reported after 1982.

II. **Complaints against priests involving minors that do not involve sex**, occurring before November 20, 1982, no matter when reported to the Diocese, including:

- a) Complaints against all Diocesan priests, from 1949 to the present;
- b) Complaints against all Religious Order Priests who worked in a Diocesan parish or Diocesan facility, from 1949 to the present;
- c) The complaints that were found to be reasonably credible by the Diocese and allegations that were found to be reasonably non-credible or false;
- d) The entire priest file of said other priests and not only those portions of the file that pertain to said complaints.
- e) The **Diocese's Secret Archive files**, if any that pertain to said complaints;
- f) The investigation files of **Bishop Kaffer**, if any that pertain to complaints;
- g) The investigation files of the Diocese's **outside investigators**, if any including Steve Kirby & Kirby Associates, that pertain to said complaints;
- h) **Diocesan Review Committee records**, if any that pertain to complaints;
- i) **Background checks of witnesses or claimants** that pertain to said complaints.
- j) Complaints against **Bishop Dan Ryan** involving minors that do not involve sex while he was an official of the Diocese of Joliet, provided the occurrence was before November 20, 1982 even though reported after said date.

III. **Allegations of sexual abuse by priests with minors** that occurred prior to November 20, 1982 and were first reported to the Diocese after November 20, 1982:

- a. Allegations against all Diocesan priests, from 1949 to the present;
- b. Allegations against all Religious Order priests who worked in a Diocesan parish or Diocesan facility, from 1949 to the present;
- c. Allegations that were found to be reasonably credible by the Diocese and allegations that were found to be reasonably non-credible by the Diocese; allegations that were found to be reasonably false by the Diocese;
- d. The entire priests' files of said other priests and not only those portions of the files that pertain to allegations of sexual abuse;
- e. The **Diocese's Secret Archive files** that pertain to said allegations of sexual misconduct of priests with minors;
- f. The investigation files of **Bishop Kaffer** that pertain to allegations of sexual misconduct of priests with minors;
- g. The investigation files of the Diocese's **outside investigators**, including Steve Kirby & Kirby Associates, that pertain to allegations of sexual misconduct of priests with minors;
- h. **Diocesan Review Committee records** that pertain to allegations of sexual misconduct of priests with minors;

- i. **Background checks of witnesses or claimants** that pertain to allegations of sexual misconduct with minors;
- j. Allegations of sexual misconduct with minors if any, of **Bishop Dan Ryan** that took place while he was an official of the Diocese of Joliet provided that the allegations occurrence was prior to November 20, 1982, but were reported after 1982;

9. **The Court has also ruled that the following information and documents are not discoverable by the Plaintiff:**

- a. The **mental health records of priests** other than Father Burnett who have had allegations of sexual misconduct with adults and sexual and other misconduct with children.
- b. Information or allegations regarding a priest's breach of **Vow of Celibacy**.
- c. The Diocesan documents or records regarding the **legal fees of priests** accused of sexual abuse with minors.
- d. The Diocesan records in the possession of any **state's attorney's office**.
- e. The Diocesan records in the possession of any **insurance company** providing insurance coverage to the Diocese.

BASIS FOR THE APPEAL

10. The Court's above rulings set forth in paragraph 8, subparagraphs I, II and III are overly broad; involves the production of a substantial amount of irrelevant materials; is based on an error of law; violates a constitutional right to privacy and reputation and is thereby an abuse of discretion, which is amplified as follows:

-A CASE OF FIRST IMPRESSION-

11. The scope and the extent of the documents required to be produced under paragraph 8, subparagraph I (allegations of sexual misconduct of priests with adults) and II (allegations involving minors not involving sex), *are a matter of first impression in any Illinois Appellate Court. The Court Order would involve the inspection of approximately 700 or more files on Diocesan priests, each of said files consist of between 100 pages and up to 700 pages. To comply with the Court Order would require a thorough reading of each file.*

-A CASE OF FIRST IMPRESSION-

AND ERROR OF LAW

12. The scope and the extent of documents required to be produced as set forth in paragraph 8 subparagraph III (allegations of sexual abuse of priests with minors, that occurred prior to November 20, 1982, and were first reported to the Diocese after 1982), *are also a case of first impression in Illinois Appellate Courts.*

13. This Court's Order of Discovery on paragraph 8, subparagraph III is based on an error of law as to what would constitute admissible evidence even under Count VII as to what the Diocese would have a duty to disclose. Under that theory the only admissible evidence would be the Diocese actual knowledge of allegations prior to 1982 that had been made to the Diocese. The

production of allegations reported after 1982 to the Diocese would have no relevance to any of the cause of action plead by the Plaintiff and that information could not lead to any admissible evidence.

-CONSTITUTIONAL RIGHT TO PRIVACY-

14. The disclosure of documents under Paragraph 8, subparagraph I (Misconduct of Priest with Adults), is not only completely irrelevant to the issue of child sexual abuse but is also a violation of the right to privacy and will cause emotional injury to all involved, especially if the priest was involved with a married person where spouse was unaware of the relationship.

15. The disclosure of said documents under Paragraph 8, subparagraphs II & III will also cause embarrassment and emotional injury to the individuals and will result in a violation of their right of privacy and reputation protected by the United States Constitution, and the Constitution of the State of Illinois, which provides as follows:

Article I, Section XII

“Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely and promptly.” (Emphasis Added)

16. It is self-evident that the mere accusation of a complaint of any type regarding a child or the committing child molestation, or being the victim of that offense, attaches a life-long stigma upon the accused, the victim and those involved, which causes long-lasting affects upon their occupational and personal endeavors and their business and personal relationships.

RIGHT OF PRIVACY
NON-CREDIBLE ACCUSATIONS
FALS ACCUSATIONS
ANONYMOUS ACCUSATIONS

17. The Diocese has disclosed and made public on its website in 2006 the names of 22 priests with credible accusations of child sexual abuse (A Diocesan press release in 2004 stated there were 27 priests with credible accusations.)

18. However, in addition to the above disclosed priest, the Diocese has received allegations of child sexual abuse against other priests which it has not made public, and they should not be made public. These involve approximately four priests that the Diocesan Review Committee determined to be not credible. There were approximately four other priests where the allegations were obviously false, and there are several other priests, who have had allegations from anonymous alleged victims.

19. Most of the above non-credible allegations, false and anonymous allegations allegedly occurred before 1982, and most all were reported after 1982.

20. **Some of the false allegations not disclosed to the public are as follows:**

a) In 2004 an adult reported to the Diocese sexual abuse by a priest when that person was age 3 (before 1982), and also alleged that her infant brother was put on a tabernacle and that abused person was made to cut off the infant's leg and eat part of it as Religious Communion.

b) Also in 2002, the Diocese received a call from an out-of-state law enforcement office alleging that an individual had been sexually abuse by a priest in the Diocese without disclosing the accuser. Several days later, the law enforcement office informed the Diocese that the allegation was withdrawn on the basis of mistaken identity.

c) In 1994, allegations of sexual abuse were made against two other Diocesan priests by an individual who was in his early 20's and alleged that he was abused when he was 22. Shortly thereafter, the individual's parents called the Diocese and advised that their son was off his medication and retracted the allegations. (Record of said complaint and redaction are referenced on the Diocese Privilege Log, submitted to the Plaintiff's counsel as part of Father Burnett's personnel file, as Page Nos. 117 through 120).

21. With reference to the non-credible allegations, false and anonymous accusations it has been the Diocese's long-standing position that the disclosure of unfounded allegations is the most deleterious types of disclosure in that it destroys the life and ministry of an unjustly accused priest who is deprived of his life-long calling. The disclosure also permanently ruins the reputation of the complainant and the witnesses who were interviewed in the investigation process.

22. This Court Order to disclose documents requires the weighing and balancing of competing interests, of the rights of privacy and reputation (and especially of those priests in the above categories whose names have not been made public), against the right of the Plaintiff to seek questionable information.

23. Although it is possible to afford some protection to the right of privacy by substituting numbers or alphabetical letters for the names of individuals, this affords only partial protection, because of other identifying information.

24. Also the Protective Order entered in this case cannot adequately insure that said sensitive information will not be disseminated to the public, especially in light of the Plaintiff's stated goal of obtaining all of the Diocese's records and exposing the Diocese's and the Catholic Church's, alleged conduct both before and after the Plaintiff's alleged abuse. The Plaintiff's

repeated use of defamatory information, by attaching it to his pleadings, even when the defamatory information bears little, or no, relationship to the issues to which said pleading is intended, illustrates the danger of providing the subject records and documents.

25. Even if the documents are submitted to the Court under seal, that is only a temporary protection during the pendency of the litigation and can be subject to later disclosure by the media under the First Amendment rights of the press. The only adequate protection is to have the issues of disclosure be resolved by the Appellate Court at this time before the potential damage occurs.

26. Also to require the production of priests entire files (of those publicly disclosed, as well as those not made public), will expose the identity of parishioners or individuals who have confided extremely private and personal information unrelated to accusations of sexual abuse. It will also disclose the identity of parish staff who have participated in personal evaluation of priests that does not involve accusations, and or criticism of other parish staff or parishioners.

27. Also, providing the names of the priests, and alleged victims and witnesses, and other identifying information is unnecessary to the points the Plaintiff is attempting to make, which appears to be the Diocese's supposed knowledge of misconduct by priests who functioned in the Diocese and the Diocese's supposed duty to disclose the frequency or infrequency of said incidents. The names and identifying information of the individuals involved does not add to, or detract from, when the incident occurred and when the Diocese became aware of it.

28. Even under the Plaintiff's unprecedented theory of Fraudulent Misrepresentation and/or Concealment, and the Plaintiff's alleged duty to warn of other priests' propensities to engage in child sexual abuse, the conduct of other priests with adults; the other priests non-sexual conduct with children and the other priests' sexual conduct with children that was not reported until after

the alleged abuse to the Plaintiff in the subject litigation, are all irrelevant and immaterial matters which have no relevance to any issue of the case.

29. Also the production of entire priests' files, as well as records of allegations not disclosed by the Diocese as set forth above, would violate constitutional rights to privacy and reputation.

30. This Court's Order requires that the Diocese examine the records of over 700 priests that span of a period of 61 years. That is unduly oppressive and burdensome and is another basis of the Court's abuse of its discretion.

31. Therefore, the Diocese cannot comply with this Court Order to produce the documents referred to above and set forth in Paragraph 8, subparagraph I, II & III.

WHEREFORE, the Defendant, the Roman Catholic Diocese of Joliet, Inc., a Trust, respectfully prays the Court as follows:

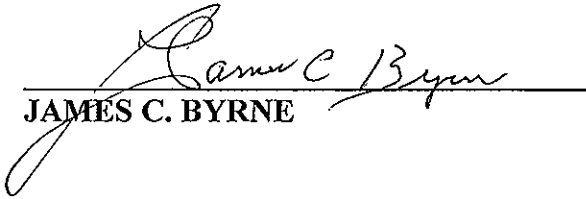
A. To enter a written Order which sets forth the Court's rulings of November 23, 2010 and December 14, 2010, on the Plaintiff's Motion to Compel Discovery and which sets forth the discovery documents the Diocese is required to provide. On this point, the Diocese moves the Court to enter the Order which is attached hereto as Exhibit "C".

B. To order that the name of all priests be deleted in any documents ordered disclosed, and alphabetical symbols substituted except for the priests whose names have been disclosed on the Diocese website as having credible allegations.

C. To enter an order of contempt against the Diocese and impose a nominal fine thereon for the Diocese's refusal to provide the documents set forth in Paragraph 8; and the subparagraphs thereof, so that an appeal of said order of contempt can be taken pursuant to Supreme Court Rule 304(b)(5).

D. For such other and further relief as this Court deems just.

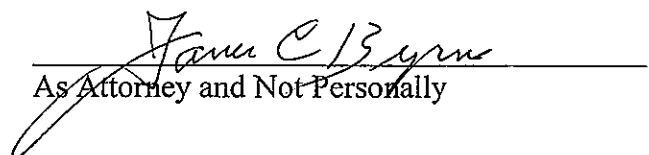
Respectfully submitted,



JAMES C. BYRNE

CERTIFICATE OF ATTORNEY

I certify as attorney of record in this cause, that I have read the above pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my client, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the statements contained herein concerning the lack of knowledge, if any, are true and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.



As Attorney and Not Personally

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF WILL)

4 IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
5 WILL COUNTY, ILLINOIS

6 DAVID RUDOFSKI)
7 AMANDA RUDOFSKI)
8)
9 Plaintiffs,)

10 -vs-

11) NO. 2007 L 283

12 ROMAN CATHOLIC DIOCESE OF JOLIET)
13 FR. JAMES BURNETT)
14)
15 Defendants.)

16 REPORT OF PROCEEDINGS had at the hearing of the
17 above-entitled cause before the Honorable MICHAEL J. POWERS,
18 on the 23rd day of November, A.D., 2010.

19 APPEARANCES:

20 MR. TERRENCE JOHNSON, MR. PATRICK BRADLEY, MR. DANIEL
21 KELLY and MR. THOMAS CRONIN, Attorneys At Law
22 Appeared on behalf of the Plaintiff;

23 MR. STUART BRESSLER, Attorney At Law.
24 Appeared on behalf of defendant Fr. James Burnett;

MR. JOSEPH LARAIA and MR. JAMES BYRNE, Attorneys At Law
Appeared on behalf of defendant Roman Catholic
Diocese of Joliet.

STEVE VITHOULKAS, CSR, RPR, RMR
Will County Courthouse
Joliet, IL 60432

1 THE COURT: Rudofski versus Catholic Diocese of
2 Joliet. Good morning.

3 MR. JOHNSON: Good morning, your Honor. Terry Johnson
4 on behalf of the plaintiff.

5 MR. BRADLEY: Patrick Bradley also on behalf of the
6 plaintiff, your Honor.

7 MR. KELLY: Daniel Kelly also on behalf of the
8 plaintiff.

9 MR. CRONIN: Tom Cronin on behalf of plaintiff, your
10 Honor.

11 MR. BRESSLER: Stuart Bressler for defendant.

12 MR. LARAIA: Joe Laraia and Jim Byrne on behalf of the
13 Diocese, your Honor.

14 THE COURT: All right. Now, is everyone going to be
15 having a speaking part in this? Otherwise I would recommend
16 that everyone, if you are not, obviously you are welcome to
17 be here, have a seat, make yourself comfortable. Do we
18 intend on having multiple speaking parts here?

19 MR. LARAIA: Mr. Byrne may join in some of the
20 argument.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: I think I am going to do all of the
23 speaking, your Honor, unless I forgot something, something
24 may pop up.

1 THE COURT: Yeah. Why doesn't everyone have a seat,
2 make yourselves comfortable, if you want to take notes or
3 listen. The microphones are on, so be careful what you are
4 saying at the counsel table. What I'll do is all parties
5 before you wrap up, if you want to consult with your
6 colleagues, I will give you that opportunity.

7 MR. JOHNSON: Okay.

8 THE COURT: All right. We have motion to compel,
9 response, reply pertaining to discovery requests, correct?

10 MR. JOHNSON: Yes, your Honor.

11 MR. LARAIA: Yes, your Honor.

12 THE COURT: All right. Mr. Johnson, proceed with
13 anything you want to put on the record.

14 MR. JOHNSON: Thank you, your Honor. Just as a point
15 of departure, does the Court wish any time limitation on us
16 today? I'd be happy to comply with -- we were here one time
17 and it took about an hour and a half, and Judge Kinney said
18 if you were in the Appellate Court you each would have about
19 ten minutes and I have a clerk. So I'm not trying --

20 THE COURT: There is a reason why Judge Kinney is the
21 Chief Judge. He is a very wise man. I am a proponent of
22 brevity. As you both -- all of you know, I have pretried
23 this case multiple times. I probably have more knowledge of
24 this than the average case that comes in front of me. I

1 realize what's at issue. I realize what -- generally what
2 you are looking for. I realize why they are objecting... I
3 don't -- I am not a big proponent of putting restrictions on
4 lawyers.

5 MR. JOHNSON: Okay.

6 THE COURT: But I am not encouraging you to go on and
7 on. I am catching a flight out of town today for the
8 holidays. So keep that in mind. I don't know what the
9 TSA's got in store for me, so I might have to get there
10 early. All right. Mr. Johnson, proceed.

11 MR. JOHNSON: Thanks, your Honor. As the Court has
12 indicated, this is on the plaintiff's motion to compel
13 documents from the diocese of Joliet. We are trying to get
14 documents that the diocese has on different states, as the
15 previous case was, but in their archive. We took the
16 deposition of the chancellor, and they confirmed that all
17 the documents we're requesting are in a small little room,
18 two rooms, within --

19 THE COURT: What type of -- what type of documents are
20 you specifically looking for?

21 MR. JOHNSON: Your Honor, as you understand from the
22 brief, we are asking for voluminous documents, but we have
23 grouped them in categories for purposes of the presentation
24 today. And one of the things that we are taking a look at

1 is the documents regarding priests that the Diocese of
2 Joliet has admitted publicly had accusations of sexual
3 misconduct against them against minors.

4 So, for example, your Honor, in February of 2004,
5 the diocese of Joliet has a press conference in which they
6 specifically admit that there were 27 priests who had sexual
7 misconduct claims made against them.

8 THE COURT: And they had files for each individual
9 priest?

10 MR. JOHNSON: Yes, your Honor. And just by way of one
11 quote, it says, in the 54 years since the founding of the
12 Catholic Diocese of Joliet in '49, 27 diocesan priests had
13 113 credible allegations of sexual misconduct with a minor
14 made against them. The diocese in a report issued today --
15 this is February of 2004. Of the -- I am continuing on
16 quoting. Of the 27, five are deceased and eight left
17 ministry within the past 30 years or so.

18 They have also indicated, your Honor, that there
19 were seven additional priests for whom they claim they were
20 not credible allegations according to the Diocese of Joliet,
21 but allegations had been made. So, your Honor, our account,
22 for purposes of discovery through admissions of the Diocese
23 of Joliet has made, is that there are 34 priests that they
24 admit that had sexual misconduct allegations made against

1 them. And, your Honor --

2 THE COURT: The additional seven that were -- I don't
3 care what phrase you want to use, cleared, exonerated, no
4 credible allegations, was that pursuant to the determination
5 by the diocese --

6 MR. JOHNSON: Yes.

7 THE COURT: -- or some other entity such as the Will
8 County State's Attorney's Office, Attorney General's Office,
9 DuPage County State's Attorney's Office?

10 MR. JOHNSON: According to the diocese, it's because
11 what they decided. And Mr. Byrne has previously told me,
12 formally and informally, you will never get from me files
13 that show non credible allegations. But, unfortunately,
14 it's non credible allegations that the diocese determines.

15 THE COURT: Let me ask you this. Is any of the files
16 that you are requesting, are any of -- you are not
17 requesting anything post this occurrence with Fr. Burnett in
18 this case, correct?

19 MR. JOHNSON: For the most part, 90 percent of the
20 files that we're requesting took place or involved admitted
21 pedophiles who served in ministry before 1983.

22 THE COURT: Okay.

23 MR. JOHNSON: There are files that we have requested
24 that will lead to discoverable information. So, for

1 example, we have a file that we got not from the Diocese of
2 Joliet, from another attorney regarding Fr. Stefanich, and
3 there were some events that took place after '83 and there
4 are some events that took place before '83. But one of the
5 things they show is what the custom and practice was of
6 Bishop Imesh post '83 of saying I'm not going to worry about
7 any priest unless you charge him with a crime. So unless --

8 THE COURT: Wait a minute. Wait. You are saying the
9 custom and practice post '83 is relevant as to what the
10 custom and practice of the diocese was at the time of this
11 occurrence?

12 MR. JOHNSON: The standard that Bishop Imesh himself
13 used, yes. But, in any event, we are talking about two
14 files.

15 THE COURT: All right. I think you have a harder time
16 making your argument for the post 1983.

17 MR. JOHNSON: Right. I agree.

18 THE COURT: Okay.

19 MR. JOHNSON: Your Honor, one of the things I would
20 like to indicate here is that even -- this is the -- we put
21 this in our brief, your Honor, but this is the -- it's this
22 one. This is the document that is attached to the Diocese
23 of Joliet's pretrial -- I'm sorry.

24 THE COURT: Can everyone see this? All right.

1 MR. JOHNSON: And this basically shows that when abuse
2 occurred and when abuse was reported. And the color code is
3 blue is when it occurred and red is when it was reported.
4 They have indicated that -- and we have put the numbers in
5 there because there is a graph from Bishop Imesh's statement
6 of 2004 where actually all the numbers come from. So this
7 is just a graph of the numbers that Bishop Imesh cited or
8 admitted to in 2004.

9 And one of the things it shows is that as of the
10 1950's, there were reports of sexual abuse, in the '60s
11 there were reports of sexual abuse, and in the '70s there
12 were reports of sexual abuse. Unfortunately, these are
13 unreported. They show one abuse reported in the 1950's and
14 we know from documents that we have received from St. Isaac
15 Jogues sending to the Diocese of Iowa, that there was an
16 additional person in 1958 that was sexually abused by a
17 priest, Fr. Janssen, serving in St. Isaac Jogues' parish in
18 Hinsdale. And that came from Diocese of Iowa's files. But
19 this number is actually two, not one.

20 In addition, there are shown that there are 73
21 minor boys were sexually abused before 1980. They don't
22 have it broken down by year, so in 1980 we have 38 abuses
23 occurring and 15 abuses being reported. We don't know of
24 that 15 how many were reported before 1983.

1 THE COURT: Reported to the diocese?

2 MR. JOHNSON: Reported to the diocese.

3 THE COURT: Now, how did you come up with -- this is
4 Bishop Imesh's figures regarding the blue graph?

5 MR. JOHNSON: Yes, your Honor. From Bishop Imesh's own
6 statement from February of 2004.

7 THE COURT: Is that marked as an exhibit in --

8 MR. JOHNSON: Yes, your Honor.

9 THE COURT: Okay. Why don't you identify that so we
10 have a clean record. At least identify it by the date of
11 the letter or report.

12 MR. JOHNSON: I'm sorry, it's a letter dated February
13 2004.

14 THE COURT: Okay.

15 MR. JOHNSON: It is attached to a press release and
16 it's signed by Bishop Imesh and it starts out the sexual
17 abuse of minors is a terrible crime.

18 THE COURT: Okay.

19 MR. JOHNSON: And on the second page of that report
20 there is a grid sheet that shows --

21 THE COURT: So you took that from his own -- his own
22 report?

23 MR. JOHNSON: Yes, your Honor. But we didn't graph
24 this. This graph actually came from the Diocese of Joliet

1 at the press conference. So we have made graphs, but this
2 is not our graph. This is the Diocese of Joliet's graph.
3 But our point is, your Honor, that even this graph under-
4 reports what we know they had actual knowledge of in the
5 50's. So one of the things that is important, and we've
6 discussed this prior with your Honor, is that what did the
7 diocese actually know about sexual misconduct of its priests
8 in the '50s, the '60s, the '70s and the time before this
9 abuse took place during the 1982-83 academic year.

10 THE COURT: Is that to support your institutional
11 negligence claim?

12 MR. JOHNSON: Yes, your Honor.

13 THE COURT: Okay.

14 MR. JOHNSON: Your Honor, this is the graph, again.
15 Turn this around, Pat. This graph is in the record. This
16 is the big graph that we previously indicated before, but
17 this is a graph that we have prepared that's listed as graph
18 number one. The title of it is Diocese of Joliet pedophile
19 priests in active ministry '49 to '83. Every red graph
20 here -- spot here is a pedophile who served in the Diocese
21 of Joliet. On the left of the 22, 23 priests that they have
22 identified in their web site, it's not the 27 plus seven
23 that they have given us the names of, but there is a web
24 site, the Diocese of Joliet's web site that lists 22

1 pedophiles, not 27 or 34, and then they amended to include
2 23.

3 Almost virtually -- I think 22 of the 23 that they
4 named all served in ministry before 1983. And as of 1983,
5 we are always seem to be playing with statistics, there is
6 close to 12 to 13 percent of the diocesan priests serving in
7 the Diocese of Joliet that are admitted pedophiles. We take
8 a look from the Catholic directory, the total number of
9 diocesan priests and put the ones that they have admitted
10 were the pedophiles in ministry, and it's close to 13
11 percent.

12 THE COURT: Let me -- let me ask you this. My
13 recollection from doing these settlement conferences was
14 that this was the -- this particular occurrence was the
15 first and only known of to the diocese. Nothing pre-dated
16 this 1983 incident for Fr. Burnett.

17 MR. JOHNSON: Not true, your Honor. Dan Shanahan.

18 MR. BYRNE: Are you talking about notice to the diocese
19 or --

20 THE COURT: Notice to the diocese.

21 MR. BYRNE: They didn't give notice of this until 2005.

22 THE COURT: What I'm saying -- no, I am not talking
23 about that. I am talking about that there is no indication
24 that they had prior notice of any problems with Fr. Burnett

1 prior to this occurrence in 1983.

2 MR. BYRNE: Yes.

3 MR. JOHNSON: That's what their claim is.

4 THE COURT: All right.

5 MR. JOHNSON: Though there was a John Doe number one,
6 we have his name, but not disclosed yet, has come forward
7 and said I was sexually abused by Fr. Burnett in the 1970s
8 at St. Charles parish. So we have received that
9 information. So there is --

10 THE COURT: Was that reported -- is that reported? Was
11 the diocese on notice?

12 MR. JOHNSON: I do not know because we have not been
13 permitted to do discovery.

14 THE COURT: All right. All right.

15 MR. JOHNSON: They would not give me listings of the --

16 THE COURT: Hold on. You guys will have an opportunity
17 to respond.

18 THE COURT: All right. Continue, Mr. Johnson.

19 MR. JOHNSON: So one of the issues have to do with
20 Fr. Burnett. The other issues has to do with the
21 institutional liability and direct negligence claim, is what
22 did the Diocese of Joliet know, what did they have actual
23 knowledge of before '83, not just with respect to
24 Fr. Burnett, but pedophiles in active ministry, because the

1 allegations --

2 THE COURT: What I am trying to get is, is what are you
3 trying to demonstrate here, that based on what happened in
4 the diocese in the 1950s, 1960s, 1970s, that they should not
5 have allowed priests to be in a confessional with a child?
6 I mean, that's the crux of this case. Is that what you are
7 trying to get at, that somehow there should have been a
8 prohibition or there should have been witnesses, someone
9 observing the sacrament of reconciliation? I'm not really
10 sure what it leads to. That's what I am trying to get at.

11 MR. JOHNSON: Well, under the allegations that have
12 been sustained twice in this case is we have alleged that
13 the Diocese of Joliet failed to advise the public of the
14 risks they had actual knowledge about. They failed -- they
15 actually concealed, we've alleged --

16 THE COURT: That's what I am trying to get at. Is the
17 point if the public would have known, if they would have
18 come clean, for lack of a better word, that there has been
19 all these incidents that have been reported from the '50s,
20 '60s, '70s, and then the public could have made a more
21 informed decision, do I send my kid to this school, do I
22 send my kid to this church, is that -- is that what the
23 implication is?

24 MR. JOHNSON: Well -- yes, your Honor, under the

1 allegations of the complaint and, also, under the testimony
2 of Mrs. Rudofski in her videotaped affidavit, she said if I
3 would have been told that these sexual predators were around
4 the Diocese of Joliet in the '50s and the '60s and the '70s
5 before this took place, I would not have allowed Dave
6 Rudofski, an eight-year-old boy, to be in a confessional
7 alone with Fr. Burnett or any other priest. And that's one
8 of the gist of the cause of action of institutional
9 negligence.

10 THE COURT: All right.

11 MR. JOHNSON: They took sole custody and control of a
12 minor, and they did not disclose that which they had actual
13 knowledge about. We are also, your Honor, interested in
14 knowing from the files what they should have known. So you
15 can't bury your head in the sand about pedophilia of priests
16 in ministry. So one of the things that we have tried to
17 categorize this is groupings. We would like the list --
18 Bishop Imesh has admitted in deposition that he prepared a
19 list of the 27. There is an actual piece of paper, a list
20 of the 27 priests by name.

21 He's also indicated or admitted in his deposition
22 that there is a list of the other seven by name. We would
23 like that list. We would like all files of the 34. They
24 have indicated on their web site that there were 22, forward

1 slash, 23 pedophile priests. The numbers seem to be
2 changing. We'd like -- these are virtually all those
3 people. I think 22 out of those 23 served in ministry
4 before 1983. We'd like to see those priests' files. What
5 I --

6 THE COURT: I'm losing you here, and I remember you
7 showing that on the graph, the 22 of 23.

8 MR. JOHNSON: There is a --

9 THE COURT: How is that different than the 34?

10 MR. JOHNSON: Well, we would like to know what the
11 difference is. They won't tell us. They -- on the press
12 release they have indicated there is 27 and 34 priests. On
13 the web site -- I don't know if I have a copy.

14 THE COURT: All right.

15 MR. JOHNSON: Here is a copy of the web site that
16 lists --

17 THE COURT: You don't know if that 23 is part of that
18 34? You are wanting to know?

19 MR. JOHNSON: Yes, your Honor.

20 THE COURT: All right. I got it.

21 MR. JOHNSON: One of the things that this document, the
22 public disclosure on the web site of pedophile priests does
23 not disclose is religious order priests that they had actual
24 knowledge of who were pedophiles before 1983. This is just

1 with respect to diocesan order priests.

2 THE COURT:- Hold on a second. Order priests that were
3 assigned to parishes or schools within the diocese?

4 MR. JOHNSON: Yes.

5 THE COURT: All right.

6 MR. JOHNSON: So, for example, we have as one of our
7 exhibits, we have again from information that they have
8 provided through the official Catholic directory, we have a
9 listing of how many religious order priests were in the
10 diocese from '49 to present, and from 1963 to present, there
11 is approximately 150 religious order priests serving in the
12 diocese every single year. So we are indicating if there is
13 a priest who was a pedophile who was serving in a parish or
14 at a certain high school and you had knowledge about it, we
15 want to know about it because --

16 THE COURT: Well, hold on. The high schools aren't
17 governed by the diocese, right?

18 MR. JOHNSON: They have Benet High -- a Catholic high
19 school that had religious order priests, if they had a
20 complaint and that complaint was communicated to the
21 diocese, that was information that the diocese had about
22 pedophiles in ministry, and we are suggesting that that is
23 relevant on the institutional claims against the diocese.
24 What did they know about this problem throughout the years.

1 There are religious order priests who have served in
2 parishes, but, more importantly, they are just not counting
3 those right here. They are not disclosing those.

4 And we have claimed in our pleadings, which have
5 been sustained, that they have under-reported religious
6 order priests. One of the things, your Honor, that we are
7 asking the Court for is all the documents that they have.
8 And there are various categories of documents. There are
9 priest files.

10 So, for example, a priest file looks like a -- to
11 lawyers a small little litigation file, it could be one
12 inches thick, it could be four inches thick. Through the
13 chancellor's deposition that we took, they are all in a
14 little room. There is actually two rooms in the chancellery
15 office. One is for certain years, another one is other
16 years. So we're trying to say we would like to see those
17 files. Those files many times contains complaints by
18 parents, they contain letters and they go to the issue of
19 notice, what the diocese was told about this problem and
20 when they were told.

21 We are also asking for separate files. There is a
22 Vicar for Clergy, and we took the deposition of the Vicar
23 General. But there are separate files that do not always go
24 into a priest file. So, for example, Bishop Imesh has

1 admitted in his deposition that Bishop Kaffer investigated
2 sexual abuse claims when he was a -- he held a title of
3 Vicar for Clergy for a while. He was an auxiliary bishop,
4 but Bishop Kaffer went out, as others did over time, and
5 investigated sexual abuse claims or priests who were having
6 problems in this area, and those documents may be in Vicar
7 for Clergy files, not necessarily the priest files.

8 We're also asking for documents to and from any
9 diocesan officials about the issue of sexual misconduct of
10 its clergy. We then go by category to what I call
11 investigation files. We found out from documents that were
12 given to us in Fr. Burnett's file that when they found what
13 I call John Doe number one, the victim of Fr. Burnett in
14 1970, a couple years after Fr. Burnett was ordained, that --
15 we learned of information from an outside investigator that
16 the Diocese of Joliet retained -- they called the Kirby
17 investigation firms. He has an office on York Road, around
18 York and Grand, not too far from St. Charles Borromeo, and
19 he goes out and investigates them. He interviews witnesses,
20 takes statements.

21 These, we believe, are part of the review
22 committee investigations that we'll talk about, but they
23 have outside investigators in addition to inside
24 investigators by Vicar for Clergy staff. So we are asking

1 for their investigative files, both outside and inside. Of
2 significant interest is what we call the review committee
3 files and hearing files for which the diocese is claiming a,
4 quote, qualified privilege that has never been recognized.

5 But what happens is that they do, since 1990 and
6 we believe before, they have formal investigations. They
7 have hearings. They call witnesses. Sister Judith says I
8 take notes on my computer during all these hearings. And
9 these are hearings about allegations of individuals who come
10 forward and say that a priest sexually abused me or my
11 family member, whatever. They actually take witnesses --
12 they take testimony. And these are investigative files and
13 hearing files that we think there is no question that are
14 discoverable.

15 There are other documents that we are requesting,
16 all laid out in the briefs, your Honor. And I will finish
17 shortly. We have asked for documents produced in civil
18 litigation by the Diocese of Joliet regarding sexual
19 misconduct of its clergy. We are asking for documents the
20 diocese gave to the grand juries. We have had a ruling from
21 the Court that the Grand Jury is not required to give us
22 information, but one of the State's Attorneys said well,
23 Judge, we shouldn't have to give you those documents because
24 you have had the Diocese of Joliet give Mr. Johnson those

1 documents.

2 So we are specifically asking for give us the
3 documents, you, Mr. Diocese of Joliet, gave to the grand
4 juries. We are also asking for the names of all individuals
5 who made complaints against any priest, including Bishop
6 Ryan. One of the issues in this case that was ruled on,
7 your Honor, I am not trying to go back there, but you said
8 you are not going to get documents about sexual misconduct
9 of Bishop Ryan who was an auxiliary bishop at the time David
10 Rudofski was abused. You are not going to get those down in
11 Springfield because once he goes down to Springfield, it's
12 too remote.

13 But we have asked for information in discovery
14 regarding sexual misconduct of a diocesan official while he
15 was serving in the Diocese of Joliet. We have had an
16 affidavit from Fr. Tom Doyle who is a canon lawyer, a
17 Dominican lawyer. We have also had briefs on this subject.
18 But if you have a diocesan official, auxiliary bishop, Vicar
19 for Clergy chancellor who is guilty of sexual misconduct
20 himself, we believe that is critically relevant on the issue
21 of institutional liability.

22 THE COURT: Well, let me back up a little bit. You are
23 talking about civil litigation documents.

24 MR. JOHNSON: Yes.

1 THE COURT: What are you specifically looking for?

2 MR. JOHNSON: They have filed lawsuits and they have ..
3 given plaintiffs' lawyers documents on individual priests.
4 We're saying if you gave those documents up, give me the
5 documents you gave in civil litigation. They have -- they
6 have insurance coverage litigation for sexual abuse. We
7 have asked specifically if you have given documents, this is
8 not a privilege, you got coverage litigation. Give us the
9 documents, those that you have given up already. Seems to
10 be pretty simple.

11 They have an issue of burdensome, your Honor. We
12 do not believe that the documents that we request are
13 burdensome. At best, they are 50 files. They are in one
14 room or two rooms in the chancellery office. We have also
15 asked for what we call secret archive files. By canon law,
16 there is this thing called the secret archive in every
17 single diocese. We asked the chancellor about it. In the
18 basement of the chancellery office, there is a little room,
19 and inside the little room there is like a little file
20 cabinet. They've got special locks on it and it's called
21 the secret archive.

22 Bishop Imesh in his deposition has confirmed that
23 documents with respect to sexual misconduct are in that
24 secret archive. In addition, by canon law, if somebody

1 dies, they can destroy these documents, but they keep
2 summaries. So when we talk to Sister Judith, the
3 chancellor, about filling out the clergy files for the John
4 Jay study and the diocesan files, we asked her, where did
5 you get the names. Well, we got the names from the bishop.
6 Did you get a list? Oh, I don't know. We said what did you
7 do? We went to the priest files. Did you look in the
8 secret archives to fill out the information for the John Jay
9 study? No, I did not.

10 So by her own admission when she is the only one
11 that filled out this information of the clergy abuse files
12 or the clergy surveys and the victim surveys, she said I did
13 not consult with the secret archive. We know from Bishop
14 Imesh that others have put documents -- sexual misconduct
15 documents in there. We would like a review of that secret
16 archive. There are -- we believe of the 30 to 50 files that
17 we believe will show what they actually know and what they
18 should have known, it will take us three or four lawyers a
19 week to look at.

20 We are looking to take a look at the original
21 files, not redacted files. We are happy to have a
22 protective order that keeps protected the names of victims
23 who have not been publicly disclosed. But we need to see
24 who the victims are because a victim said I told somebody in

1 1955 that this was a problem or 1960 or 1970, before 1983.
2 We believe those are discoverable. Thanks, Mr. Bradley.

3 The John Jay report -- John Jay study required the
4 diocese to take a look at religious order priests as part of
5 their inquiry. Also of interest when we take a look at
6 the -- when we talked -- the mental health files, we believe
7 we should have an in camera review for. Sister Judith, the
8 chancellor, said I took a look at mental health files,
9 psychiatric files of pedophile priests who were sent for
10 treatment. Those were in the file, I took a look at them.
11 And, actually, there is some questions that are asked by
12 John Jay, did this person go for treatment to one of these
13 ten or 15 places where they sent priests with sexual
14 disorder problems. And it said yes. Did that priest admit
15 during treatment that he had victims or had problems? Yes
16 or no.

17 So in this public disclosure that they made six or
18 seven years ago about this study, the public disclosure had
19 to do with data that was reviewed by the chancellor in this
20 diocese, and it included a review of psychiatric records.
21 We believe, your Honor, that with respect to the psychiatric
22 and mental health records, it's critically relevant about
23 what the diocese knew, had actual knowledge about during the
24 time. We believe that the appropriate remedy was to be --

1 was to take those records, whether it be Fr. Burnett's or
2 others, and have an in camera review so that you can
3 determine whether they are privileged or not privileged. We
4 don't get them, the records will be reserved. If they are
5 not privileged, we'll take an order of court at the
6 appropriate time.

7 THE COURT: Response?

8 MR. LARAIA: May it please the Court. Judge, I looked
9 at this matter with reference to seeing if I could put these
10 in categories that would be easier for you to get a handle
11 on and then those which didn't fall within those categories.
12 And as I see it, the plaintiff's request, and I submit that
13 this motion is extremely important, and I am sure you
14 recognize that from the pretrials because the way this case
15 will go is it will either be tried about whether or not
16 Fr. Burnett abused Mr. Rudofski and whether Mr. Rudofski
17 suffered injuries from it for which he should or should not
18 be compensated, or a total review of all of the records of
19 the diocese for whatever purpose the plaintiff wants to do
20 it.

21 And I respectfully submit on behalf of the diocese
22 that the latter purpose is not the purpose of this lawsuit.
23 But looking at the specifics --

24 THE COURT: But isn't there an institutional negligence

1 count?

2 MR. LARAIA: I am going to get to that, if I may,
3 Judge, yes. What they call institutional negligence isn't
4 an action called institutional negligence. Institutional
5 negligence, and the cases even that Counsel has cited, is a
6 recognition by the Court that an employer can be responsible
7 for the actions of its employee beyond the vicarious
8 liability, and that that is what in one case they called
9 institutional negligence.

10 What is encompassed in institutional negligence is
11 really the act of negligent hiring and/or supervision,
12 because that's the gist of the action from which it came out
13 of. So when we talk about institutional negligence, it
14 isn't that under this idea of institutional negligence it's
15 a whole separate cause of action. All the cases that deal
16 with sexual misconduct that have to do with imposing
17 liability upon an employer has to do with negligent hiring
18 and/or supervision. When you look at the Illinois cases,
19 that's where it centers upon.

20 THE COURT: But isn't the theory -- the public policy
21 behind that is that it's not some unsuspecting employer
22 that's never had any problems before hires a person, is
23 caught off guard, versus an employer where there's been a
24 so-called track record going back to the '50s, the '60s, the

1 '70s, that puts them on notice that, you know, there might
2 be a problem. Isn't that what the distinction is?

3 MR. LARAIA: I don't believe so, your Honor. When you
4 look at the Boy Scout case, that's what they tried to do in
5 the Boy Scout case, exactly what Mr. Johnson is trying to do
6 here, go through statistics and numbers and come with some
7 formulas that say there are an unusual amount of these types
8 of situations of abuse or negligence on behalf of the
9 employers that he should have been aware of and should have
10 had a duty to warn, and the Court rejected that. Illinois
11 doesn't accept that.

12 It may be in another jurisdiction, it may be in
13 California, it may be in Pennsylvania, but it isn't here in
14 Illinois. And so, if I may, what we have to talk about,
15 what is relevant to the causes of action. And as we cited
16 the law in relevance, before discovery, as you well know,
17 because you applied it every day, Manz versus Briel
18 (phonetic), Supreme Court Rule 201B1, Lissam (phonetic),
19 those cases talk about the matter must be relevant to the
20 causes of action. And what are the causes of action that he
21 talk -- that are pled here?

22 One is vicarious liability, of which we objected
23 to, because the cases that are under vicarious liability
24 that pertain to sexual abuse or criminal conduct all say

1 that criminal conduct is beyond the scope of the employment.
2 However, that cause of action is here. The second is
3 negligent hiring and/or supervision. And all the cases
4 under negligent hiring and supervision, and we cited all the
5 sexual cases to the Court, all talk about the employer
6 knowledge of this employee's particular propensity which
7 relates to the injury that was caused. That's what it is.

8 It doesn't talk about the lawyer's knowledge or
9 the employer's knowledge in general of his other employees'
10 conduct that put him on some notice or some duty to warn or
11 duty to notify people about that. And the clearest would be
12 drivers in a delivery company. A delivery company driver
13 causes -- has an accident. Are they entitled to -- is the
14 plaintiff entitled to all of the other accidents caused by
15 all of the other employees to show that that -- there were
16 an unusual number of accidents? I submit no. The -- all of
17 the cases that talk about negligent hiring and/or
18 supervision are very specific that the conduct must be that
19 which relates to the kind of injury.

20 And the sexual cases, conduct has to do with
21 tardiness, it has to do with other type of misfunctions on
22 behalf of the employee were not admissible. It's those --
23 that conduct which goes --

24 THE COURT: Now you are talking about a different

1 standard. We are talking about what's discoverable. We're
2 not talking about what's admissible.

3 MR. LARAIA: I understand.

4 THE COURT: This is broader than what's admissible at
5 trial. We all agree with that.

6 MR. LARAIA: And I am well aware that relevance as it
7 pertains to discovery is considerably broader. However, in
8 the cases that I have cited you, there still must be a
9 threshold with reference to the theory of the case that the
10 information goes to. I submit that their theory of the case
11 is that the diocese, because it had general knowledge that
12 some priest had committed some pedophile conduct, put it
13 under an obligation to warn the parishioners of that. And I
14 submit there is no case in Illinois that comes anywhere
15 close to that.

16 All of the cases, and rightfully so, talk about
17 putting on behalf of the employer the responsibility when
18 they become aware of this employee's responsibility. For
19 example, in the driver case, we will take a cab company, if
20 they hire a driver who has had five DUI's before, they were
21 negligent in the hiring and/or supervision, and their
22 responsibility is to get rid of him or to keep him away from
23 driving, put him as a dispatcher. But to say that the
24 plaintiff can show that other drivers have had DUI's, that

1 certainly is far beyond the relevancy of this particular
2 case and the negligent hiring or supervision as it pertains
3 to this employee.

4 So what is really under negligent hiring and
5 supervision and under their fraudulent concealment, which
6 is, again, I respectfully submit, another theory that there
7 are no cases to support, but we have it in this particular
8 case, the conduct of other priests which is generally the
9 bulk of the discovery that they are seeking, the first
10 category, other priest conduct, is irrelevant, doesn't meet
11 the threshold responsibility. And I submit that even
12 complaints that were made to the diocese of other priests,
13 other than Fr. Burnett, we concede that any complaints that
14 the diocese received, accusations of Fr. Burnett prior to
15 1983, which is the date that they alleged the plaintiff in
16 this particular case was sexually abused in a confession,
17 those, I submit, we are required to turn over, and I submit
18 that we have turned those over.

19 However, there were none in the disclosures that
20 we made and everything that we know that occurred prior to
21 1983. None. The first complaint against Fr. Burnett was
22 made in 2004 -- or 2005, and later -- 2006. That's it.
23 December of 2005 and later in 2006. None before 1983. We
24 submit that we've turned over his entire file except for

1 certain privileged materials, and we submit that that's what
2 they are entitled to. We submit that when you are talking...
3 about other priests and they ask for it in different -- in
4 different ways. They ask for it in reference to records
5 subpoenaed by the State's Attorneys, records submitted in
6 civil litigation, request number six, insurance litigation
7 records, the John Jay college survey, the press release
8 information, diocese, the priests disclosure on the web
9 site, Bishop Ryan's file.

10 And we've answered with reference to Bishop Ryan
11 that we have no records of any complaints against Bishop
12 Ryan while he was serving in the Diocese of Joliet from 19 I
13 think it was '64 to '84. Internal correspondence re other
14 priest accusations falls in the same category. Diocesan
15 policies of sexual abuse. Diocesan records concerning the
16 transfer of priests. Priest personnel files that pertain to
17 Fr. Virtue, who is another priest totally separate from
18 this. Documents authored by seven bishops and monsignors.

19 Any documents that have to do with other priests
20 we respectfully submit, are irrelevant and immaterial to the
21 causes of action, vicarious liability which talks about the
22 negligence of this employee in this particular event.
23 Negligent hiring and/or supervision, which talks about the
24 conduct of this particular employee that's known to the

1 diocese or should have been known to the diocese before
2 1983, and the fraudulent concealment, which is exactly the
3 same as negligent hiring and supervision.

4 All the cases that deal with sexual abuse,
5 criminal conduct of an employee, fall in the negligent
6 hiring and/or supervision theory. The fraudulent
7 misrepresentation was rejected in Doe versus Dilling which
8 is a 2008 Illinois Supreme Court case, and we've cited four
9 other cases on that particular matter. The matter with
10 reference to -- and the point that you raised which is 1983,
11 knowledge before, knowledge after. We submit again that the
12 knowledge that we had of Fr. Burnett before, discoverable.
13 Act as agents of other priests of accusations before 1983
14 that were learned before 1983, we submit irrelevant, not
15 discoverable. Actions of priests prior to 1983 that were
16 learned after 1983, we submit not discoverable.

17 How could, under any of the theories, it be
18 reasonable for the diocese to disclose something to
19 Mr. Rudofski's parents that would keep them from delivering
20 the child for his first confession? He was not a student at
21 the school. He was there for religious education, something
22 they didn't learn about until after the alleged abuse. I
23 think it's just obvious on its face.

24 In short, with reference to other priests'

1 conduct, because that's exact -- that's the main gist of the
2 plaintiff's request, we're either going to discover matters
3 that have to do with 50 years of records, 50 years of priest
4 files, 50 years of matters that have nothing at all to do
5 with this particular case or any recognizable theory, or we
6 are going to try the case, which I respectfully submit they
7 have tried to plead in this particular case is whether or
8 not the diocese had knowledge or should have had knowledge
9 of Fr. Burnett to have either taken him out of service or
10 put him into some duty that had nothing to do with the
11 dealing with parishioners or dealing with children.

12 The second area, if I may, your Honor, has to do
13 with review records, review committee investigations and
14 records. And in that they have asked for the review
15 committee records pertaining to Mr. Rudofski, the review
16 committee records pertaining to Dan Shanahan who is -- who
17 alleged that Fr. Burnett abused him, and the review records
18 of Tim Shanahan who said he was abused by Fr. Virtue, a
19 different priest. And the general review committee records
20 in general.

21 We have cited to the Court the Chicago Bar
22 Association case which talks about a qualified privilege.
23 The qualified privilege, I respectfully submit, is
24 recognized in Illinois. It has to do -- it's recognized by

1 Wigmore On Evidence, and we have cited that in our response
2 as well. And what it pertains to are matters of
3 investigations where the information is important to obtain
4 and evaluations are important to get, and the chief factor
5 is that they were provided with assurances of
6 confidentiality.

7 THE COURT: You are talking about like peer review?
8 Peer review like doctors do?

9 MR. LARAIA: Something like that, yes, sir. And
10 that -- and that under those circumstances, they should be
11 kept confidential. With reference to the review committee's
12 records pertaining to Mr. Rudofski's claim, we submit the
13 qualified privilege applies there. With reference to Dan
14 Shanahan, we submit his accusations against Fr. Burnett were
15 not reported until 2005, so they are irrelevant to any
16 notice that the diocese had.

17 And we are speaking now with reference to the
18 three theories which they have against the diocese. All are
19 predicated upon the diocese's notice or should have had
20 notice of Fr. Burnett's conduct prior to 1983. Also, the
21 qualified privilege would fall in there as well. With
22 reference to Tim Shanahan's complaints against Fr. Virtue,
23 that's even another step removed. Not only is it a
24 qualified privilege, but whatever Fr. Virtue is accused to

1 have done to Tim Shanahan, which again did not even surface
2 until 2005, doesn't have anything to do at all with any of
3 the three theories of liability that they have against the
4 diocese. And we submit that those as well should not be
5 submitted.

6 They asked for a list of the names in request
7 number 1.27 of the individuals who appeared before the
8 review committee. It's a Rule 214 request. It's requesting
9 us to prepare a document that doesn't exist, which I submit
10 is not within the purview of Supreme Court Rule 214.

11 THE COURT: Well, what was the response that you gave?
12 What was the response you gave to that particular request?

13 MR. LARAIA: Under 1.27? Give me one second, Judge.
14 The response we gave was the diocese objects to creating a
15 list of witnesses. That is not the purpose and subject of
16 Rule 214 requests.

17 Secondly, the proceedings before the diocese are
18 privileged pursuant to the qualified privilege.

19 THE COURT: All right. But that -- you can say that
20 that document does not exist.

21 MR. LARAIA: There is no -- yes.

22 THE COURT: Hold on. You will get your chance. I
23 mean, it seems to me I would have responded that document
24 does not exist and then put the language that you did in

1 terms of 214 as required you to procure that document or
2 create it or whatever you want to say. All right...
3 Continue.

4 MR. LARAIA: Yes, sir. The third category, your Honor,
5 are the mental health records. And under this, even if the
6 diocese wanted to turn over all the health records, the
7 mental health records of Fr. Burnett, they cannot.

8 THE COURT: They are saying -- in camera inspection is
9 what they are saying. They didn't say just flat out hand
10 them over to Mr. Johnson. They want me to review them and
11 see whether the Mental Health Act applies and whether there
12 is a privilege or not for me to make the determination, not
13 for the diocese to make that determination, which is not
14 unusual. We get that every other day here.

15 MR. LARAIA: I understand. But 740 ILCS 110 talks
16 about -- in the Norza (phonetic) case and the Rita case that
17 we've cited talk about the records not being subject to the
18 privilege. The disclosure of the mental health records to
19 the diocese doesn't waive Fr. Burnett's right. And, in
20 fact, as being turned over, I think it's under Section 10 of
21 the act, we cannot turn them over. It prohibits --

22 THE COURT: Absent a court order.

23 MR. LARAIA: Absent a court order.

24 THE COURT: Right.

1 MR. LARAIA: That is true.

2 THE COURT: They are requesting a court order, you
3 understand that.

4 MR. LARAIA: And we submit that they are exempt and
5 protected. The Village of Stickney case that they talk
6 about did not turn over records, it turned over the
7 recommendation of the psychologist. And I am sure you are
8 more than familiar with the Village of Stickney case. In
9 that particular case, they asked for records, and the Court
10 said no, you don't get the records. And until you can show
11 that the privilege doesn't exist, there shouldn't be an in
12 camera turn-over. And I believe that's --

13 THE COURT: Well, I presume you are not in possession
14 of the raw data. You shouldn't be in possession of it.

15 MR. LARAIA: From the psychologist, no.

16 THE COURT: Yeah. I presume what you have are
17 recommendations or some type of synopsis or something like
18 that.

19 MR. LARAIA: Or a report concerning the evaluation.

20 THE COURT: Yeah.

21 MR. LARAIA: But under the act, I submit to your Honor
22 we can't even turn that over. And I believe that
23 Fr. Burnett's attorneys have made that objection as well.
24 So I submit that Fr. Burnett's mental health records and the

1 mental health records which I believe Mr. Johnson asked for
2 today concerning all of the other priests, certainly not
3 only are the other priests' matters irrelevant, but they are
4 also protected by the Mental Health and Developmental
5 Disabilities Act.

6 The next category, your Honor, is a diocese policy
7 questions. And they ask for the diocese policies on sexual
8 abuse, documents authored by seven bishops and monsignors
9 concerning sexual abuse.

10 THE COURT: Is there a time frame in terms of the
11 policies as to what particular time?

12 MR. LARAIA: They have asked for them since the
13 beginning of the diocese to the present, which is like 50
14 years. With reference to the diocese, and I submit they are
15 irrelevant, the policies, because what is relevant pertains
16 to the three causes of action, and I apologize for being
17 repetitive. But beside that, we have answered that by
18 giving them -- we have produced the policies for 1990, 1993,
19 1997 and 2003, and have said those are the policies we have
20 had. So we have told him we have already answered that.
21 With reference to the documents authored by the bishops,
22 they asked for all documents authored by them.

23 We -- not only do we submit they are irrelevant,
24 but the diocese has produced the special pastoral statements

1 for 1990, 1993, 1997 and 2003. The charter for the
2 protection of children and the essential norms of the
3 diocese, we've produced those. So we have even made
4 compliance with what we have concerning that. To go
5 further, seeks not only the irrelevant material but is --
6 would be unduly burdensome and overly broad because that
7 would require us to go through every record that the diocese
8 has concerning -- to find every pronouncement that any
9 bishop or monsignor or anyone on behalf of the diocese made
10 concerning sexual abuse. And I submit we have not -- we
11 should not be required in discovery to have to do that.

12 The next policy question that they have asked is
13 policies on the background checks of employees, priests and
14 seminarians from 1949 to the present. I submit that what
15 our policies were concerning the -- whether we run
16 background checks or don't run background checks I submit is
17 irrelevant to the three causes of action, even including
18 negligent hiring and/or supervision, and we have given them
19 the documents we have complied by giving them the 1990, 1993
20 and 1997 policy statements and saying that none existed
21 before 2003. So we have complied with that one.

22 The policies on sexual abuse, same argument of
23 relevancy, your Honor, and we have given them the '90, '93,
24 '97 and 2003. So I submit that even though we object for

1 the record to providing it, we have given them the policies
2 that were there.

3 The next category, your Honor, I kind of look at
4 as somewhat repetitive of some of these, but in order to
5 make sure that we cover all of them, are other requests that
6 may not have been covered. The civil litigation, this
7 pertains to other priests' conduct again, the same other
8 priest conduct argument, the same 1983 before and after
9 argument. And, also, in the litigation, I believe in some
10 of them there are protective orders with reference to the
11 disclosure. I submit that that -- again, we should not be
12 required to provide that. The same thing with insurance
13 litigation.

14 The next is the John Jay College surveys. On the
15 John Jay College surveys, we provided them with an affidavit
16 that we only completed the survey on priests that we knew
17 had credible allegations that we sent to the John Jay.
18 Again, that's other priest conduct that we were instructed
19 not to keep a copy, we didn't keep a copy, so we have
20 nothing to turn over on that. And so we have answered we
21 have no documents that pertain to that other than what we
22 had submitted to them of which we don't have a copy. So on
23 that one, I believe we have complied.

24 The request with reference to the 27 priests and

1 the press release of whom there were credible allegations,
2 that falls in the other priests category, immaterial, that I
3 submit we should not have to provide. And if the Court were
4 to consider that that were relevant in some fashion to the
5 three actions which they have pled, the Court, I
6 respectfully submit, should not give any complaints that we
7 received after 1983.

8 When you look at his chart, his chart talks about
9 priests that were in active duty prior to 1983. It doesn't
10 say when allegations of those priests that they have
11 indicated on the chart supposedly had accusations against
12 them when the diocese became aware of those. And I submit
13 that any accusations against those priests, if the Court
14 were to go down that avenue, that came after 1983, I submit
15 we should not have to provide.

16 THE COURT: You are saying even -- just allegations,
17 not occurrences. You are talking about --

18 MR. LARAIA: Occurrences that occurred before 1983 for
19 allegations that occurred after 1983.

20 THE COURT: Well, I think the problem there is that I
21 think the point that I presume Mr. Johnson is trying to make
22 is that not only what the diocese knew, but what they should
23 have known. I mean, that's typically, you know, a
24 catch-all. So I don't know that that exonerates or doesn't

1 make it discoverable --

2 MR. LARAIA: Well --

3 THE COURT: -- just because it didn't come -- wasn't
4 alleged until after 1983. Do you understand the
5 distinction?

6 MR. LARAIA: I understand the distinction.

7 THE COURT: All right. All right. Continue. I am
8 just pointing it out.

9 MR. LARAIA: Okay. With reference to the photos of
10 Fr. Burnett, we have provided them with a photo and said we
11 don't have any others, but we have since sent Mr. Johnson a
12 letter saying we are going to look and see if we can find
13 more photos and we will provide that.

14 With reference to the list of employees that they
15 have asked for at the two churches where Fr. Burnett served,
16 we have said we don't have a list, but we will try to create
17 a list and provide them with that information. The
18 discovery -- they want -- they have asked to see the diocese
19 library. We have answered we don't have a library.

20 With reference to Bishop Ryan, Janssen, Rapp and
21 Virtue's records, we have answered with reference to Bishop
22 Ryan we have no records of any abuse that he's alleged to
23 have occurred while in the diocese. Janssen, Rapp and
24 Virtue, I submit, are other priests whose conduct are

1 irrelevant, and I submit we should not have to provide those
2 for the reasons that I have argued here a number of times.

3 Request Number 19 is an overall catch-all internal
4 correspondence of sexual abuse; irrelevant, overly broad,
5 unduly burdensome. Records concerning the transfer of
6 priests, again, irrelevant, overly broad, unduly
7 burdensome. They have asked for the file on Fr. Virtue. I
8 believe I have already touched on that. He is a separate
9 priest. He did serve during the same time Fr. Burnett
10 served at St. Mary's in Mokena where Mr. Rudofski and
11 Mr. Shanahan claim that Fr. Burnett abused them.

12 I submit there are no allegations that Dan
13 Shanahan or Mr. Rudofski were abused by Fr. Virtue, and I
14 submit that his conduct is irrelevant to this particular
15 cause. Photographs of Fr. Virtue. We provided them with
16 one, so we don't have -- and sent them a letter saying we
17 are going to look for them. Priests' legal fees, documents
18 concerning that, I think that falls in the same thing with
19 irrelevant information.

20 Allegations prior to 1983 concerning other
21 priests, I've argued that to the Court here a number of
22 times. I won't be repetitive. 31 is documents produced in
23 other cases. I have argued that already to the Court.
24 Background checks on John Doe. John Doe is an occurrence

1 that involves Fr. Burnett that supposedly occurred prior to
2 the alleged abuse to Mr. Rudofski. We provided them with
3 information concerning that as part of Fr. Burnett's file.
4 However -- and we have informed them that we did do a
5 background check on him. He has asked that that be held
6 confidential and that any information with reference to him
7 we are attempting to abide by his confidentiality request,
8 and we'd ask the Court not to provide that.

9 Plaintiff's interrogatory number one and Bishop
10 Kaffer's knowledge of other priests, our argument would go
11 the same there. I am begging the Court's indulgence. Their
12 interrogatory number one requests relevant and discoverable
13 information without waiving any of the objections -- I'm
14 sorry. Interrogatory number one asks the diocese to
15 describe what investigation the Roman Catholic Diocese of
16 Joliet through its employees, agent, representatives or
17 assigns has ever done surrounding the allegations of the
18 plaintiff's complaint as it relates to the question of
19 whether Fr. Burnett engaged in any sexual conduct with minor
20 boys or otherwise broke his vow of promise of celibacy at
21 any time of his ordination.

22 We have objected to providing any information
23 concerning the vow of celibacy because I submit that it's
24 irrelevant and immaterial. It has to do with whether or not

1 a priest will marry. Whether a priest will marry or not has
2 nothing to do at all with any alleged abuse to
3 Mr. Rudofski. It says please include the answers to these
4 interrogatories the names and contact information of all
5 individuals that have been interviewed by any such person
6 described above, a summary of what they said and who
7 interviewed and spoke with them. Please also include a
8 response whether any written or oral recorded videos were
9 made. This request includes any investigation of the review
10 board.

11 I submit I've argued that with reference to
12 relevancy, also with reference to privilege, with reference
13 to the qualified privilege. The -- I believe we have
14 responded to that adequately by our answer, and that's in
15 our response.

16 The last, I believe, is the plaintiff's
17 interrogatory number six which asks for Bishop Kaffer's
18 knowledge concerning other priests' conduct, and I believe
19 Mr. Johnson alluded to that with reference to the secret
20 files and any investigations he may have done. We have
21 answered that by saying without waiving the objections, the
22 diocese states on information and belief Bishop Kaffer did
23 not participate in any investigation or inquiry regarding
24 allegations of child sexual abuse against Fr. Burnett

1 because he retired on August 15, 2002, and at that time
2 Mr. Rudofski had not notified the diocese. . So I believe we ...
3 have complied.

4 Respectfully, your Honor, the most important
5 aspect, at least as far as where this case goes in
6 discovery, concerns their theory of the case and the
7 diocese's theory of the case. Whether it's everything --
8 every allegation against any priest at any time is part of
9 the proof of the three counts that are against us or whether
10 it's limited to that which the law requires, and that has to
11 do with Fr. Burnett.

12 I respectfully submit that the Court -- that it's
13 a whole different aspect of discovery, it's one that
14 involves thousands of hours and numerous depositions as
15 compared with the simple cause of action which is what the
16 diocese knew about Fr. Burnett or should have known about
17 him, not what the diocese knew about other priests. And I
18 respectfully ask the Court to deny their request.

19 THE COURT: Mr. Byrne?

20 MR. BYRNE: Your Honor, there is no legal duty to
21 disclose that which you do not know. We have challenged
22 plaintiff's attorney to cite some authority. They have
23 cited none. Take a step backwards. Their theory is a duty
24 to warn. Assuming there is a duty to warn, it's a duty to

1 warn with information -- actual information that you have so
2 that one can protect themselves. And that means if there is
3 a duty to warn, any allegation or related documents that the
4 diocese had prior to David Rudofski being abused, if there
5 was a duty to warn, that had to be disclosed so
6 Mrs. Rudofski could protect her son.

7 Now, and the Court has used this phrase, well,
8 what about after 1982 or '83 and into the '90s, the diocese
9 receives an allegation for the very first time about some
10 other priest, not Fr. Burnett, and it relates to something
11 that happened in 1970, and then the -- this is the phrase
12 used. Well, one could then argue in 1990, even though the
13 diocese had its first knowledge, maybe they should have
14 known.

15 By the way, even if you followed that tortured
16 logic, they should have known, but they couldn't have
17 disclosed it. And I get back to that same point over and
18 over again, every allegation that came in afterwards,
19 even -- even if assuming that the diocese somehow should
20 have known, one can now do the illogical thing and say,
21 well, you didn't disclose that which you should have known.
22 By the way, there is no case. If they had a case on that,
23 your Honor, then your Honor might say, well, you know, that
24 information might lead to other relevant information. But

1 there is no such case. And, therefore, I think the cutoff
2 is when David Rudofski was abused.

3 Allegations that came in afterwards, even if they
4 relate to what occurred before, couldn't possibly have any
5 relevance, no matter if you approach it on a pragmatic basis
6 or a legal basis.

7 THE COURT: Isn't that the ostrich defense, though,
8 bury your head in the sand and --

9 MR. BYRNE: Your Honor, let me address where they
10 should have known comes in, okay, because it's under a duty
11 to warn. It's altogether different. That is not really a
12 defense on the negligent hiring, okay, because if you had
13 the truckdriver with the DUI and the employer ducks his head
14 and doesn't do an investigation, and if they had, they'd
15 find out there were five or six DUI's, the Court imposes
16 liability for that particular employee on the basis of
17 should have known. There is no question about it.

18 But that's the only time the should have known
19 theory is utilized. It's never utilized on the duty to
20 warn. By the way, your Honor, just take the concept, the
21 duty to warn -- I mean, the overall heading is you have
22 misrepresented by not disclosing, you have done something
23 deliberate, you held something back. When you shift that to
24 this whole concept of, well, maybe you could have known and

1 if you could have, then maybe you should have, I mean that
2 is so far removed, and, again, I will just conclude that
3 concept with there is no case that they can cite.

4 Your Honor, maybe I can simplify some of this
5 other issues on different files. A priest's file contains a
6 variety of constitutional privacy rights which have nothing
7 to do with sexual abuse, okay? They have parishioners
8 writing in, complaining about employees, about other priests
9 which have nothing to do -- with their sermons, about what
10 happened to the individual's personal family. There could
11 have been an abortion, there could have been a child
12 pregnancy. I am giving the Court that background because
13 those are constitutional privacy rights.

14 Whatever the Court orders to be disclosed, I would
15 ask the Court that it would limit it to an allegation and
16 related documents, meaning letters, memos, interviews,
17 allegations of child sexual abuse and related documents,
18 with one exception, one exception, and that is the priest --
19 the very priest who is accused. Then his entire file should
20 be produced absent attorney-client mental health. But to
21 get into that --

22 THE COURT: You only confined that request on the
23 priests' files to anything pertaining to abuse?

24 MR. JOHNSON: I cannot take their interpretation of

1 abuse, no, your Honor. What they have given me with respect
2 to Fr. Burnett should be equally produced on all the ...
3 priests' files that were pedophiles before 1983 who have
4 served in ministry. If it's a motion in limine in terms of
5 what you are going to produce at time of trial, that's a
6 different issue. If it's a protective order -- but what
7 they want to show me is far less than what I think is
8 discoverable, even under the allegations of the complaint.
9 So, your Honor, I can't take their version of discovery.

10 THE COURT: All right. Continue.

11 MR. BYRNE: If I may. Your Honor, the primary source
12 of allegations and knowledge is within the chancellery
13 office, and secondary sources just lead us down an avenue
14 which is lengthy and gets us nowhere. Here is what I mean
15 by a secondary source. If there is an allegation against a
16 priest, okay, it's in the chancellery office files, period.
17 The fact that it may have at one point been sent to a
18 State's Attorney, that's a secondary source. To go in that
19 direction, we now have to focus on what was turned over to
20 the State's Attorney, what years was it, and what
21 individuals did it relate to.

22 The fact that those primary source records were
23 turned over in civil litigation, we have the same thing.
24 Those are secondary sources. If, in fact, the Court is

1 ordering the turn-over of records, they are within the
2 chancellery office. By the way, there is additional
3 problems on civil litigation records because in each and
4 every case that's been filed there is protective orders, and
5 in each and every one of those cases -- well, I will stop
6 there.

7 Let me mention, and I fully appreciate that this
8 Court is not bound by what any other trial court has done in
9 this jurisdiction. A priest accused, the entire priest file
10 is produced. If in rem any other priest file -- any other
11 allegations are requested, it's not the entire priest's file
12 of anybody else, it's merely the allegations. And that's if
13 and when that is produced.

14 Your Honor, the review committee records. The
15 review committee didn't come into existence until 1990.
16 David Rudofski is 1982. The review committee records, your
17 Honor -- and I don't want to repeat what Mr. Laraia did on
18 the basis of the law and the Chicago Bar Association cases.
19 If, in fact, any of those were relevant, if they were, they
20 would pertain to Fr. Burnett, not records after 1990
21 regarding some other priest whose allegation came in after
22 1990. Your Honor, I have nothing further. Oh -- no, I have
23 nothing further. I am chafing at the bit. I apologize.

24 MR. JOHNSON: Your Honor, Mr. Laraia misstates the

1 institutional liability claims that are pending in this
2 case. Count 7, fraudulent misrepresentation and
3 nondisclosure of facts under restatement 557A and 310.
4 Specifically we have alleged at page 56 -- or paragraph 56
5 the Diocese of Joliet through their bishops, agents,
6 officials and attorneys has had actual knowledge that
7 predatory and pedophile priests have been in active and
8 unrestricted ministry in the Catholic Church at all relevant
9 times between '49 and '85; '49 being the inception of the
10 diocese, '85 with respect -- I'd say '83, two years from the
11 time of the abuse.

12 Armed with that knowledge, the Diocese of Joliet
13 hid from its parishioners, including David Rudofski and his
14 parents. Also, the years between '49 and the date of the
15 filing of the complaint, the Diocese of Joliet has
16 misrepresented and under-reported the true nature and number
17 of predatory and pedophile priests that served in active
18 ministry in the Diocese of Joliet. That count has been
19 sustained twice. We've argued the same hearings. Judge
20 Kinney has ruled twice. Those are the allegations in this
21 complaint, and we believe that our request with respect to
22 those other priests are consistent and discoverable under
23 that complaint.

24 1958, a member of the diocesan Curia, official of

1 the Diocese of Joliet, had actual knowledge that a
2 pedophile, a person that came to the diocese from Iowa, who
3 was being treated for pedophilia at Loyola University
4 Medical Center under a psychiatrist there, he,
5 unfortunately, was made by the St. Isaac Jogues's official a
6 head of the Boy Scouts of the parish, and he sexually abuses
7 a 14-year-old boy. Nowhere does this information come in
8 any disclosure the Diocese of Joliet has made. And that's
9 why I'm a little bit, to be honest with you, not curious or
10 not satisfied about what their interpretation of the
11 reporting was.

12 With respect to Fr. Virtue, there is this
13 Fr. Virtue. There are two priests that are serving at the
14 exact same time at the parish where David Rudofski was
15 abused. Both priests, Fr. Virtue and Fr. Burnett, are
16 sexually abusing brothers. And the year before our client
17 was victimized, 1978 to 1982, Virtue goes someplace else and
18 is found to be guilty of sexual misconduct, we believe as a
19 result of his misconduct at St. Mary's of Mokena. What
20 could be more compelling about what a diocese should have
21 known if two priests living together, both admitted
22 pedophiles, are abusing two brothers, and then our gentleman
23 comes in a year later and gets sexually abused.

24 MR. LARAIA: Excuse me.

1 THE COURT: Hold on. Hold on. If you have an
2 objection, you can object, but, you know, there is a
3 format. Don't address each other. Comments are addressed
4 to the Court.

5 MR. LARAIA: I'm sorry.

6 THE COURT: All right.

7 MR. LARAIA: I objected to the idea of admitted.
8 Burnett has admitted --

9 THE COURT: Hold on. I will note your objection for
10 the record. Continue, Mr. Johnson.

11 MR. JOHNSON: In fairness, thank you. I will not
12 say --

13 THE COURT: All right. Address me now.

14 MR. JOHNSON: He is an alleged pedophile. With respect
15 to Fr. Virtue, there is a substantiated allegation from the
16 diocese for which he was sent to -- that Fr. Virtue was -- I
17 will not say guilty, but committed this act of sexual
18 misconduct. We believe that's critically relevant, but so
19 are other cases of sexual misconduct that predate 1983.

20 Your Honor, we believe that the request is not
21 burdensome. We would like to take a look at 50 files. We
22 believe they are discoverable, and I believe they are
23 critically relevant on the allegations pending before the
24 Court.

1 THE COURT: Okay. All right.

2 MR. JOHNSON: Oh, sorry, Mr. Bradley made one -- one
3 mention. With respect to the qualified privilege, your
4 Honor, the Campabella (phonetic) case, which we have cited
5 in our brief, specifically rejects the qualified privilege
6 that Mr. Laraia is attempting to impose on diocesan
7 investigations of criminal conduct. They are pedophiles,
8 priests who have abused boys. This -- the Campabella case
9 was Appellate Court of Illinois, Second District, 2004. And
10 the last page, it says, whatever the force of this
11 reasoning, it does not warrant an exercise of judicial
12 legislation.

13 The privilege that the diocese would have us
14 recognize implicates competing public policy considerations
15 that are best weighed by the general assembly. And they say
16 we decline to consider whether this privilege should be made
17 part of Illinois law. There is no precedent under Illinois
18 law to shield investigations of pedophile priests of a
19 diocese. And we believe that's the law of the State of
20 Illinois. Thank you, your Honor.

21 THE COURT: Okay. All right. I've taken notes, and I
22 will try to address this as much as possible. And I might
23 miss a few things here and there. I am sure you will tell
24 me about this. All right. This is a motion to compel

1 discovery, okay? And as I commented earlier, what's
2 discoverable might not necessarily be admissible. But I
3 encounter this all the time. One side has to take the word
4 of the other in terms of we don't think it's relevant.
5 Well, it's the Court's role to determine what's relevant and
6 what's not relevant, not for any one party to determine
7 what's relevant.

8 With regards to the -- Mr. Laraja had indicated
9 that there are certain things that don't exist. So that's
10 why we have 214 affidavits where we don't have the documents
11 sought or we are fully in compliance, we have no further
12 documents, that should serve to suffice for those various
13 things. I am not going to repeat everything that you have
14 indicated.

15 With regards to the files of the 27 priests and
16 then the seven additional priests, I am going to order that
17 to be discoverable, but it has to be confined somewhat to
18 abuse. As Mr. Byrne, I believe, pointed out, there is
19 something about someone's sermon or someone's personal
20 family, I think the example given was an abortion, that's
21 not discoverable. It has to be some way confined to
22 allegations of misconduct, abuse, however you want to
23 characterize it. However, I am going to confine that to not
24 include any occurrence post this occurrence. And I don't

1 recall what the dates were in 1983. I don't even know if
2 your client was able to determine in terms of any type of
3 specificity in terms of when that happened in 1983.

4 MR. LARAIA: Your Honor, we have a -- we believe it
5 took place during the 1982-1983 academic year at
6 St. Mary's. We have produced a document signed by
7 Fr. Burnett that indicates he delivered the first
8 confession, I believe, in November of 1982. That would have
9 been first semester (inaudible) the second semester.

10 THE COURT: All right. So anything post that
11 occurrence then would --

12 MR. BYRNE: Post November 1982.

13 THE COURT: Correct. -- would not be discoverable.
14 There was an indication that you were seeking a list of
15 order priests who work in the diocese. I am going to
16 confine that to that work for some entity that is overseen
17 by the diocese, whether it be a parish, a school. If it's
18 an independently run order high school that is not governed
19 by the diocese, I am not going to order that to be
20 discoverable.

21 MR. JOHNSON: Your Honor, may I ask for clarification?

22 THE COURT: Sure you can.

23 MR. JOHNSON: We have the names of all the order
24 priests that were in the diocese. We are only asking for

1 reports that the diocese has received of religious order
2 priests that had sexual misconduct allegations made. So if
3 a priest in 1970, he was a religious order priest, had a
4 complaint that the diocese received, that's all we're
5 looking for.

6 THE COURT: Yeah, but I think there needs to be some
7 more of a nexus --

8 MR. JOHNSON: Okay.

9 THE COURT: -- in terms of maybe he is a visiting
10 priest at a local parish, maybe he's helping out at a parish
11 or at a school. There has to be some nexus with an entity
12 controlled by the diocese. If he is in a parish -- if he is
13 in a high school run by an order that merely is within the
14 boundaries of a diocese, you know, I'm not going to order
15 that discoverable, okay?

16 With regards to Bishop Kaffer's investigative file
17 regarding sexual abuse claims, I am going to order that be
18 discoverable, but only post November of 1982 occurrence.

19 MR. JOHNSON: Prior from '82?

20 THE COURT: Yeah, that's discoverable. Post November
21 1982 is not discoverable.

22 MR. JOHNSON: Okay.

23 MR. LARAIA: Judge, when you are talking about post
24 November of 1982 --

1 THE COURT: Occurrences.

2 MR. LARAIA: -- you are talking about accusations made
3 before?

4 THE COURT: Not accusations, occurrences.

5 MR. LARAIA: Occurrences that occurred.

6 THE COURT: Correct.

7 MR. LARAIA: Regardless of when they were reported.

8 THE COURT: Correct.

9 MR. LARAIA: Okay.

10 THE COURT: Okay. With regards to the outside
11 investigative files, I am going to order those discoverable,
12 but under the same confines. It's not discoverable if the
13 occurrence is post November of 1982.

14 With regards to the civil litigation documents,
15 how did you respond to that? Did you identify the case
16 numbers, where the lawsuits were pending?

17 MR. LARAIA: No, sir.

18 THE COURT: You have to do that at a minimum. You
19 know, I am not sure what the -- what would be on file with
20 the various clerks' offices, but you have to identify the
21 case numbers, the names of the parties, anything of that
22 nature, and I am going to reserve my ruling as to any
23 further documentation on that. But I think --

24 MR. LARAIA: So we are going to identify the cases but

1 we don't have to produce documents until you --

2 THE COURT: Not yet.

3 MR. LARAIA: -- further rule?

4 THE COURT: Not yet.

5 MR. LARAIA: Okay.

6 THE COURT: With -- pertaining to the complaints about
7 Bishop Ryan, I am going to hold that discoverable for any --
8 and I am going to exclude any post November 1982
9 occurrences.

10 The secret archive files, I am going to hold that
11 those are discoverable. I don't care if you want to do a --
12 you know, to comply with 214, there is various ways. You
13 can tender the documents or you can do a document
14 inspection. I mean, you can have someone there, Mr. Johnson
15 or a representative or one of these lawyers there while they
16 look at it. They might not be interested in it, but there
17 is different ways to comply with 214, but I am going to
18 allow that.

19 With regards to the mental health records, I am
20 going to order that those be tendered to me for in camera
21 inspections.

22 MR. LARAIA: Judge, I wasn't heard on this. I just
23 wanted to say that Fr. Burnett never did anything to waive
24 the statutory privilege, and he's claimed a privilege 16

1 months ago. We put a letter out to everyone, and I just
2 want you to know that.

3 THE COURT: We will show that for the record. There
4 might not even be anything there. I don't know what's there
5 until I have them produced. Those will have to be produced
6 at my chambers, and you are going to have to put some type
7 of documentation on there, copy of the court order ordering
8 it for in camera inspection, and have them, you know, sealed
9 in some type of a fashion so that I know when I receive them
10 that those are -- that those are --

11 MR. LARAIA: Is that only for Fr. Burnett?

12 THE COURT: Hold on one second. What were you going to
13 say, Mr. Johnson?

14 MR. JOHNSON: This is also not directly addressed, but
15 there is also a privilege log that Mr. Byrne has provided in
16 which documents from Fr. Burnett's file are not being
17 produced. We have them, it was well-done, but do you want
18 me to reserve those? Those are the things that we think
19 should be subject to in camera review, also. I am happy to
20 address it at a later time. I just didn't want you to --

21 THE COURT: No, as long as we are doing an in camera
22 inspection, why don't you produce that. But as long as you
23 segregate the two things.

24 With regards to the records -- the mental health

1 records as to the other priests, I am going to hold that to
2 be non discoverable.

3 With regards to the review committee, I am going
4 to order that that be discoverable.

5 Along the lines of that civil litigation
6 information, I am not sure why -- what the -- why you need
7 insurance information pertaining to those prior lawsuits, as
8 to why that would be discoverable.

9 MR. JOHNSON: I was here one time, your Honor, and I
10 saw on the call a piece of litigation which Mr. Byrne had
11 filed against Lloyds of London and others. If they have
12 disclosed documents, that they have produced documents to
13 them, I don't know, but I assume it's -- my understanding is
14 coverage litigation documents are produced. If they are
15 produced, I'm just trying to say identify the documents
16 and --

17 THE COURT: I think that's too broad. I am going to
18 deny that, that request, for -- unless you can demonstrate
19 --

20 MR. JOHNSON: May I have a clarification?

21 THE COURT: You may.

22 MR. JOHNSON: The review committee discoverability, may
23 we request that that apply to priests who had credible
24 allegations of sexual misconduct that predate the event?

1 For example, if they have an investigation that they bring
2 witnesses, that says this occurrence happened in 1978, it
3 seemed to be --

4 THE COURT: Anything pre occurrence.

5 MR. JOHNSON: Okay.

6 MR. LARAIA: Is that limited to pre occurrence?

7 THE COURT: It is.

8 MR. LARAIA: Okay.

9 THE COURT: With regards to diocesan policies, are
10 there -- are you confining that to policies pertaining to
11 the reporting of sexual abuse? I mean, I can -- I can
12 imagine how voluminous diocesan policies are on --

13 MR. JOHNSON: Your Honor, we have not requested all the
14 policies. They have given us post occurrence policies of
15 sexual misconduct, but they reference that -- and even the
16 Archdiocese of Chicago and other places around this locale
17 have said hey, in the '80s and '70s, we did this. We are
18 just talking about sexual misconduct and how (inaudible) the
19 sexual misconduct policies prior to 1990.

20 THE COURT: Pre occurrence.

21 MR. JOHNSON: Yes.

22 THE COURT: All right. I'll grant that motion to
23 compel the diocesan policies.

24 MR. LARAIA: You are talking about the written

1 policies?

2 THE COURT: The written policies pertaining --

3 MR. LARAIA: Prior to 1982?

4 THE COURT: Pre occurrence. With regards to your
5 request for information pertaining to legal fees, I am going
6 to order that that's not discoverable.

7 With regards to background checks, I am ordering
8 that that is discoverable pre occurrence.

9 With regards to the information regarding the vows
10 of celibacy, I am going to order that that is not
11 discoverable. And I am sure I have left a few things out,
12 but that's what struck me when I was going through it.

13 MR. JOHNSON: I am sure we can ask for clarification at
14 a later date. May I request that the order indicate that
15 today that the Court has ruled consistent with the
16 transcript of proceedings that we will attach so we can all
17 be very accurate? We would be happy to get a transcript,
18 but this is obviously going to be a voluminous order, and I
19 would be happy to craft a --

20 THE COURT: Just attach the transcript corresponding to
21 my ruling.

22 MR. LARAIA: I think what he is asking for is a
23 temporary order now subject to another order to be submitted
24 later. Is that what you are asking?

1 MR. JOHNSON: There is always those conferences that
2 people can't even agree to what was said. I will be happy
3 to do whatever you want, take advice from the Court.

4 THE COURT: Well, what we could do is we could just
5 pick a date, you can order the transcript today, we can pick
6 a date say maybe within three weeks for entry of discovery
7 order consistent with my ruling, and then that way hopefully
8 you will have the transcript, you can write out the order
9 consistent with it. Fair enough to everybody?

10 MR. JOHNSON: Fine.

11 THE COURT: And if there is a dispute, then we can
12 address it on that court date, okay? And then you guys can
13 go through the transcript. If there is something I missed,
14 you can bring it to my attention.

15 MR. JOHNSON: Thank you, Judge.

16 MR. BYRNE: Thank you, your Honor.

17 MR. LARAIA: Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 (AND THOSE WERE ALL THE PROCEEDINGS HAD.)

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1 STATE OF ILLINOIS)
2 COUNTY OF W I L L) SS.

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I, STEVE VITHOULKAS, Official Court Reporter for
8 the 12th Judicial Circuit, Will County, Illinois, do hereby
9 certify the foregoing to be a true and accurate transcript
10 of the electronic recording of the proceedings of the
11 above-entitled cause, which recording contained a
12 certification in accordance with rule or administrative
13 order.

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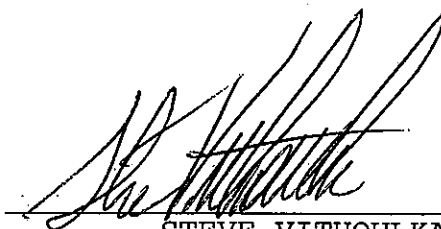
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STEVE VITHOULKAS
Official Court Reporter.

1 THE COURT: Rudofski versus Diocese of Joliet.

2 MR. BYRNE: Good morning, your Honor. James Byrne on
3 behalf of the Diocese.

4 THE COURT: Mr. Byrne.

5 MR. BRADLEY: Good morning, your Honor. Pat Bradley
6 for the plaintiffs.

7 THE COURT: Mr. Johnson.

8 MR. JOHNSON: Good morning, your Honor. Terry Johnson
9 on behalf of the plaintiff.

10 MR. BYRNE: We're here for presentation of an order,
11 and I think what we would like to do is just pass it to your
12 9:30 call.

13 THE COURT: That's fine. You guys ordered the
14 transcript. That was my recollection. And then we were
15 going to have a few questions if something wasn't covered.

16 MR. BYRNE: Hopefully we can work that out. If we
17 can't, we will step up.

18 THE COURT: That's fine. See if you can work it out.
19 And if you can't, I will call it at the end. You are going
20 to have to bring me back up to speed a little bit.

21 MR. BYRNE: Okay. Thank you, your Honor.

22 (Matter passed and recalled.)

23 THE COURT: Rudofski versus Diocese of Joliet.

24 MR. BYRNE: Good morning again, your Honor.

1 THE COURT: Good morning.

2 MR. BYRNE: James Byrne on behalf of the Diocese.

3 MR. BRESSLER: Stuart Bressler for Fr. Burnett, Judge.

4 MR. BRADLEY: Good morning again, your Honor. Patrick
5 Bradley for the plaintiff.

6 MR. JOHNSON: Good morning, Judge. Terry Johnson for
7 the plaintiff.

8 MR. BYRNE: Your Honor, we have two proposed orders of
9 the court transcript --

10 THE COURT: Okay.

11 MR. BYRNE: -- which I am tendering to the Court here.
12 And one of the biggest issues that I see between the two
13 court orders is their order is talking about just sexual
14 misconduct in general, which would include anything between
15 adults and adults. And I think this whole case is child
16 sexual abuse. And to obtain whatever allegations there were
17 regarding other priests and child sexual abuse. So that, to
18 me, was kind of a glaring issue because now we are going
19 into something that has -- is beyond me as to how it would
20 have any relevance. So that was one of the major
21 objections.

22 The other one, your Honor, and you can look at the
23 court transcript here, the other one had to do with
24 regarding allegations with minors, sexual abuse of minors.

1 And we all agree if it's -- the occurrence is prior to '82,
2 we don't care when it was reported. Your order is that's
3 discoverable. The question is, does the entire priest's
4 file be produced or the allegations.

5 Now, as I read what the Court said, it's the
6 allegations. And I pointed out to the Court just briefly
7 the difficulty in the issues with the entire priest's file.
8 Your Honor, I think what I have to expound on, if the Court
9 would indulge me, this is not a typical personnel file.
10 When somebody applies to be a priest, they are doing a
11 background regarding his family. They are bringing things
12 out such as the father may have been an alcoholic problem.
13 They are bringing things out such as there may have been a
14 divorce.

15 Once the priest is assigned, there is evaluations
16 at certain times done about his governance and how he
17 acts -- interacts with the parish. We have staff, your
18 Honor, who are filling out forms criticizing their pastor.
19 We have a pastor who responds criticizing school personnel.
20 These are all governance issues on personal -- we have
21 interviews by the way, of a bishop of a priest regarding his
22 assignment or what parish he can get, that priest making
23 negative comments about other priests, having nothing at all
24 to do with misconduct.

1 Your Honor, there is a whole slew of information
2 in these priests' files, some of which I'm articulating to
3 the Court, which could have no relevance whatsoever. The
4 key thing here, your Honor, as I see it, is they're saying
5 we knew or should have known child sexual abuse, those are
6 the allegations. They say to a jury, here is the
7 allegations, here are so many, thank you very much, they
8 never told anybody. And, your Honor, in all of this, I will
9 bring out one other thing. On this issue of did the Diocese
10 know and not disclose, we admitted that in our answer to the
11 amended complaint on paragraph 62 in which they said you
12 knew. You not only knew that you had priests, you
13 transferred them. Not only did you do that, you took
14 priests from other diocese who had allegations and brought
15 them into your diocese.

16 That's their key element on knew and should have
17 known, and we admitted that and said there were
18 approximately seven. So I just ask the Court to consider
19 that. As I see it, from what the Court has ordered and
20 talked, I gave only one example or maybe two examples last
21 time of highly sensitive information in the file, such as a
22 woman who might write in and complaining about the school or
23 something else, would say something about she may have had
24 an abortion or a teenage daughter. I just gave these two

1 examples briefly.

2 I'm now giving all this other information which in
3 my mind I don't know how it can have any relevance to lead
4 them evidence that they need in order to produce. So I
5 think those are the two main differences that we have here,
6 your Honor.

7 THE COURT: First of all, do you agree that those are
8 the two differences?

9 MR. BYRNE: Main. Excuse me.

10 MR. BRADLEY: Yes.

11 THE COURT: Do you want to respond then?

12 MR. BRADLEY: Yes. My response is this, your Honor.

13 In your order of -- or in your ruling on the 23rd of
14 November, you stated, and I am going to quote. "With regard
15 to the files of the 27 priests and the seven additional
16 priests, I am going to order that to be discoverable." Now,
17 we went out in the hall and we tried to work out an
18 accommodation such that we could work out our differences in
19 an amicable way and only bring you problems that you needed
20 to resolve. And what we proposed in this regard was that
21 Counsel for the plaintiff and Counsel for the defendant meet
22 at the chancellory office where all of these documents by
23 Counsel's previous statements are found and go through
24 them.

1 We don't care and probably shouldn't see some of
2 the documents if, as Mr. Byrne said at the prior hearing,
3 there is an issue of an abortion. We don't want to have
4 that, and no one should see that.

5 THE COURT: Other than -- other than allegations of
6 sexual misconduct, what would you want out of the priest's
7 file?

8 MR. BRADLEY: Well, there will be documents, I submit,
9 your Honor, that pertain to suspicions, pertain to questions
10 about the priests in particular. And this came up with
11 regard to Fr. Stefanich, one of the priests, I believe,
12 that's on their list of 27 where there were allegations.
13 Bishop Imesh has testified. Well, those were allegations he
14 was skinny dipping with seven or eight boys.

15 Now, skinny dipping to the normal, reasonable
16 person walking down the street would suggest there might be
17 a problem. Those are the type of documents that pointed in
18 Stefanich's case or should have pointed in Stefanich's case
19 to a problem priest.

20 THE COURT: So you're saying there would be evidence of
21 that nature that wouldn't be per se sexual misconduct?

22 MR. BRADLEY: Correct.

23 THE COURT: But leading down the road inappropriate.

24 MR. BRADLEY: Would neither be an allegation nor would