

Father O'Leary asked for a meeting with Cardinal Law on December 23, 1994. See O'LEARY, ARTHUR P. 1-151-152. As a consequence of the recent allegations and in accordance with the recommendations of St. Luke Institute in November, 1993, a re-evaluation of O'Leary was scheduled for January, 1995. See O'LEARY, ARTHUR P. 1-151-152. In preparation for O'Leary's meeting with Cardinal Law, a background memo containing the history of the allegations was prepared by Father Deeley for the meeting with Cardinal Law. See O'LEARY, ARTHUR P. 1-151-152.

In February, 1995, Father Deeley reported to Father Flatley regarding a meeting he had with Father O'Leary regarding his re-evaluation at St. Luke Institute. See O'LEARY, ARTHUR P. 1-169. Although the assessment is not available, from the memo it is clear that a long-term inpatient assessment was recommended. See O'LEARY, ARTHUR P. 1-169. Father O'Leary wanted assurances that if he got a positive report after his inpatient stay that he would be restored to ministry, and wondered what the consequences would ensue if he did not comply with the recommendations. See O'LEARY, ARTHUR P. 1-169. He was informed by Father Deeley that his lack of cooperation would be reported to Cardinal Law. See O'LEARY, ARTHUR P. 1-169.

On March 13, 1995, the Delegate's staff met and decided that the verbal communication of the Review Board in April 7, 1994 was sufficient, and no

written follow-up was necessary in Father O'Leary's case because "There are current issues in this case that make a written communication inappropriate at this time." See O'LEARY, ARTHUR P. 1-179. The document was signed by Father Flatley on April 19, 1995. See O'LEARY, ARTHUR P. 1-179. This statement by the Review Board clearly did not reflect the history of abuse that Father O'Leary had inflicted on his victims, and Father O'Leary's continuing refusal to confront his sexual pathology. While the [REDACTED] reported the debilitating effects of Father O'Leary's actions on their boys and their family. See O'LEARY, ARTHUR P. 1-180; 0184. Father O'Leary continued to lobby the church to get back into ministry while refusing to undergo a long-term psychiatric assessment and neglecting to contact his Monitor. See O'LEARY, ARTHUR P. 1-182. Father O'Leary also engaged in hospice work against the orders of the RCAB. See O'LEARY, ARTHUR P. 1-182; 1-189. Despite the intransigence of Father O'Leary in acceding to the recommendations of the RCAB, Father O'Leary was given permission to concelebrate a Mass with Cardinal Law at a parish in Marshfield, MA in September, 1995. Cardinal Law was apprised of his status by memorandum from Father Flatley. See O'LEARY, ARTHUR P. 1-186. Both Father Flatley and the office of the Delegate stated their concerns about O'Leary. See O'LEARY, ARTHUR P. 1-186.

On October 4, 1995, Father O'Leary agreed to release his records to Southdown in Ontario and go there for a second opinion after a meeting with Father Flatley. See O'LEARY, ARTHUR P. 1-189. On December 6, 1995, Father Flatley met with Father O'Leary to discuss the second opinion from Southdown, which concurred with the recommendations from St. Luke Institute in recommending long-term inpatient treatment. See O'LEARY, ARTHUR P. 1-202-203. Father O'Leary stated that he was healthy and did not need residential treatment, but would discuss it with Dr. Purcell, his long-term therapist and contact Father Flatley. On January 23, 1996, Cardinal Law granted him sick leave status as of February 1, 1996 and Father O'Leary went to Southdown on February 3, 1996 and remained there through the end of May, 1996. See O'LEARY, ARTHUR P. 1-208. The departure covenant and the evaluations by Southdown personnel fit the characterization of "sexual misconduct with a minor" and therefore, according to the RCAB policies on Sexual Misconduct of a Priest, Father O'Leary could not be returned to ministry. See O'LEARY, ARTHUR P. 1-245-246. Father O'Leary was angry and devastated by this decision, angry at the Archdiocesan personnel, angry about the sexual policies of the Church, and continued to lobby for permission to carry out hospice work. See O'LEARY, ARTHUR P. 1-245-246. Cardinal Law was informed of the status of Father O'Leary's case before a meeting in June, 1996. Although Father Flatley clearly

states that Father O'Leary had violated the sexual abuse policy with minors, and therefore, could not return to parish ministry, the apologist tone of the memorandum clearly shows that the RCAB's concern lies more with Father O'Leary and returning him to service than with the welfare of minor children:

There was no clear-cut acting out, no sexual contact. Certainly this case was different from some of our more celebrated abuse cases. I struggled with the idea that perhaps there was something akin to sexual harassment here rather than abuse or misconduct. However, I was not able to find anyone with expertise in this area to agree that this was a valid distinction where minors are concerned. So the policy stands.

See O'LEARY, ARTHUR P. 1-254-256. On July 1, 1996, Cardinal Law wrote to Father O'Leary to inform him officially that his status was Senior Priest/Retirement.

Father O'Leary continued in follow-up treatment at Southdown as required during the next few years, and to treat with Dr. Purcell, but he never gave up his crusade to return to priestly ministry. In June, 1997, Father O'Leary made a request to help his parish by doing weekend work; this proposal was passed on by Msgr. Coleman to Bishop Sean O'Malley, who denied the request. See O'LEARY, ARTHUR P. 1-289. This decision was formalized by a letter from Cardinal Law on June 9, 1997. See O'LEARY, ARTHUR P. 1-289.

Father O'Leary continued to ask to perform weekend and limited ministry, as the letter to Cardinal Law notes with regard to funeral masses of

hospice clients, and to perform weekend ministry in his parish. See O'LEARY, ARTHUR P. 1-289. The Delegate's recommendation to the Review Board considered his request to perform weekend ministry within the RCAB, and the request was not recommended by the Delegate. See O'LEARY, ARTHUR P. 1-315-316. The Delegate's Assessment of the Priest's Response in the September, 1998 Review Board memo aptly summarized the character of Father O'Leary: "..The priest's response [to the allegations] indicates a desire to conceal information which could damage his standing or reputation. He has admitted only to that at which he has been caught, and reluctantly." See O'LEARY, ARTHUR P. 1-315-316.

Subsequently the Review Board recommended, in September, 1998, the following: "That the behavior of the priest, partly by his own admission, qualifies as sexual misconduct. In light of this, the Policy applies to the priest and he is prohibited from the weekend celebration of parish masses, which is at his request." See O'LEARY, ARTHUR P. 1-319. Finally, in February, 2001, the new Delegate, Father Charles J. Higgins, gave Father O'Leary the final refusal of the RCAB to his request to perform weekend parish ministry, citing a letter from Cardinal Law in June, 1997 stating the same policy. See O'LEARY, ARTHUR P. 1-328.

19. EUGENE O'SULLIVAN

It took only three short years, following his ordination on February 2, 1960 in a class of other child molesters including Father Birmingham, Father Lane, and Father Shanley, for the first of many complaints of sexual abuse against a minor to arise against Father O'Sullivan. Specifically, in a June 12, 1963 memo found in the RCAB files, it is documented that Father Shinnick had reported that Father O'Sullivan **"was molesting several boys (altar boys) in parish among whom was his nephew...also [REDACTED] boy, + [REDACTED] boy."** See EO-0015-16 (emphasis added). At that time, Father O'Sullivan was assigned to Our Lady Comforter of the Afflicted, in Waltham, Massachusetts. See EO-0466. Father O'Sullivan denied anything serious and said that he was just fooling with the boys and putting his hand in their pockets. See EO-0015-16. This information was sent to Bishop Riley, who advised that they "wait a bit." See EO-0015-16. Father Ed Harrington, Father O'Sullivan's pastor, was called in to the Chancery and reported that the parents of the boys had called him to their homes and had told him about Father O'Sullivan's actions. See EO-0015-16.

The RCAB responded to these allegations by telling Father O'Sullivan to start his three week vacation beginning June 16 to July 6 and then informed Father O'Sullivan that he would be transferred effective July 9, 1963. See EO-

0015-0016. Father O'Sullivan was transferred to St. Ann's Parish, Marshfield, Massachusetts, in July 1963. See EO-0466.

Just over a year after the Father Shinnick complaints, on October 1, 1964, Mr. and Mrs. [REDACTED] wrote to Cardinal Cushing complaining about Father O'Sullivan's sexual molestation of their 12-year old son [REDACTED], an altar boy, in August 1964. See EO-0002. The allegations were that Father O'Sullivan had reached under James's bathing trunks and had touched him repeatedly in the private area for several minutes, and had told [REDACTED], "not to tell anyone I touched you." See EO-0002. [REDACTED] told his parents that this was not the first time this had happened. See EO-0002.

The letter to the Cardinal indicated that on the day after the abuse, the [REDACTED] complained to Father Finn, Father O'Sullivan's pastor at St. Ann's parish, and Father Finn had told them to return that evening. See EO-0002. Expecting Father Finn to confront Father O'Sullivan that evening, instead Father Finn told the [REDACTED] that he "had rather hoped [they] would not return but would forget the incident." See EO-0002. Father Finn told them "not to discuss the matter with a soul; that he would report the matter to the proper authorities in Boston"; and that the [REDACTED] would be contacted upon their return to Milton. See EO-0002. Six weeks later, having not heard back from anyone, Mr. and Mrs. [REDACTED] telephoned Father Finn and were shocked to hear that Father Finn had not

reported the matter because he had not received any further complaints. See EO-0002.

The RCAB's response to these charges against Father O'Sullivan was to transfer Father O'Sullivan from St. Ann's to Assumption, in East Boston, in February 1965. See EO-0467. In May 1970, Father O'Sullivan was transferred from East Boston to Arlington's St. Agnes Parish. See EO-0467.

In 1984, Father O'Sullivan pled guilty to a charge of having "unlawful sexual intercourse or unnatural sexual intercourse" with a boy younger than sixteen, in Arlington, Massachusetts. See EO-0181. The abuse allegedly began when the boy, an altar boy, was thirteen years old, and the abuse continued for two years. See The Record (wire services) 7/17/93.

The ■■■■ allegations of rape prompted Father O'Sullivan's resignation letter, of November 1, 1984, to Cardinal Law that referenced, "the recent circumstances which I have discussed with you, Father Banks, and my pastor, Monsignor Linnehan." See EO-0293. Cardinal Law wrote back to Father O'Sullivan on November 9, 1984 saying, "it is my intention to refrain from appointing you to any new position of pastoral responsibility in the Archdiocese until it is evident from professional evaluation and a successfully completed program of rehabilitation that you are able to undertake such responsibilities without possible harm to others or to yourself." See EO-0296.

The following day, on November 10, 1984, Bishop Banks wrote to Dr. Peterson of St. Luke Institute in Maryland asking for a recommendation and report about Father O'Sullivan. See EO-0003. Bishop Banks informed St. Luke's that a couple of years after his ordination, Father O'Sullivan had been involved in incidents with altar boys, that Father O'Sullivan had been transferred, and within a few months was involved in more incidents with altar boys. See EO-0003.

The RCAB files also contain a letter dated November 13, 1984, written by Mr. [REDACTED], one of Father O'Sullivan's 1963 abuse victims, stating that Father O'Sullivan, "has been a sexual deviate for at least (20 years) and the church has known since he was removed from Our Lady's parish in Waltham. I was one of a group of altar boys that was molested by the deviate...Nothing was done. The Diocese made no effort to correct the situation." See EO-0006-0007. In a companion letter of the same date, November 13, 1984, Mr. [REDACTED] wrote to the Middlesex Assistant District Attorney, "[w]hen we advised the Pastor, Father Harrington, of the problem Father O'Sullivan was immediately transferred and was never seen or heard from again. I was under the assumption that the Diocese was taking care of the matter and either rehabilitation or expulsion had occurred. What I see now is a cover up. I am also sure that until the incident in Arlington we were not the last group." See EO-0008-0009.

The RCAB files contain undated notes in Bishop McCormack's handwriting that reference Dr. Phil Quinn, and state that Father O'Sullivan was a "big problem—8 times!" The notes further indicate that Father O'Sullivan had "very little guilt" and was "very bitter." See EO-0005. However, in December 1984, Father O'Sullivan con-celebrated his uncle's funeral Mass with Cardinal Law. See EO-0386.

By letter of January 12, 1985, [REDACTED], the mother of [REDACTED], whose abuse by Father O'Sullivan at St. Agnes' Parish in Arlington had resulted in Father O'Sullivan's guilty plea, wrote to Cardinal Law describing the "anguish, pain and suffering" that Father O'Sullivan's October 1984 abuse of her son had caused. See EO-0010-0012. She documented her disappointment that "no one from the church came or called to offer guidance or assistance...The hardest thing for me to believe is that this has gone on for so many years...when he was exposed for molesting a group of boys at Our Lady's Parish in Waltham, 20 years ago all the church did at that time was transfer him. See EO-0010-0012.

The RCAB's continued protection of predatory priests and primary concern about the media is evident in the June 1985 letter from Bishop Banks permitting Father O'Sullivan to perform the marriage of Father O'Sullivan's niece, "as long as there (was) no great publicity." See EO-0387. By letter of November 5, 1985, Cardinal Law ended Father O'Sullivan's assignment as

Associate Pastor at St. Agnes Parish in Arlington and placed Father O'Sullivan on Sick Leave. See EO-0425. In August 1985, Father O'Sullivan was treated at Southdown, a treatment center in Ontario, Canada, See EO-0381, where he received, according to Bishop Banks a "very favorable report." See EO-0382.

In October 1985, less than a year after Father O'Sullivan pleaded guilty to unlawful intercourse with a child, Cardinal Law transferred Father O'Sullivan to the New Jersey Diocese of Metuchen on a "Lend Lease." See EO-0466. Newark Bishop Theodore McCarrick, who headed the Metuchen Diocese at the time, confirmed in 1993 that he was made aware of Father O'Sullivan's past, but had been assured that there were **no restrictions** on where Father O'Sullivan's ministry could take place. See EO-0181. Bishop McCarrick stated that he had received assurances from both the Archdiocese of Boston and the treatment center, that Father O'Sullivan was rehabilitated and that Father O'Sullivan could reestablish a ministry for Jesus Christ. See EO-0181. In Metuchen, Father O'Sullivan was assigned to a parish that had an elementary school, and later he was involved in ministries that included religious education programs for children and a youth group. See EO-0181. Cardinal Law has denied that he had given any assurances to Bishop McCarrick about Father O'Sullivan. See EO-0184-0185.

In 1993, the Archdiocese learned that the Boston Globe was about to write an article about Father O'Sullivan's transfer to New Jersey. Discussions then ensued at the Chancery as to how to best control the publicity. The Cardinal himself wrote the "talking points" to be made with the Globe; and many of those points were false. In Cardinal Law's handwritten memo of July 16, 1993 to Bishop Hughes, Cardinal Law wrote that he had contacted the Bishop of Metuchen, reviewed the case, and had asked if the Bishop would consider allowing Father O'Sullivan to serve. See EO-0184-0185. Cardinal Law added that Bishop Banks had "held a more extensive interview w. the Bp. (sic)." See EO-0184-185. To the contrary, Bishop Hughes replied (in the margin of the same note) that Bishop Banks said that he had **never** talked to Bishop McCarrick and that Cardinal Law had done the conversing with McCarrick. See EO-0184-185. Further to Cardinal Law's memo, Cardinal Law wrote that his first knowledge of the allegations against Father O'Sullivan was in 1985. To this Bishop Hughes replied (in the margin of the same note), "**Certain? – There were previous reports.**" See EO-0185 (emphasis added).

At Bishop Banks' deposition taken on November 7, 2002, he testified that the pastor in Metuchen had been notified about Father O'Sullivan and to monitor Father O'Sullivan very closely so that there would not be any repetition of what had happened before. See Banks Depo., November 7, 2002, p. 66. Bishop Banks

testified that he had forgotten if he was the one in contact with the Diocesan officials in Metuchen, see Banks Depo., November 7, 2002, p. 67, and he had forgotten if any restrictions were placed on Father O'Sullivan's access to children when Father O'Sullivan was reassigned to Metuchen. See Banks Depo., November 7, 2002, p. 67. Bishop Banks also testified that after Father O'Sullivan's six month treatment at Southdown, it was determined that Father O'Sullivan was not pedophilic or ephebophilic, but that Father O'Sullivan was sexually immature. See Banks Depo., November 7, 2002, p. 67. Bishop Banks also testified that Father O'Sullivan could have been transferred to avoid scandal. See Banks Depo., dated November 8, 2002, p. 216.

At Cardinal Law's deposition taken on June 5, 2002, he testified that Father O'Sullivan was transferred to the Diocese of Metuchen in New Jersey because Father O'Sullivan had family in New Jersey. See Law Depo., June 5, 2002, p. 167. However, Father O'Sullivan testified at his deposition of January 16, 2003, that he did not have any family in New Jersey. See Deposition of Father O'Sullivan ("O'Sullivan Depo."), January 17, 2003, p. 58. Furthermore, Father O'Sullivan testified that Bishop Banks had suggested that Father O'Sullivan go to New Jersey because they had a need for priests. See O'Sullivan Depo., January 17, 2003, p. 57. Cardinal Law testified that he was the person who made the

ultimate decision on assignment of a priest and he made the decision that Father O'Sullivan could function without risk. See Law Depo., June 5, 2002, p. 188.

RCAB records indicate that as of March 16, 1991, Father O'Sullivan was having "serious difficulties in Metuchen...want[s] out." See EO-0018. Bishop McCormack's notes of August 1991, made reference to Father O'Sullivan's "short fuse" and psychological problems. See EO- 0168. Undated notes in Bishop McCormack's handwriting, referenced July 23, 1985 and Bishop McCarrick of Metuchen, New Jersey, who said, "no accusations in Metuchen...why yank him out..." See EO-0004.

Father O'Sullivan returned to Boston in 1992 and was unassigned. The complaints about Father O'Sullivan's prior abuse of children kept coming in to the RCAB:

- In approximately June of 1992, Father O'Sullivan was accused of having committed incest with his brother [REDACTED] son [REDACTED], from 1970 to 1979 beginning when [REDACTED] was nine years old. See EO-0001, 0169. As a defense, Father O'Sullivan, known as "Father Bud" to family members, argued that [REDACTED] was not a blood relative, but rather was the product of an adulterous relationship that [REDACTED], Father O'Sullivan's former sister-in-law, had engaged in during her marriage to his brother [REDACTED]. See EO-0001. Father O'Sullivan further defended

himself by adding that when [REDACTED] was a young teenager, he told Father O'Sullivan that he was gay. Father O'Sullivan reported that [REDACTED] led an active gay life and contracted AIDS in California. See EO-0001. [REDACTED] reported that his older brother, [REDACTED] who had died in 1989, had also been abused by their uncle, Father O'Sullivan, years before [REDACTED]'s abuse. [REDACTED] died in the early 1990's.

- In September of 1992, Sister Catherine Mulkerrin received a call from [REDACTED] who was looking for Father O'Sullivan and wanted to get something out of his system that "happened a long time ago." See EO-0173.
- Demand letters poured in from:
 - [REDACTED] in September 1993 See EO-0024-0025;
 - [REDACTED] in September 1993 See EO-0031-0033;
 - [REDACTED] in March 1994 See EO-0041; and from
 - [REDACTED] in March 1994 See EO-0274.
- In April of 1999, the Boston Police Sexual Assault Unit contacted the RCAB about a complaint by [REDACTED] that Father O'Sullivan had molested him. See EO-0052.

- In February 2002, [REDACTED], the nephew of Monsignor Robert Barry, called Sister Rita to make an allegation of abuse by Father O'Sullivan. See EO-0461.

In 1997, the RCAB placed Father O'Sullivan on senior Priest/Retirement Status See EO-0466. However, in 1999 the mother of a victim saw Father O'Sullivan wearing his priestly collar at Carney Hospital, Dorchester, Massachusetts. See The Boston Globe, article 2/9/02. Father O'Sullivan confirmed this fact at his deposition, and admitted that he used to visit a sick priest at Carney Hospital, wearing his priestly attire. See O'Sullivan Depo., January 17, 2003, p. 95. Father O'Sullivan testified that no restrictions had been placed on Father O'Sullivan wearing priestly attire. See O'Sullivan Depo., January 17, 2003, pp. 95-96. No restrictions had been placed on Father O'Sullivan's access to children. See O'Sullivan Depo., January 17, 2003, pp. 96-97.

20. ANTHONY REBEIRO

Father Anthony Rebeiro was ordained on December 22, 1956. See Rebeiro-001. He served in various assignments throughout the Archdiocese of Boston during the 1950's, 1960's and 1970's. See Rebeiro-001. In 1984, Father Rebeiro was assigned to St. Patrick's Parish in Natick. See Rebeiro-001.

On March 25, 1984, ██████████ wrote a lengthy letter to newly appointed Archbishop Bernard Law detailing the sexual assault of his wife by Father Rebeiro at St. Mary's parish in Franklin. See ██████████ letter to Cardinal Law dated March 25, 1984. When Mrs. ██████████ and Father Rebeiro were alone in the rectory office, Father Rebeiro blocked the only exit, exposed himself and masturbated in front of Mrs. ██████████. See ██████████ letter to Cardinal Law dated March 25, 1984. When she sought confidential advice from another Archdiocesan priest, Mrs. ██████████ was told that it would be in her best interest to tell no one of the incident, avoid Father Rebeiro and "try to forget about it." See ██████████ letter to Cardinal Law dated March 25, 1984. Mr. ██████████ explained the effect this was having on his wife. See ██████████ letter to Cardinal Law dated March 25, 1984. When Mr. ██████████'s father died, Father Rebeiro forced himself into this very personal and sad moment in the ██████████ life. See ██████████ letter to Cardinal Law dated March 25, 1984. Mrs. ██████████ learned that Father Rebeiro was going to stop by the house to offer his condolences and she panicked. See ██████████ letter to Cardinal Law dated March 25, 1984. When Father Rebeiro arrived, Mrs. ██████████ spent two hours fighting off Father Rebeiro's sexual advances. See ██████████ letter to Cardinal Law dated March 25, 1984.

Most importantly, in his letter to then-Archbishop Law, Mr. ██████████ expressed his disappointment in how the church had responded to the sexual

assault, specifically Rev. Henry P. Boivin, pastor of St. Mary's and Bishop Daniel Hart, Regional Bishop of Brockton. See [REDACTED] letter to Cardinal Law dated March 25, 1984. Mr. [REDACTED] reported that Father Rebeiro had been dismissed from his assignment as Chaplain at Wellesley College because of sexual misconduct and was transferred from St. Linus parish in Natick after incidents involving "sex and character assassination." See [REDACTED] letter to Cardinal Law dated March 25, 1984. Pastor Boivin abandoned his obligations as pastor. He refused to return telephone calls. He avoided meetings with the [REDACTED] and eventually reported that the whole matter had been turned over to the office of the Administrator, Bishop Daily. See [REDACTED] letter to Cardinal Law dated March 25, 1984.

In April 1984, Bishop Daily's notes show that there were calls to the Chancery to say:

the husband of the woman from FRANKLIN has written to ABP. Law re: Tony. Rebeiro having some problems at NATICK & WELLESLEY. _____ [handwriting illegible] says I'll check our files and get back to you. T.V.D. says he has nothing on that in his files. _____ [handwriting illegible] after checking files calls back to say we have nothing re: Rebeiro and problem.

See Rebeiro-132-133. Mr. [REDACTED]'s letter summarized the RCAB's typical response to matters of sexual assault and sexual abuse. See [REDACTED] letter to Cardinal Law dated March 25, 1984. Despite this horrific report, the RCAB left Father

Rebeiro in ministry until August 2002. Father Rebeiro went on to sexually assault several others. See Rebeiro-258-259; 260-261; 262-263; 293-294.

Cardinal Law responded to Mr. ██████'s letter in the following manner: "As you must know, my knowledge of the case is not complete. After some consultation, **I find that this matter is something that is personal to Father Rebeiro and must be considered as such.** . . . Please keep me in your prayers and know that you and your family are in mine." See Cardinal Law letter to ██████ ██████ dated April 3, 1984 (emphasis added).

When asked about ██████'s letter in his deposition, Cardinal Law admitted that the allegations in Mr. ██████'s letter were "terribly serious," See Law Depo., August 13, 2002 , p. 29, and they described "gross misconduct." See Law Depo., August 13, 2002, p. 33. Nevertheless, Cardinal Law could not specify what, if anything, was done to investigate the allegations made by Mr. ██████ regarding his wife or the other allegations of sexual misconduct against Father Rebeiro that Mr. ██████ wrote about in his letter. See Law Depo., August 13, 2002, p. 50.

In May 1985, Cardinal Law transferred Father Rebeiro from St. Patrick Parish in Natick to St. Charles Parish in Woburn. See Rebeiro-192. In March 1987, Father Rebeiro was transferred from St. Charles to St. Joseph's in Holbrook and in May 1989, Father Rebeiro was transferred from St. Joseph's to St. Anthony of Padua in Revere. See Rebeiro-215, 237. Throughout the 1980's and 1990's,

Father Rebeiro requested to be considered for various assignments as pastor. See Rebeiro-218, 239, 246. Each request was denied. See Rebeiro-224, 226, 228, 229, 234, 241-245, 248, 254, 255.

In January 1994, the [REDACTED] contacted the RCAB again. See Rebeiro-249-250. This time, [REDACTED] spoke to Father Peter Graziano, St. Mary's in Mansfield who in turn referred the matter to Sr. Catherine Mulkerrin. See Rebeiro-256-257. Sr. Catherine noted: "what may be important is to have a clearer picture of what, if any, assessment was made about Father Rebeiro." See Rebeiro-256-257. When asked about this at her deposition, Sr. Mulkerrin stated that she could not recall whether Father Rebeiro underwent an assessment. See Deposition of Sister Catherine Mulkerrin ("Mulkerrin Depo.") dated February 14, 2003, pp. 39-40.

In May 2002, a man reported that he was abused by Father Rebeiro at St. Linus parish when he was a minor. See Rebeiro-293-294. Almost 20 years after first being made aware of Father Rebeiro's grave sexual misconduct in 1984, the Archdiocese of Boston finally removed Father Rebeiro from ministry. See Rebeiro-295. The Archdiocesan spokesperson stated "the allegation made against Father Rebeiro was recently reported for the first time to the Archdiocese of Boston regarding an incident that occurred nearly thirty years ago." See Rebeiro-295.

After Father Rebeiro was removed, additional victims came forward and reported that they were abused by Father Rebeiro as well. One woman was abused by Father Rebeiro in 1977 when she was a patient at Leonard Morse Hospital, Natick Campus. See Rebeiro-258-259. Another woman reported that she was sexually abused as a minor by Father Rebeiro in 1974-1980 at St. Linus Parish in Natick. See Rebeiro-260-261. A third woman reported she was abused by Father Rebeiro when she was 14 years old and Father Rebeiro was assigned to St. Linus parish. See Rebeiro-262-263.

21. GEORGE J. ROSENKRANZ

George Rosenkranz was ordained on February 2, 1962 and was assigned as Assistant Pastor to the St. John's Parish in Canton, Massachusetts. See Rosencrantz-0295¹⁶. From February 23, 1965 until June 1970 he was an Assistant Pastor at the Star of the Sea Parish in Marblehead, Massachusetts. See Rosencrantz-0255-0256. In addition, Father Rosenkranz was responsible for all youth programs in the parish and oversaw the altar boys, and the Boy Scouts and CYO programs. See Rosencrantz-0306-0308. He was listed as Guidance Director

¹⁶The documents produced by the RCAB regarding Father George Rosenkranz were Bates stamped with a misspelling of Father Rosenkranz's name. However, for ease of reference, documents are cited exactly as they are stamped, "Rosencrantz".

and his resume says that he personally gave individual guidance to 100 students and the eighth grade during the academic year. See Rosencrantz-0306-0308.

It is alleged that between 1965 and 1969, Father Rosenkranz sexually molested and raped at least two children from the parish, Peter Pollard and [REDACTED]. See Affidavit of Peter Pollard ("Pollard Aff.") and Rosencrantz-0373. Evidence exists in the records which not only supports that these incidents occurred, but also that Church officials knew of Father Rosenkranz's activities as of 1970 and that those activities were the very reason why he was transferred from Star of the Sea to Our Lady of Grace in Chelsea, Massachusetts. See Rosencrantz-0373.

On March 13, 1995, Father Dennis J. Burns, Pastor of the Star of the Sea wrote a report concerning the allegations of abuse by Rosenkranz made by [REDACTED]. See Rosencrantz-0373. In it, he wrote: "When I came to Marblehead, I heard from staff here that there was a problem, somewhat of this kind, with George Rosenkranz. The Chancery records should have some kind of record of that." See Rosencrantz-0373.

Before that, Father George Protopapas, G.M.J. of the St. John the Baptist Parish in Lowell, wrote a letter to Bishop Robert J. Banks at the Chancery. See Rosencrantz-0501-0503. Father Protopapas had lived with Father Rosenkranz for over three years. See Rosencrantz-0501-0503. In that letter, Father Protopapas

wrote: "He had to leave in the past the parish of Our Lady, Star of the Sea in Marblehead, for the same serious reason that he is leaving St. Joseph. For the good of the church he should be deprived of exercising his priestly functions." See Rosencrantz-0501-0503. This shows that Father Rosenkranz was asked to leave Marblehead in 1970 due to his sexually inappropriate behavior.

Evidence that Church leaders knew as early as 1970 that Father Rosenkranz was molesting children is also supported by the allegations of victim Peter Pollard, who said: "On one occasion, Rosenkranz was sitting with me in the basement of the church at the Star of the Sea. I was about 15 or so. My pants and underwear were down to my thighs. The Senior Partner of the Church, Monsignor William McCarthy, walked in and saw us. I thought he would say something, but he just turned around and walked away. See Pollard Aff..

Even after 1970, Father Rosenkranz could not control his sexual behavior, which actually resulted in his arrest and public court hearings in 1981 and 1989. See Rosencrantz-0495, 0559, 0440, 0432-0435. Despite their knowledge of Father Rosenkranz's sexual deviance and dangers to children, supervisors at the Chancery took no actions to remove him from ministry in the 1970's or 1980's. As a result, several children were molested by Father Rosenkranz during the 1970's. See Affidavit of Edward Palermo ("Palermo Aff."); Pollard Aff.; Rosencrantz-0373. In addition to [REDACTED], See Rosencrantz-0373, [REDACTED]

██████████ was "raped, sexually assaulted and molested" at the Blessed Sacrament Church in Saugus, Massachusetts. See Rosencrantz-0165, 0174-0175. According to Mr. ██████████, he worked at the Blessed Sacrament Church as a teenager and his duties required him to answer telephones and write Mass cards between 6:00 and 8:30 p.m. See Rosencrantz-0174-0175. Father Rosenkranz asked ██████████ to accompany him and watch a TV program about stained glass windows in the churches of Europe. See Rosencrantz-0501-0503. ██████████ complied, but while watching TV, Father Rosenkranz began to massage the child's groin and advised him that it was perfectly normal. See Rosencrantz-0501-0503. He then began to masturbate the child and performed oral sex upon him. See Rosencrantz-0501-0503. Father Rosenkranz then required the child to masturbate him until he ejaculated. See Rosencrantz-0501-0503. Father Rosenkranz then required the child to perform oral sex on him. See Rosencrantz-0174-0175. There were other similar occurrences. See Rosencrantz-0174-0175.

On February 3, 1998, Mr. ██████████ executed a "release" to the Boston Archdiocese for the payment of monies resulting from the molestation of him by Father Rosenkranz. See Rosencrantz-0207-0210. That release states: "It further is expressly agreed by and among all of the parties to this Release, as well as their attorneys, agents, servants, employees and insurers, that they will maintain the confidentiality of the facts of this settlement. . . ." See Rosencrantz-0209.

In March of 1972 until June 1984, Father Rosenkranz was an Assistant Pastor at the Blessed Sacrament Parish in Saugus, where Edward Palermo a minor, was a member of the parish. See Rosencrantz-0295. It is alleged that on various occasions, Father Rosenkranz orally and anally raped the boy in the Church, the rectory and in a hotel in New Hampshire. See Palermo Aff.

On July 23, 1981, Father Rosenkranz was arrested for sexual activity in a bathroom at Sears in Peabody, Massachusetts. See Rosencrantz-0440. The incident appeared in the *Salem News* with Father Rosenkranz's name. See Rosencrantz-0400. Bishop Daily received a call from Tim Barry, a special police officer at the Sears Roebuck store in Peabody. See Rosencrantz-0400. Mr. Barry said that Father Rosenkranz was in the men's room at Sears and two others were in the stalls. See Rosencrantz-0400. Mr. Barry said he observed Father Rosenkranz on his knees giving oral sex to another man in the stall. See Rosencrantz-0400. Father Rosenkranz had no identification and refused to identify himself. See Rosencrantz-0400. He was handcuffed and brought to the Peabody Police Station and charged with "unnatural and lascivious acts." See Rosencrantz-0440. Father Rosenkranz called a lawyer, who turned out to be Judge Gannon of Saugus. See Rosencrantz-0440.

Bishop Daily met with Father Rosenkranz, who denied the charges and said he felt he was being treated unjustly. See Rosencrantz-0440. Interestingly,

Bishop Daily did not attempt to determine if Father Rosenkranz had any previous sexual issues at his parishes. See Rosencrantz-0440.

Somehow, Father Rosenkranz was placed in contact with Attorney Beldon Bly of Saugus, who told him "not to worry." See Rosencrantz-0440. Even more interesting, however, is a notation on red message paper from the Cardinal's residence which said: "Bly is friend of Clerk, who is friend of Judge. Clerk will make it get lost in paperwork, which is why G.R. could deny it." See Rosencrantz-0435.

Efforts of Bishop Daily to manipulate the criminal process relating to the charges against Father Rosenkranz were apparently successful. See Rosencrantz-0446. A February 11, 1982 letter from Bishop Daily to the Cardinal stated:

The Suit against Father George Rosenkranz has been dropped. The accusation has been removed from the record because of no finding -- no evidence, etc.

See Rosencrantz-0446. What appears devoid from the record is any concern over the fact that the incident had been witnessed and that Father Rosenkranz, a sitting priest, might endanger others in his parish. In addition, Father Rosenkranz was obviously enabled by the Chancery and continued his sexual activities.

On November 17, 1987 and December 12, 1987, Cardinal Law received two letters from Peter Pollard detailing his abuse by Father Rosenkranz and the

damage done to him. See Rosencrantz-0449-0453. At that time, Father Rosenkranz was active in ministry at the St. Joseph's Parish in Salem, despite the extensive information known by Church officials about his sexually deviant activities. See Rosencrantz-0295. The letter to Cardinal Law was detailed and graphic as to the sexual abuse of Mr. Pollard. See Rosencrantz-0451-0453.

The matter was assigned to Bishop McCormack for review. See Rosencrantz-0454. Bishop McCormack interviewed Father Rosenkranz on December 30, 1987. See Rosencrantz-0454. In a revealing Memorandum about the interview, he said "the alleged actions are ones which could be called sexual foreplay in comparison to actual overt genital activity. See Rosencrantz-0456. Father Rosenkranz was "upset" by the charges. See Rosencrantz-0456. The memo references the 1981 sexual act in the men's room of Sears, so this was not something of which Bishop McCormack was unaware. See Rosencrantz-0456-0458. Father Rosenkranz described Mr. Pollard's allegations as "half truths and half unrealities." See Rosencrantz-0456-0458.

Bishop McCormack met with Mr. Pollard and again with Father Rosenkranz. See Rosencrantz-0456-0458. He recommended that Father Rosenkranz be evaluated at The Institute for Living in Hartford, Connecticut. See Rosencrantz-0456-0458. Father Rosenkranz asked if the Diocese did not trust his words. Bishop McCormack responded that it "was not the matter, but the

[d]iocese had a responsibility legally as well as to the people it serves to make sure that all unanswered questions were addressed and that a disposition about future ministry was determined." See Rosencrantz-0456-0458.

On January 30, 1988, without making any inquiry to the personnel at Star of the Sea Parish in Marblehead about Father Rosenkranz, the Boston Archdiocese, through Bishop McCormack, gave Peter Pollard the Church's response to his complaint. See Rosencrantz-0463. He told Mr. Pollard that "up to now, we had found nothing which would require removal of him from ministry." See Rosencrantz-0463-0465. Mr. Pollard was visibly upset and wanted to know why the Church would believe Father Rosenkranz's denial as it would be natural for him to deny it. See Rosencrantz-0463-0465. Bishop McCormack's response was as follows: ". . . it was also my experience that if pressed they will open up and seek help. . . ." See Rosencrantz-0463-0465.

Bishop McCormack admitted getting angry at Mr. Pollard and yelling at Mr. Pollard. See Rosencrantz-0463-0465. Bishop McCormack said: "We have been thorough and the evidence does not support his demands. . . Father Rosenkranz has denied these [kissing; asking to expose himself] and given his own story. . . I need evidence in order to act differently from the way we are acting right now. . . ." See Rosencrantz-0463-0465.

In his memorandum on the subject, Bishop McCormack ended by noting that he should "Tell Father Rosenkranz we are sorry such a matter has been prolonged. See Rosencrantz-0463-0465. Know it has been difficult for him as well as Peter Pollard." See Rosencrantz-0463-0465. McCormack also recommended conferring with other priests who knew Father Rosenkranz to assure that they knew nothing about any sexual abuse - just to create a record to protect the Church. See Rosencrantz-0463-0465. One such priest was Father Paul Miceli who revealed that Father Rosenkranz admitted the Pollard incident. See Rosencrantz-0558. It was noted Father Rosenkranz had showed "regret, remorse and repentance over Pollard (short lived)." See Rosencrantz-0558. This admission is significant. Bishop McCormack never revisited the issue with Mr. Pollard despite this new revelation. Obviously, his interest remained with his brother priest, regardless of the evidence.

Ironically, other evidence that supported Peter Pollard's version of the events existed for the asking. See Rosencrantz-0501-0503 and 0373. Bishop McCormack simply never bothered to ask. It is even more ironic since Bishop Banks informed Father Rosenkranz that he did not believe his denials of the Pollard matter. See Rosencrantz-0499. When all of this was occurring, Father Rosenkranz continued as a sitting priest with children involved in his ministry at St. Joseph's Parish in Salem. See Rosencrantz-0295. On October 26, 1989, less

then a year after Bishop McCormack's review of the Pollard allegation against Father Rosenkranz, Father Rosenkranz was arrested for the second time and arraigned in the Lawrence District Court for indecent assault and battery. See Rosencrantz-0559. Father Rosenkranz had been involved in grabbing an undercover police officer in the groin at the rest stop on the highway after several reports had been received about overt homosexual activity there. See Rosencrantz-0489-0490. Father Rosenkranz admitted to the occurrence to the Chancery. See Rosencrantz-0489.

From December 1989 until December 1998, Father Rosenkranz was placed on sick leave. See Rosencrantz-0295. From 1998 until the present, he has been designated as unassigned-special and he has been living in Englewood Florida Id. He is still a priest and receives a stipend from the RCAB each month. See Rosencrantz-0295.

22. PAUL P. RYNNE

Paul P. Rynne was ordained in 1956. See Rynne, Paul 1-003. On January 28, 1985, Father Rynne's appointment as Administrator of St. Bonaventure Parish in Manomet, Massachusetts was terminated and he was appointed Pastor at the same parish. See Rynne, Paul 1-126. On April 10, 1986, Reverend John W. Corcoran met ██████████, then age 17, at his home. See Rynne, Paul 1-129. ██████████'s parents, ██████████, were present, as was Father Thomas

McDavitt. See Rynne, Paul 1-130-132. At the meeting, Mr. [REDACTED] presented a letter which graphically described Father Rynne's sexually inappropriate conduct toward his son:

We are sending this letter in deep duress and with a feeling of betrayal by a priest who has made a very serious mistake and a lasting impression on our son. This man is entrusted with an entire parish and for the welfare of all. This priest is **Father Paul Rynne**, Pastor of St. Bonaventure. He has become friendly with our son and asked him to join him for dinner on Thursday, April 3, 1986...[u]pon returning from the restaurant, he was asked if he would like to remove his shirt and pants and let his "cock" hang out. There were other overtures made as to exactly what sexually excited him. In shock, he just made his way to his car and came home...[c]riminal charges could be lodged that would be very damaging to the church and the entire community.

Please advise me of what action is to be taken by the diocese concerning this deplorable situation **so that it doesn't happen to some other youngster in our community.**

See Rynne, Paul 1-133 (emphasis supplied). Reverend Corcoran spoke to the victim directly on April 10, 1986, who confirmed the incident and added that Rynne "began getting touchy at the end of the night," and asked him if he had ever been "approached by a gay over the age of 18." See Rynne, Paul 1-130-132. "[Rynne] then tried to touch me just below the belt, asking do you want me to take a picture of you from here down?" See Rynne Paul 1-130-132. The victim added that Father Rynne persisted and said "so, you are not interested in anything sexual". See Rynne, Paul 1-130-132.

On April 14, 1986, Rev. Corcoran wrote a letter to Bishop Banks, then Chancellor of the RCAB, and enclosed his report regarding the sexual assault on [REDACTED]. See Rynne, Paul 1-129-135. He added "I was highly impressed by the sincerity and credibility of all the members of the [REDACTED] family under such difficult circumstances...[They] simply want to prevent any further occurrences of such happenings to their children or others." See Rynne, Paul 1-129.

Father Slyva was also questioned by Bishop Banks about Father Rynne four (4) days after Father Corcoran's encounter with the [REDACTED] family. See Rynne, Paul 1-137. He reported that two parents approached Slyva in Manomet and told him that "Rynne took a young man to South Africa." See Rynne, Paul 1-137. "Sister Jeremy mentioned to Father Slyva her concerns for a kid at the rectory." See Rynne, Paul 1-137. Also, Slyva "found an album of pictures of priests and kids half dressed." See Rynne, Paul 1-137. "Lawyer Timothy O'Neill [was contacted] and he says that there is really no criminal charge that could be lodged." See Rynne, Paul 1-137.

Father Rynne was confronted by Bishop Banks on April 25, 1986 and Banks noted "[Rynne] implicitly went along with me when I said that an indecent thing like this usually means that there have or will be other incidents." See Rynne, Paul 1-138. On May 16, 1986, Cardinal Law wrote to Father Rynne: "after thorough discussion with Bishop Banks, I am accepting your resignation

as Pastor of St. Bonaventure Parish, Manomet, effective July 10, 1986. I note that you are submitting your resignation for personal and medical reasons upon the advice of your physician." See Rynne, Paul 1-140. On June 3, 1986, Bishop Banks wrote to Reverend J. William Huber at the House of Affirmation and noted: "it seems that there are rumors that this incident is not isolated. My own guess is that the problem is deep rooted." See Rynne, Paul 1-144.

Father Rynne was sent for evaluations at the House of Affirmation and at Southdown. See Rynne, Paul 1-148; 1-153; 1-158. Following these evaluations, there were still lingering questions about whether Father Rynne still posed a threat to minors. See Rynne, Paul 1-166-1-68. An "evaluation of services" form completed by the RCAB indicated that it was "too soon to say" whether Father Rynne could responsibly engage in active ministry. See Rynne, Paul 1-166-1-68. Nonetheless, on July 13, 1987, Bernard Cardinal Law appointed Father Rynne to the position of Parochial Vicar at St. Margaret's Parish in Brockton, Massachusetts. See Rynne, Paul 1-169.

23. PAUL V. TIVNAN

Paul V. Tivnan was ordained a priest into the Archdiocese of Boston on February 1, 1963 at the age of twenty-seven. See Tivnan-2 015. From 1963 to 1968, Father Tivnan served as an Assistant in Saint Therese Parish in Everett, followed by an assignment at St. Paul Parish in Hamilton, from 1968 through

1970. See Tivnan-2 015. In September, 1970, he was assigned an assistant priest at Our Lady Comforter of the Afflicted in Waltham followed by a short assignment at Our Lady of Grace in Chelsea until June of 1972. See Tivnan-2 015.

Father Tivnan served at various parishes between 1968 and 1970. See Tivnan-2 015. In an RCAB Personnel Board Data Form dated 1968, Father Tivnan expressed his interest in participating in “youth work, high school chaplain and hospital chaplain.” See Tivnan-2 020-022. In the fall of 1970, Tivnan received a letter from Cardinal Cushing informing him that he was to be transferred from Saint Paul Parish in Hamilton to Our Lady Comforter in Waltham as an assistant priest and asked for “prayers during these difficult days.” See Tivnan-2 032.

Between the years of 1972 and 1985, Father Tivnan was assigned and transferred to four parishes, serving the communities of Chelsea, Sudbury, Needham and Marlboro until he was put on a “Sick Leave” in May of 1985 by Cardinal Law. See Tivnan-2 015, 2 063. A memorandum dated April 26, 1985, sent by Father Ryan to Bishop Banks and Bishop McCormack discussed a telephone call that Father Ryan had received from a Sudbury policeman regarding possible “‘concerns’ in regard to impropriety in morals, etc” by Father Tivnan. See Tivnan, P.-1 to 2. Father Ryan continued to state that after the telephone conversation with the policeman, he spoke with the victim referred to

as the “son of [REDACTED],” and discussed the allegations and possible action that could be taken. See Tivnan, P.-1-2.

A few weeks later on May 11, 1985, Bishop McCormack met with [REDACTED] [REDACTED], “the [REDACTED],” and his father as well as another young man, [REDACTED] [REDACTED] See Tivnan, P.-4. In handwritten notes taken by Bishop McCormack it states that while Father Tivnan was “stationed in Sudbury, Needham and Marlboro he used his office to gain sexual acts from these youth.” See Tivnan, P.-4. [REDACTED] explained to McCormack that he had been forced into various sex acts including being fondled, and had told Father Tivnan to stay away from him. See Tivnan, P.-4. [REDACTED] also described to McCormack that he had been involved in “sexual activity twice a week” with Father Tivnan and that he was scared to tell his parents about the abuse, but once his father had found out he immediately contacted the chancery as well as the Sudbury Police Department. See Tivnan, P.- 4. During this meeting the boys also shared with McCormack the fact that they had a list of twelve other boys that Father Tivnan saw regularly, including one who had committed suicide when Father Tivnan went to visit him. See Tivnan, P.- 4.

Within one week, Father Tivnan was flown by the RCAB to Washington, DC to seek an evaluation by Dr. Michael Peterson at St. Luke’s Institute, who determined that Father Tivnan suffered from Klinefelter’s Syndrome, which

could be treated by Depoprovera. See Tivnan-2 070, 2 065, 2 077, 2 081. In addition, while on his trip to Washington, DC, Father Tivnan attended a "Sexuality Awareness Workshop." See Tivnan-2 075-076. According to a memorandum sent by Father Ryan to Bishop McCormack, Father Tivnan had also been evaluated at the St. Luke Institute, the Clinical Radiologists facility in Silver Springs, as well as METPATH, Inc in Hackensack, New Jersey. See Tivnan-2 078.

After returning from his treatment, Father Tivnan spoke with Bishop McCormack and reviewed the evaluation completed by Dr. Peterson, determining that he desired to have a mastectomy due to his diagnosis in addition to the fact that he was very self conscious of the effects the unusual endocrine disorder had on his body. See Tivnan-2 081-082.

In September of 1985 a confidential memo was sent to Bishop Banks from Bishop McCormack inquiring about the RCAB's financial responsibility for [REDACTED], who has been in contact since the allegation was made. See Tivnan-2 098. The memorandum stated the following in regard to whether they should support [REDACTED]:

If we refuse it, then we are not pastorally helping him. If we accept it, are we acknowledging not only pastoral assistance, but opening ourselves up to some kind of legal intervention...My recommendation is that we offer him assistance since he has been involved in this matter for about 12 years.

See Tivnan-2 098. Bishop McCormack had a great deal of concern with putting Father Tivnan back within the ministry in February of 1986, and felt that there was a “question concerning legal and insurance liability.” See Tivnan-2 119. Also, in reviewing an evaluation completed by Dr. Cassem, Bishop McCormack stated the following:

My impression is that Paul will have a difficult time working in ministry. His resistance to insight and to appreciating the seriousness of his situation does not seem to offer much promise of personal development and change. The limited and isolated nature of the ministry in which he would be placed would be stressful for him...If Paul is placed in ministry, he will need to be ‘watched closely....’

See Tivnan-2 144-145. Bishop Alfred C. Hughes responds to Bishop McCormack and Bishop Banks by stating that “it should be made clear to him that the Archdiocese of Boston will not be able to continue him in pastoral ministry if there is one slip.” See Tivnan-2 151. In July of 1986, Father Tivnan returned to the Archdiocese of Boston with an assignment to reside at St. Michael’s Parish in Lowell and to assist at the Bon Secours Hospital in Methuen with extreme supervision by Reverend Gerry Wyrus, the Chairman of the Department of Pastoral Care. See Tivnan-2 171-172. Father Tivnan was also permitted to celebrate daily Mass in West Andover. See Tivnan-2 169. In July of 1986, an agreement was signed by Reverend Tivnan and Bishop McCormack stating the above. See Tivnan-2 171-172.

In August of 1986, Father Tivnan was removed from "Sick Leave" status and began his new assignment at Bon Secours Hospital until January of 1987. See Tivnan-2 179. At the time of the end of his assignment, William Lane, the President and CEO of Bon Secours Hospital requested for Bishop McCormack to revise the agreement to "allow Father Tivnan to function in the capacity requested." See Tivnan-2 208. Bishop McCormack agreed to allow Father Tivnan to be unrestricted in his work at the Hospital, with the exception of the Pediatric ward. See Tivnan-2 209.

In September of 1987, Father Tivnan was moved to St. Francis in Braintree to assist in nursing home care at Sacred Heart Parish in Weymouth. See Tivnan-2 015. He was allowed to celebrate Mass at the nursing home and "as needed in either of the above parishes (St. Francis or Sacred Heart)." See Tivnan-2 222. He was moved again in January of 1991 to Marion Manor in South Boston as an associate chaplain, where he lasted three short months due to the fact that there were complaints about him by his peers. See Tivnan-2 284, 2 320-321. After his removal from Marion Manor he was placed within the Carney and Deaconess Hospitals to assist in Chaplain work. See Tivnan-2 362.

In March of 1994 a complaint was made to Sr. Catherine Mulkerrin by, [REDACTED], a former altar boy at Saint Paul Parish in Hamilton, regarding an incident where Father Tivnan took John to visit his friends in Rockport and

fondled him while they slept in bed together. See Tivnan-2 370. John remembered thinking that “this is what old men do” while he pretended to be asleep during the abuse. See Tivnan-2 370.

In September of 1995, after requesting to be placed back in parish ministry, Father Tivnan was contacted by Father Flatley who expressed to him that his expectation to return is unrealistic and supports himself by forwarding him The Policy of the Archdiocese, “The assignment of one who has engaged in sexual misconduct with a minor will exclude parish ministry and other ministry that involves minors.” See Tivnan-2 401. Father Tivnan was thereafter placed at the Archdiocesan Priests’ Residence in Georgetown by Cardinal Law to live with other priests whose ministry was limited due to past allegations including Father Gale, Father Paquin and Father Mullin. See Tivnan-2 426, 430.

After much convincing by Father Murphy and Father McCarthy, Father Tivnan was placed on “Permanent Disability” status and moved from the Archdiocesan Residence to Beverly Common in 1998. See Tivnan-2 460, 2 463. A letter was sent to him from Cardinal Law stating the following:

Over the years many lives have been touched by your generous care and priestly concern. All of us in the Archdiocese are grateful to you for the work you have done while you were able. We shall always relay on your constant prayerful support.

See Tivnan-2 496. Even after Father Tivnan had been removed from the parish, he continued to have problems with young children. Tivnan 2-540. In May of

2001, Toni Terenzi, the Archdiocesan secretary, reported to Bishop Murphy that Father Tivnan had participated in a Mass at Saint Florence in Wakefield where five and six girls were in attendance. See Tivnan-2 540. Father Tivnan had apparently nudged one of the girls, who in turn reported the incident to Father Murphy. Father Higgins later contacted the girls father but a review of the RCAB documents produced shows that nothing materialized from the situation. See Tivnan-2 540; 547; 557.

24. ERNEST TOURIGNEY

Ernest Tourigney was ordained a priest of the Archdiocese of Boston in February 1961. His first assignment was Immaculate Conception in East Weymouth. See ET-0181. The RCAB was aware as early as May of 1974 that Father Tourigney was engaging in inappropriate sexual behavior with young boys. See ET-0004; 0098-99. Father Haley, pastor of St. Mary's in Holliston and the housekeeper spoke to Bishop Banks about a relationship between Father Tourigney and [REDACTED]. See ET-0004; 0098-99. After Father Tourigney and the boy denied the relationship, the matter was dropped, and he was returned to ministry. See ET-0004. Father Tourigney would go on to molest many other children.

In February 1974, a parishioner from St. Mary's in Holliston, Father Tourigney's second assignment, wrote to Cardinal Medeiros. See ET-0364.

Thomas D. Clifford asked that Cardinal Medeiros examine the conduct of Father Tourigney. See ET-0364. He wrote, “[w]hether Father Tourigney’s activities stem from love of God, or love of love, or whatever, I question the wisdom and possible damage.” See ET-0364. While the letter is vague, the RCAB was put on notice that Father Tourigney’s behavior concerned a parishioner enough to write to Cardinal Medeiros. There is no indication that any investigation was done by the RCAB.

In October 1988, once Mr. [REDACTED] was an adult, he spoke to the RCAB, specifically Bishop Banks, about the abuse he suffered at the hands of Father Tourigney. See ET-0004. Father Tourigney used his position as a priest to manipulate Mr. [REDACTED] into believing their relationship was normal and good. See ET-0004. Tourigney told Mr. [REDACTED] that they had a “special dimensional relationship” like in the Bible, “rooted in the Eucharist.” See ET-0004. When Mr. [REDACTED] brought this issue to the attention of Bishop Banks in 1988, Father Tourigney “basically agreed about his relationship with [REDACTED] and agreed that he lied in 1974. See ET-0098-99. Nevertheless, the RCAB returned Father Tourigney to ministry. Bishop Banks noted that “[Father Tourigney] has other problems [drinks, family, Messina]” See ET-0004.

In 1988, Bishop Banks wrote about the 1974 abuse of Mr. [REDACTED]:

this was brought to my attention in May 1974. I called in Tourigney-who denied it. Father Haley and housekeeper brought

it to my attention. I spoke to [REDACTED] and he also denied it. That was the end of that. Jim admits he lied to me. Tourigney spoke to Jim and told him what to say. Tourigney was also aggressive towards RJB.

See ET-0004; see also ET-0098-99. When Mr. [REDACTED] spoke to Bishop Banks in 1988, he told him about three other children who were sexually abused by Father Tourigney: [REDACTED] [REDACTED], Mr. [REDACTED] brother, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] from Matignon. See ET-0005, ET-0098-99.

Father Tourigney's responses rang hollow. He said that Mr. [REDACTED] was just a friend. It was "affectionate but not sexual." See ET-0005. Father Tourigney said that his relationship with [REDACTED] [REDACTED] was also a friendship. See ET-0005. He was in grammar school and around "all the time." See ET-0005. Father Tourigney's "feelings were overwhelming-just too much." See ET-0005. Father Tourigney's response to Mr. [REDACTED]'s allegation was simply that he "really doesn't know what happened that night." See ET-0005. Besides the fact that Father Tourigney was sexually abusing [REDACTED] [REDACTED] between the years 1984-1987 at Immaculate Conception in Revere, Father Tourigney stated that there was "nothing in Revere." See ET-0098-99; Complaint of John and Jane Doe v. Ernest Tourigney et al. ("John and Jane Doe Complaint").

After the allegations surfaced of the gentlemen above, Father Tourigney was sent to Southdown in Toronto for a psychological assessment. See ET-0098-99. In 1989, Southdown wrote: "sexual repression, coupled with a strong need

for affection and a growing, if naïve, comfortableness with sexuality may be contributing factors' to the sexual relationship. Prominent obsessive/compulsive traits. Ernest does not appear to be in danger of any sexual acting out or harming youth." See ET-0098-99.

Father Tourigny was also sent to Doctor O'Hanley for treatment. See ET-0098-99. Dr. O'Hanley's July 15, 1989 evaluation resulted in a finding that Father Tourigny has no proclivity for acting on impulse. See ET-0098-99. "[T]here is no evidence from [O'Hanley's] interview nor from the testing that would suggest that his ministry be limited in any way." See ET-0098-99. However, just a few short months earlier, in February of 1989, [REDACTED], [REDACTED], [REDACTED] and [REDACTED] [REDACTED] mother, called the RCAB to report that Father Tourigny called her and said that he had [REDACTED] in bed with him and either he or [REDACTED] "[h]ad a hard-on." See ET-0010; ET-0098-99. She told Bishop Banks that Father Tourigny threatened that if his friends in Milford knew what was going on, they would take care of [REDACTED] and his family. See ET-0010; ET-0098-99. He said, "what will [REDACTED] do when he finds out that I got a slap on the wrist." See ET-0010; ET-0098-99. Father Tourigny also mentioned a boy in Revere and told him that "our friendship must be based on the Eucharist." See ET-0010; ET-0098-99. When confronted with this information, Father Tourigny admitted making this call to Mrs. [REDACTED]. See ET-0098-99.

Nevertheless, the RCAB returned Father Tourigney to ministry in 1989 where he served at Our Lady of Immaculate Conception, Revere. In 1992, an intervention was held by the Priests' Recovery Program and Father Tourigney was referred to Saint Michael's Community in St. Louis. See ET-0098-99. The evaluation took place May 18-May 22, 1992 and inpatient treatment was recommended. See ET-0012. Father Tourigney remained at St. Michael's until the end of December 1992. See ET-0098-99. In 1993, Father Tourigney was placed on Sick Leave. See ET-0098-99.

By 1995, five individuals had complained that they had been abused by Father Tourigney. See ET-0096-97. Mr. [REDACTED] and his brother [REDACTED] were abused in 1974 at Immaculate Conception in Weymouth. See ET-0096-97. Mr. [REDACTED] and [REDACTED] [REDACTED] were abused in 1960's-1970's at Immaculate Conception in Weymouth. See ET-0096-97. Mr. [REDACTED] was abused in 1981 at Matignon High School. See ET-0096-97. [REDACTED] was abused in 1975 at St. Mary's in Holliston. See ET-0096-97. In 2002, Mr. [REDACTED] reported that he had been abused from 1984-1987 at Immaculate Conception in Revere. See John and Jane Doe Complaint.

If Father Tourigney had been removed from ministry in 1974, after Bishop Banks received the complaint from Pastor Haley and the housekeeper, Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] would never have been abused.

Instead, ██████████ was subjected to Tourigney's predatory sexual behavior for three years including numerous incidents where Tourigney fondled Mr. ██████████'s penis and masturbated on him. See John and Jane Doe Complaint.

In 1993, Father Tourigney was placed on administrative leave and lived at Our Lady's Hall in Milton, "house for alcoholics and incurable pedophiles." See ET-0729-0732. On May 14, 1993, Mr. ██████████ met with Cardinal Law. Before the meeting, Bishop McCormack drafted a memo to Cardinal Law stating that "Mr. ██████████ is looking for you and me and Bishop Banks to say: I am sorry. Sorry that Bishop Banks reinstated him in the parish after an evaluation in light of what he learned from Mr. ██████████. Sorry that Bishop Banks didn't reach out to Mr. ██████████ further after meeting with him. Mr. ██████████ wants to be assured that Father Tourigney will never be put into a position to do such things again." See ET-0455, 0460-461. It is unknown whether this apology was ever made.

After meeting with Mr. ██████████, Bishop McCormack wrote to Bishop Banks and requested that Banks meet with Mr. ██████████. See ET-0467. Bishop McCormack wrote: "If you choose not to meet with him, my sense I that he will take it as a sign of indifference to his concerns." See ET-0467. Again, it is unclear if Bishop Banks ever reached out to ██████████.

Numerous documents within the RCAB's file give suggestions for handling the cases of priests accused of sexual misconduct. For example, in

November 8, 1993, Bishop McCormack wrote to Father Tourigney saying that two victims ([REDACTED] i and [REDACTED]) “think we should reach out to find [other victims].” See ET-0045. Sister Catherine Mulkerrin wrote to Bishop McCormack saying, it would not be good for Father Tourigney to be out of the country working for Habitat for Humanity because Habitat has children volunteers. See ET-0056. Also, Ed O’Flaherty’s opinion was that Father Tourigney was a “danger to young men.” See ET-0622. Father Kevin Deeley asked: “do we have any responsibility to notify any prospective employer about allegations of sexual misconduct.” See ET-0505.

Even after his ministry ended, Father Tourigney repeatedly made requests to celebrate mass, perform weddings, baptisms, funerals etc. See ET-0778, 0783-0784; 00812-0814. Permission was initially granted by Cardinal Law and the RCAB but then permission was rescinded for some of the later requests. See ET-00812-0814. In 1998, the RCAB learned that despite all of the restrictions they eventually placed on Father Tourigney, he is still performing mass. See ET-0778, 0783-0784.

25. DOZIA WILSON

Father Dozia Wilson was ordained into the Diocese of Albany, New York in 1972. See WILSON, DOZIA J.-1.001. In 1975, he was appointed as chaplain to a boys school in Albany, then left the following year for Boston, where he was

appointed as administrator to a parish in Roxbury. See WILSON, DOZIA J.-1.001.

It is apparent that Father Wilson's departure from Albany was less than voluntary. Records disclose that the Bishop of Albany was given an ultimatum from the Albany Police to "get him out of Albany." See Wilson, Dozia J. - 1.049. A note signed by Bishop Daily in May of 1978 indicated that indicated that a boy who was a member of the parish in Albany was "living with J.W. at the rectory along with others." See Wilson, Dozia J. - 1.049. Bishop Daily's note stated that this information was reported to Cardinal Medeiros on May 23, 1978. See Wilson, Dozia J. - 1.049.

In a communication of December 1, 1978, a youth worker assigned to the Roxbury Parish where Father Wilson worked wrote a long letter to Cardinal Medeiros, notifying him of detail of inappropriate behavior with the children of the parish. See Wilson, Dozia J.-1.078-087. The allegations included many financial improprieties and also detailed Father Wilson's abusive behavior. See Wilson, Dozia J.-1.078-087. The letter reported that the "padre" has many foster sons and that two were residing at the rectory and that he would take to "gay spots" in Albany and Springfield where he would allow these "kids" to drink to excess. See Wilson, Dozia J.-1.078-087. Despite receiving state compensation for his "foster sons," the letter also alleged that Father Wilson would take advantage

of them financially. See Wilson, Dozia J.-1.078-087. There was also another reference to Father Wilson's "perceived behavior, contained in minutes of a NOBC meeting in September of 1978[,] see Wilson, Dozia J.-1.078-087, 1.099-102," and it makes reference to the presence of fair skinned boys in the rectory. See Wilson, Dozia J.-1.100 through 1.101.

Father Wilson was removed from the Roxbury parish by Cardinal Medeiros, effective March 6, 1979. See Wilson, Dozia J.-1.135. A further complaint arrived to Cardinal Medeiros about Father Wilson. See Wilson, Dozia J.-1.142. Various options regarding transfer were considered for Father Wilson. Father Wilson was sent to the House of Affirmation for evaluation. See Wilson, Dozia J.-1.162.

In response to a request for a recommendation from the Diocese of Tulsa, Bishop Daily stated that the Father Wilson and that change "would do him good[,] yet no mention was made of the information contained above. See Wilson, Dozia J.-1.150; 1.155. After the Tulsa bishop advised Cardinal Medeiros that he was not very impressed with Father Wilson, and wanted more information, Cardinal Medeiros responded, stating that "he add nothing to add" to Bishop Daily's previous letter. See Wilson, Dozia J.-1.175. Again, critical information was not provided to the Diocese of Tulsa. See Wilson, Dozia J.-1.175.

In 1997, a former member of the Roxbury parish where Father Wilson worked wrote to Cardinal Law to report that that he had been sexually abused while he stayed in the parish rectory for two years. See Wilson, Dozia J.-1.181-182. This victim specifically asked whether the Boston Archdiocese, or any of its priests, knew in the 1970's about Father Wilson's tendencies toward pedophilia? See Wilson, Dozia J.-1.181-182. He also asked whether any such information had come to the attention of the Archdiocese prior to the sending of the victim's letter. See Wilson, Dozia J.-1.181-182. A file memorandum was prepared by Father William Murphy which outline all of the information contained above. See Wilson, Dozia J.-1.193. Again, this comprehensive file review shows that records of abusive priests were not inadequate, and that reports of earlier abuse were easy to retrieve.

Three days after this comprehensive file review, Cardinal Law wrote a letter to the victim, promising to investigate the "matter thoroughly." See Wilson, Dozia J.-1.197. At the time he sent this letter, the information the victim had asked for had already been assembled, but its existence was not acknowledged in any way by the Cardinal. There are no records of any further response to the victim by the Archdiocese or Cardinal Law.

DISCUSSION

I. RELEVANT EVIDENTIARY STANDARDS

In Massachusetts, all relevant evidence is admissible unless subject to an exclusionary rule. See Lentz v. Metropolitan Property and Cas. Ins. Co., 437 Mass. 23, 26 (2002); Poirier v. Plymouth, 374 Mass. 206, 210 (1978). Evidence is relevant if it renders the desired inference more probable than it would be without evidence, see e.g., Santos v. Chrysler Corp., 430 Mass. 198, 211 (1999); Poirier, 374 Mass. at 210; Tilton v. Union Oil Co. of California, 56 Mass. App. Ct. 901, 902(2002), or if it “tends to establish or at least shed light” on an issue. See e.g., Kobico, Inc. v. Pipe, 44 Mass. App. Ct. 103, 109 (1997) (quoting Adoption of Carla, 416 Mass. 510, 513 (1993)); Foreign Car Center, Inc. v. Salem Suede, Inc., 40 Mass. App. Ct. 15, 16 (1996). Relevance is a broad concept, see Foreign Car Center, Inc., 40 Mass. App. Ct. at 16, and need not bear directly on ultimate fact in a case; but rather, is sufficient if it constitutes a link in a chain of proof. See Liarikos v. Mello, 418 Mass. 669, 672 (1994).

II. EVIDENCE OF THE RCAB’S PRACTICES AND POLICIES CONCERNING SEXUALLY ABUSIVE PRIESTS OTHER THAN FATHER SHANLEY IS ADMISSIBLE TO REBUT THE DEFENDANTS’ KEY DEFENSES

1. Section 85K.

Massachusetts General Laws Chapter 231, Section 85K provides, in relevant part:

It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or, association is or at the time the cause of action arose was a charity; **provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs.**

MASS. GEN. LAWS Ch. 231, § 85K (emphasis supplied). Certainly, based on the statutory language of Section 85K itself, there is no charitable immunity under Massachusetts law. See id.; Conners v. Northeast Hosp. Corp. 439 Mass. 469, 478-79 (2003) (first clause of first sentence of Section 85K abolishes charitable immunity). In turn, whether a party's activity accomplishes directly a charitable purposes, and therefore falls within the qualified limitation of liability contained in the second clause of the first sentence of Section 85K, "is a question of fact," according to the SJC. See Conners, 439 Mass. at 478-79; Keene v. Brigham and Women's Hosp., Inc., 439 Mass. 223, 239 (2003). As a result, for the RCAB to benefit from the safe harbor provided by Section 85K, the RCAB must prove that the activity proximately causing the Plaintiffs' harm was carried on to "accomplish directly" the RCAB's charitable purposes. See Keene, 439 Mass. at 239 (explaining that Section 85K must be plead as an affirmative defense and stating that "the burden [is] on the defendant to prove both that it is a charitable

organization and that the tort complained of fell within the range of activities covered by the cap.”).

For example, in McKay v. Morgan Memorial Coop. Indus. & Stores, Inc., the SJC reversed a directed verdict for the defendant (a charitable corporation) because the evidence did not warrant a ruling as a matter of law that the defendant’s activities were carried on “to accomplish directly the charitable purposes of the corporation[.]” See 272 Mass. 121, 123-24 (1930); see also, Conners, 439 Mass. at 479 & n.7 (citing McKay as support for same). After juxtaposing activities “primarily commercial” in nature, where there was liability for negligence, with those activities carried on accomplish directly a charitable purpose with incidental revenue yielding benefits, where there was no liability for negligence, the SJC explained:

On the evidence, however, the jury would have been warranted in finding that the activities of the defendant at the store in which the accident occurred were commercial in character, being carried on primarily to obtain money to be used for the general charitable purposes of the defendant and not to accomplish directly any specific charitable purpose to which the receipt of money was merely incidental, and, consequently, that the defendant was subject to the ordinary rules of liability.

See id. at 126 (internal quotations omitted). The protections afforded by Section 85K must be confined narrowly. See Conners, 439 Mass. at 473. The Legislature enacted Section 85K to balance the desirability to protect charitable corporations with the interest of persons harmed by the tortious acts of those charitable

corporations. See id. at 473 (citing and quoting 1971 House Doc. No. 5976 (Governor Francis W. Sargent’s address to Legislature proposing Section 85K), which further quoted recommendations of the Forty-Sixth Annual Report of the Judicial Council, 1970 House Doc. No. 723). Section 85K “embodies the ‘balance’ sought by the Governor.” See id.

In that regard, the underlying purpose of the abrogated doctrine of charitable immunity and, in turn, the charitable limitation of liability contained in Section 85K, **was and is to protect a charity’s assets because, in essence, a charity holds those assets in trust for the benefit of the public.** See Connors, 439 Mass. at 473 (explaining that by enacting Section 85K, the Legislature pursued its objective of preserving charitable assets); Keene, 439 Mass. at 238 (describing Legislative purpose and explaining SJC “bound to give § 85K the scope intended by the Legislature.”).¹⁷ Consequently, the history, purpose, and judicial interpretations of Section 85K yield the following syllogism that the Court may use to determine the applicability of the charitable limitation of liability contained in Section 85K:

1. An activity that benefits the public is an activity carried on to “accomplish directly” a charitable purpose;

¹⁷ In Keene, the SJC reversed a Court-imposed (Connelly, J.) sanction striking Section 85K as an affirmative defense as a result of defendant’s failure to produce discovery. See 439 Mass. at 224 and 239 (there was “no basis for striking the charitable cap as a sanction . . .,” especially where “both parties agree that the alleged malpractice occurred when the defendant was performing its charitable activities.”).

2. An activity carried on to “accomplish directly” a charitable purposes deserves protection under Section 85K;
3. Therefore, an activity that benefits the public deserves protection under Section 85K.

See Connors, 439 Mass. at 473 (describing purpose of Section 85K); Keene, 439 Mass. at 239¹⁸ (“a charitable corporation must be engaged in its charitable purpose to enjoy the benefit of the cap, just as, at common law, the protection of charitable immunity only extended to negligence committed in the course of activities carried on to accomplish charitable activities); see also, Bob Jones Univ. v. U.S., 461 U.S. 574, 591 (1983) (historically, a charitable activity is one which provides public benefit and is neither illegal or violative of established public policy); Grueninger v. President and Fellows of Harvard College, 343 Mass. 338, 339-40 (1961) (charitable immunity is not available where the activities are not charitable or are not within the charitable purposes of the corporation); Heinrich v. Sweet, 118 F. Supp. 2d 73, 91-92 (2000) (finding that a doctor’s acts of conducting human experiments on the terminally ill were not charitable, regardless of the good faith of the doctor and hospital), jury verdict vacated on other grounds, 308 F.3d 48 (2002).

¹⁸ In Keene, the SJC reversed a Court-imposed (Connelly, J.) sanction striking Section 85K as an affirmative defense as a result of defendant’s failure to produce discovery. See 439 Mass. at 224 and 239 (there was “no basis for striking the charitable cap as a sanction . . .,” especially where “both parties agree that the alleged malpractice occurred when the defendant was performing its charitable activities.”).

It is under those benchmarks that the RCAB's affirmative defense will fail. Plainly, as outlined in detail above, the RCAB had a practice or policy to protect alleged child molesters and keep them in ministry where they would have continued, unsupervised access to children. See supra. That activity, which proximately caused the Plaintiffs' injuries, not only was and is contrary to asserted RCAB purposes, but also was and is antithetical to any known public benefit. See Gagne v. O'Donoghue, 1996 WL 1185145, * 7 (Mass. Sup. Ct., June 26, 1996). It would be extraordinarily inappropriate for the Defendants to receive the protections of Section 85K, particularly in light of evidence establishing that the Plaintiffs were never informed of the RCAB's unlawful policies and practices of allowing child molesters to have access to children. No matter in what capacity the Defendants claim they were acting, it seems incongruous to find that their actions were carried on directly to benefit the public, i.e., to "accomplish directly" the RCAB's charitable purposes, whatever those purposes may be. If the RCAB is allowed to allege Section 85K as an affirmative defense, the Plaintiffs are entitled to present evidence to rebut that affirmative defense in its totality.

2. Statute of Limitations and Proximate Causation

In Massachusetts, a tort action must be brought within three years after the cause of action accrues. See MASS. GEN. LAWS Ch. 260, § 2A. A cause of action "accrues" when a plaintiff has (1) knowledge or sufficient notice that he or

she suffered appreciable harm and (2) knowledge or sufficient notice of the cause of that harm. See Ross v. Garabedian, 433 Mass. 360, 365 (2001); Bowen v. Eli Lilly & Co., 408 Mass. 204, 208 (1990); Hendrickson v. Sears, 365 Mass. 83, 83-84 (1974) (adopting a common law “discovery rule” for tort actions); see also, MASS. GEN. LAWS Ch. 260, § 4C (incorporating the common-law discovery rule into the statute of limitations applied to actions for sexual assault and battery of a minor). In turn, a plaintiff invoking the discovery rule and claiming that the delay in filing suit stems from a failure to recognize an injury and/or its cause, “bears the burden of proving both an actual lack of knowledge and **the objective reasonableness** of that lack of knowledge.” See Doe v. Creighton, 439 Mass. 281, 283 (2003) (emphasis added). In other words, the statute of limitations begins to run from “the point at which a reasonably prudent person in the plaintiff’s position, ‘reacting to any suspicious circumstances of which he might have been aware,’ would have discovered that another party might be liable for [his] injury.” See Bernier v. Upjohn Company, 144 F.3d 178, 180 (1st Cir. 1998) (quoting Malapanis v. Shirazi, 21 Mass. App. Ct. 378, 487 (1986)).

In the context of an action brought by a sexual abuse victim against a supervisor of the alleged abuser, however, the date the claim “accrues” against the supervisor may well be different from the date the claim “accrues” against the alleged abuser for statute of limitations purposes. See e.g., Armstrong v.

Lamy, 938 F. Supp 1018, 1032-33 (D. Mass. 1996); Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, 833 F. Supp. 1366 (N.D.Ill. 1993); Doe v. Paukstat, 863 F. Supp. 884 (E.D.Wis. 1994); Sowers v. Bradford Area School Dist., 694 F. Supp. 125 (W.D.Pa. 1988), aff'd, 869 F.2d 591 (3rd Cir. 1989), judgment vacated on other grounds, sub nom Smith v. Sowers, 490 U.S. 1002 (1989). Indeed, in Armstrong, the federal District Court expressly recognized that the act of fostering an environment of deliberate indifference, which allowed a teacher to sexually abuse the plaintiff, presented a valid claim for supervisor liability under 42 U.S.C. § 1983. See 938 F. Supp. 1032-35.¹⁹ In addition, the District Court recognized that, with regard to supervisor liability claim, the accrual date for statute of limitations purposes against the supervisor was separate and apart from the accrual date against the alleged perpetrator, even if the plaintiff knew he had been harmed by the perpetrator earlier than discovering the supervisor's wrongful conduct.²⁰ See id.

¹⁹ The Armstrong court ultimately concluded that the plaintiffs had not proffered sufficient evidence that made the supervisors liable for the perpetrator's sexual abuse. See 938 Mass. at 1034-35. In particular, the Armstrong court commented that the plaintiffs had not shown that the supervisors received notice that the perpetrator was sexually abusing any students. See id.

²⁰ The two separate accrual dates make logical sense. Assume, for example, the following: (1) a teacher sexually abuses a student; (2) the next week, the student starts drinking heavily because he or she is traumatized by the abuse; and (3) the student immediately realizes that he or she is drinking because he or she has been harmed by the abuse, i.e., has made a causal connection between the abuse and the harm. Arguably, under Ross and Creighton, supra, the student's cause of action would accrue "the next week" and would expire three years thereafter unless the student brings an action against the teacher. Assume also, however, that the teacher had sexually abused four other students over the past three years and the school's principal knew about the abuse but was indifferent not only to the victims, but also to protecting others. Assume further

Much like the argument presented to the Armstrong court (and in the cases cited therein), the Plaintiffs allege that they were harmed by the Defendants' failure to adequately supervise Father Shanley or otherwise protect the Plaintiffs from Father Shanley. See generally, Third Amended Compl. In addition, as alleged in the Plaintiffs' complaint and as described in greater detail herein, the Plaintiffs claim that the Defendants created an environment of indifference and acquiescence that permitted Father Shanley to sexual molest Greg over a period of approximately six years. See id.; supra. Furthermore, the Defendants allege that the Plaintiffs failed to bring their action "within the times specified by the General Laws of the Commonwealth[,]" see e.g., Answer of the Defendant, Bernard Cardinal Law to Plaintiffs' Complaint, i.e., that the statute of limitations bars the Plaintiffs from any recovery. Because the Defendants concealed Father Shanley's and many other priests' sexual molestation of other parishioner's children, as well as their own wrongful conduct, before and after Father Shanley abused Gregory, it was not reasonable for the Plaintiffs to realize that the Defendants proximately caused their harm until recently. As a result,

that the principal (1) concealed his wrongful conduct of failing to properly supervise the teacher or prevent him or her from having access to other students, and (2) concealed a school practice and policy that fostered the sexual abuse by the teacher, as well as other teachers, which allowed abuse to occur at the school. According to Armstrong and the cases cited therein, the cause of action against the principal would not accrue until the student became aware of the principal's wrongful conduct and the school's practices and policies, which could be many years after "the next week."

evidence of the RCAB's practices and policies will weigh heavily on the jury's assessment of reasonableness for statute of limitation purposes and, as a result, is highly probative in this action.

3. Other Key Defenses

The Defendants' normal business practices in dealing with complaints against priests also is admissible to test other key defenses raised by the Defendants. Specifically, negligence is the failure of a person to exercise the degree of care that a reasonable person would exercise under the circumstances. See Morgan v. Lalumiere, 22 Mass. App. Ct. 262, 267, rev. denied, 398 Mass. 1103 (1986). The attendant circumstances are an essential element of negligence in Massachusetts courts. See id. (instruction on negligence must refer to reasonable person standard and to attendant circumstances). On April 12, 2002, Cardinal Law issued a press release seeking to explain the conduct in "the case of Father Shanley." See Addendum, Press Release, dated April 12, 2002. In particular, Cardinal Law stated as follows:

The case of Father Paul Shanley is particularly troubling for us. For me personally, it has brought home with painful clarity **how inadequate our record keeping has been. A continual institutional memory concerning allegations and cases of abuse of children was lacking.**

See id. (emphasis added). In addition, on May 20, 2002, Cardinal Law issued another press release about the Father Shanley case and stated "I assure you that

my first knowledge of an allegation of sexual abuse against this priest was in 1993. **It was immediately acted upon . . . I wish I had known in 1984, and I wish I had been aware of the 1966 report. It is only possible to act based on what is known, however.**" See Addendum, Press Release, dated May 20, 2002 (emphasis added). Furthermore, during his deposition, Cardinal Law described the general policy at the RCAB between 1984 and 1989 (years during which Gregory was sexually molested by Father Shanley) as follows:

[W]hen such a complaint is made is to see the person, then see the priest. Once the determination is made that intervention is required, I told him how the priest's activity is restricted and how he's assisted along with any victims who we learn have been affected by him. That was in general our policy. And as you know from this case, Father Geoghan's case and other cases, we did put people back in ministry in those days. But it wasn't – it wasn't putting people back in ministry with the thought that, well, we're just going to move this person from A to B or this person is a risk but we're going to take a chance by putting him in a different environment. It was under – it was because we felt that we had reason to believe that this person, having had this brought to their attention, having gone through some treatment, was not a risk.

See Law Depo., October 11, 2002, p. 159.

Based on those statements, it is clear that Cardinal Law (and perhaps the other Defendants) will claim that he was not negligent when supervising Father Shanley because, under the circumstances, Cardinal Law would have acted differently if he had known all of the information. Proving that (1) sexual abuse was rampant within the RCAB, (2) the RCAB's record keeping system and

institutional memory were not faulty, and (3) the Defendants, as a matter of practice, return accused or admitted child molesters to ministry, see e.g., supra. directly undermines Cardinal Law's explanations for his conduct concerning Father Shanley. The way the Defendants handled other priests both prior to and subsequent to the time that Greg was molested contradicts the broad statements made by Cardinal Law that the RCAB lacked an institutional memory of "allegations and cases of sexual abuse against children" and that Cardinal Law would have acted on certain claims if he had known about them. Indeed, although the Defendants seemingly were well aware of the history and admissions of inappropriate conduct of various priests, they allowed them to continue in ministry having continued access to unsuspecting children. As the Court already has recognized:

The actual discovery materials before the court include statements from Cardinal Law that between 1984 and 1989 some offending priests were returned to active ministry when, after treatment, archdiocesan personnel and the Cardinal determined they did not present risks of harm to children. **Despite this assertion,** other archdiocesan records obtained through discovery reveal that some offending priests may well have been assigned to parishes, youth groups and the like, even though the Cardinal or other archdiocesan personnel knew that the priests in question were at the least suspected of engaging in continuing sexual encounters with children. With respect to Father Lane, he was permitted in the late 1990s to publicly celebrate Sunday Masses at a parish in Natick. By this time, archdiocesan personnel were well aware from the institutions in question that Father Lane had a history of molesting adolescent boys at the Alpha Omega House during the 1970s and that an allegation of child sexual molestation was made against him

in 1997. The RCAB records, produced by court order for purposes of this motion, raise significant questions of whether the archdiocese was really exercising the care they claimed to use in assigning offending priests.

See Addendum, Court Order, dated November 25, 2002 (emphasis added).

Accordingly, evidence of the RCAB's practices and policies in dealing with other alleged child molesters is highly relevant to the Plaintiffs' ability to rebut other key defenses raised by the Defendants.

III. EVIDENCE OF THE RCAB'S PRACTICES AND POLICIES CONCERNING SEXUALLY ABUSIVE PRIESTS OTHER THAN FATHER SHANLEY IS ADMISSIBLE BASED ON THE PASSAGE OF TIME AND THE DEFENDANTS' FAILED MEMORIES

A routine act occurring in the context of a business custom practice is admissible to prove a particular act was performed.²¹ See Commonwealth v. Carroll, 360 Mass. 580, 587 (1971); O'Conner v. Smithkline Bioscience Laboratories, Inc., 36 Mass. App. Ct. 360, 365 (1994); Elias v. Surran, 35 Mass. App. Ct. 7, 12-13 (1993); see generally, Hon. Paul J. Liacos, Mark S. Brodin & Michael Avery, Handbook of Massachusetts Evidence, § 4.4.8, pp. 172-73 (7th ed. 1999) (and cases cited therein).²² In particular, according to the SJC, so-called

²¹ Business custom or practice should be contrasted with personal habit, which is inadmissible to prove a person performed an act in accordance with that habit. See generally, Palinkas v. Bennett, 416 Mass. 273 (1993); Figueiredo v. Hamill, 385 Mass. 1003 (1982).

²² The fact that the act is performed by an individual does not render it inadmissible as evidence of a business habit. See Palinkas, 416 Mass. at 276 (and cases cited therein); cf. PROP. MASS. R. EVID. 406 (1980), which provides:

(a) Admissibility. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of

“business habit”²³ evidence is admissible when an person is not able to recall his or her actions or inactions based on lack of memory. See Palinkas v. Bennett, 416 Mass. 273, 275-78 (1993).

For example, in Palinkas, the Court (McHugh, J.) admitted the defendant’s testimony regarding “instructions he would routinely furnish to parents when discharging a prematurely born infant on the issue of what instructions, if any,” the defendant have given to the plaintiff when discharging her prematurely born infant, who suffered brain damage allegedly based on the defendant’s negligent instructions. See 416 Mass. at 273-74. Justice McHugh admitted the evidence after the defendant testified he had no memory of discharging the infant and because there was a dispute as to whether the defendant had even discharged the infant and what instruction he had given the plaintiff upon discharge. See id. at 274-75.²⁴ The evidence was highly probative because the defendant, the plaintiff’s experts, and the defendants’ experts²⁵ conceded that the defendant

eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice, but such evidence is not admissible for the purpose of proving that a person or organization did or did not conform on a particular occasion to the prescribed standard of care.

²³ A “habit” is a regular response to a repeated situation with a specific type of conduct. See Palinkas, 416 Mass. at 277.

²⁴ Justice McHugh also had denied the plaintiff’s motion in limine to exclude evidence of the defendant’s normal routine when discharging both healthy and prematurely born infants. See 416 Mass. at 275.

²⁵ The plaintiff had sued two doctors; however, the disputed issue on appeal dealt only with business habit evidence concerning one doctor. See generally, Palinkas, 416 Mass. 273-75.

would have been negligent if he had not furnished the plaintiff with certain instructions when discharging the infant. See id. at 275. As a result, the SJC rejected the plaintiff's claim on appeal that the defendant's business habit in treating other patients was inadmissible and that Justice McHugh erred in admitting the evidence once he determined it was a business habit. See id. at 275-78. The SJC recognized that, considering the events at issue had taken place almost eleven years after the incident, the business habit evidence was in practicality the only way the defendant could refute the plaintiff's testimony. See id. at 278.

In the action before this Court, the Plaintiffs must show what the Defendants did or did not do with regard to Father Shanley. The Defendants' actions or inactions, however, took place over the past forty or so years. In addition, in many cases, the Defendants' memories about what they did or did not do in response to allegations against Father Shanley are not entirely clear and in some cases are inconsistent.

For example, at his deposition, Bishop Daily stated that he could not remember whether or not:

1. he had a significant file on Father Shanley concerning deviant activity;
2. he spoke with Cardinal Medeiros about the Sweeney Report he received in 1977, which alleged that Father Shanley endorsed publicly the propriety of sex between adults and children;

3. he spoke with reporters to verify what was reported in the Stevens Letter;
4. he spoke with Father Shanley about what was said in the Stevens Letter was true or false; and
5. he undertook any inquiry to determine what Sheila Burke's problem was with Father Shanley in 1982.

See Deposition of Bishop Thomas V. Daily ("Daily Depo.") dated August 21, 2002, pp. 121-22, 189-90; Daily Depo., August 22, 2002, pp. 232-34 and 297-298. In addition, at his deposition, Bishop McCormack stated that:

1. He has no specific recollection of receiving and reading the RCAB's confidential file on Father Shanley;
2. He does not recall seeing any documents that were contained in the RCAB's confidential file on Father Shanley, including the letters from Ms. Higgs, Mr. McGeady, and Ms. Sweeney;
3. He does not recall speaking with Dr. Cassem about Father Shanley;
4. He did not receive any assessment or any reports regarding Father Shanley's emotional, psychological, or physical health from the Institute for Living; and
5. He does not recall being involved with moving Father Shanley out to California, although a letter from the file indicates that he would be responsible for working out the details for Father Shanley's move.

See McCormack Depo, August 15, 2002, pp. 101-02; September 27, 2002 pp. 213-15; and October 1, 2002, pp. 100-02 and 133-36. Moreover, as described above, Cardinal Law waffled about whether or not he received the 1985 letter from Ms. Higgs, which accused Father Shanley of endorsing publicly the propriety of sex between adults and children. Compare Law Admissions, Response No. 1

(Cardinal Law “does not believe he read the ‘Higgs Letter’ in 1985. . . .”) with Law Depo., June 5, 2002, pp. 222-25 (where Cardinal Law admitted that it was more probable than not that he did receive the letter from Ms. Higgs and amended his sworn answer to the Plaintiffs’ request for admissions to: “**the defendant believes that he did read the Higgs letter in 1985.**”); Law Depo., June 7, 2002, pp. 64-66 (where Cardinal Law, after admitting that he had discussed the subject with his counsel, again changed his sworn answer and stated that “The Defendant does not believe he read the ‘Higgs Letter’ in 1985.”). In addition, at his deposition, Cardinal Law stated that he has no recollection of Bishop Daily telling him that the RCAB had received correspondence suggesting that Father Shanley had attended the founding conference of NAMBLA. See Law Depo., June 7, 2002, p. 115; Law Depo., October 11, 2002, pp. 77-80.

What the Defendants did or did not do in the circumstances above, as well in many other instances, speaks directly to whether they breached their respective duties owed to the Plaintiffs. See generally, Morgan, supra. (negligence is the failure of a person to exercise the degree of care that a reasonable person would exercise under the circumstances). As a practical matter, and considering the passage of time and the Defendants’ failed or seemingly inconsistent memories, the Plaintiffs seek to introduce evidence about how the RCAB and its employees, including the Defendants, responded or failed

to respond to complaints against other accused child molesting priests as business habit and as circumstantial evidence of their responses to complaints made against Father Shanley. That evidence is clearly relevant to the Plaintiffs' negligence claims, as recognized already by the Court:

The plaintiffs have presented the court with a firm foundation of documentary support that the practices and procedures of the RCAB with respect to the manner in which they responded to allegations of child sexual molestation made against members of the clergy assigned to the Boston archdiocese *are clearly relevant* to the plaintiffs' claim of negligence. The RCAB's practice of sending accused clergy to St. Luke's and the Institute of Living and then following or choosing not to follow their recommendations *are directly at issue in the case at bar*.

See Addendum, Court Order, November 25, 2002. Moreover, evidence that the Defendants had knowledge and notice of complaints against other priests speaks directly to whether or not the Defendants should have left Father Shanley in a position where he would have continued, unsupervised access to children, considering the Defendants' potential knowledge of prevalence and recidivism of other accused child molesters within the RCAB over the past forty years.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiffs' motion in limine in its entirety.

Respectfully submitted,

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