

1 that is, that this court feels that the plaintiff does
2 not have to merely -- does not have to show only actual
3 knowledge, but may show what the defendants should have
4 known.

5 Negligence is based in part on foreseeability.
6 Any claim of negligent supervision or negligence in an
7 automobile accident gets to the basic issue of
8 foreseeability, was it foreseeable, and this does not
9 require any interpretation of religious doctrine.

10 One of the cases that was cited, I think by both
11 parties, is Doe v. Dorsey. This is the Florida case,
12 District Court of Appeal of Florida, Fifth District,
13 November 22, 1996, John Doe versus Norbert Dorsey as
14 Bishop of the Diocese of Orlando, et cetera. And I'm
15 not sure what page it is. It seems to be page 125.
16 It's the third bracketed paragraph.

17 And it says, "In any event, we are persuaded that
18 just as the state may prevent a church from offering
19 human sacrifices, it may protect its children against
20 injuries caused by pedophiles by offering civil damages
21 against a church that knowingly" -- and here are the
22 operative words -- "parentheses, including should know,
23 close parentheses, creates a situation in which such
24 injuries are likely to occur. We recognize that the
25 state's interest must be compelling, indeed, in order
26 to interfere in the church's selection, training and
27 assignment of its clerics. We would draw the line at

1 criminal conduct."

2 And as I've indicated, sexual abuse of a minor is
3 a crime. He is not being prosecuted for that now, I
4 recognize that, but it is unacceptable to the church
5 and to this state and to society. The church certainly
6 doesn't condone sexual abuse. If the courts were to
7 preclude questions on the foreseeability of sexual
8 abuse, it would be using the first amendment to
9 prohibit enforcing neutral laws of general
10 applicability.

11 It is clear to this court that the first amendment
12 does not preclude inquiry into acts that are explicitly
13 prohibited by the state. I've already given the
14 example of offering up the sacrifices, and that
15 probably should suffice.

16 Certainly the state's power and obligation to
17 protect its citizens from the commission of crimes has
18 to take precedence over prohibiting inquiry into
19 religious practices or policies.

20 The inquiry in the case at bar that plaintiff
21 seeks, in any event, is not an excessive entanglement
22 in religion. So for those reasons, the motion in
23 limine is denied.

24 However, we are now going to get to the issue of
25 ratification, and I'm going to carve out some
26 exceptions to this.

27 Ratification, for the same reasons, does not

1 church would use that particular example does not mean
2 that he can get into all examples or all methods of the
3 church in dealing with any situation. I really have to
4 hear that question at the time.

5 So, there will be some restrictions, but as to the
6 basic ruling on the first amendment, I have ruled that
7 you can go into certain questions, even though it may
8 implicate the first amendment, for all the reasons I've
9 stated.

10 My opinion at this point, unless someone changes
11 it later, is that what the church knew or should have
12 known is the tort law involved. And I know that there
13 are cases cited by defendants that say, well, you know,
14 as long as they had antecedent knowledge. Judge
15 Covello said that. He said antecedent knowledge, and
16 then he said or constructive knowledge. That would
17 appear to be the should have known. But then on Doe
18 versus Dorsey, it's very clear that the court in
19 Florida said, "Including should know."

20 And I am basing it primarily on negligence law as
21 it is, tort law, that to be found liable for
22 negligence, there has to be a foreseeability factor.

23 So those two areas, the ratification I've
24 discussed, and I'm denying the motion in limine on the
25 ratification with the exception of those comments I
26 have made on these 11 subject areas of Reverend Doyle
27 and the three of Mr. Sipe, which would apply to anybody

1 else.

2 Now, we still have the issue --

3 MR. SWEENEY: There were three motions to quash,
4 your Honor.

5 THE COURT: Yeah. I know that. And I don't know
6 whether you want to start now --

7 MR. SWEENEY: If we can. I don't know how
8 prolonged it will. Just for the record, your Honor, I
9 would take exception to the rulings your Honor has
10 made.

11 THE COURT: Sure.

12 MR. SWEENEY: As I understand it, I'm going to be
13 required to raise the objection as the trial goes
14 along, so your Honor will understand --

15 THE COURT: Yeah. I certainly understand that. I
16 don't know -- I don't know when -- I know on
17 evidentiary matters, objection, hearsay, sustained, you
18 don't have to have an exception. When you get into
19 motions, I'm not clear on that. So if you want to
20 preserve the record to make sure that there is no
21 problem --

22 MR. SANTOS: I would take an exception then, too.

23 THE COURT: Okay. You're taking an exception?

24 MR. SANTOS: Well, I mean --

25 THE COURT: All right. You both take an exception
26 to my rulings. That's fine.

27 MR. SWEENEY: I would take an exception for the

1 Bronkiewicz.

2 Each of those depositions were taken under a
3 sealing order that was issued by Judge Bruce Levin of
4 the Fairfield Judicial District Superior Court. The
5 sealing order is dated December 8, 1994, and I believe
6 I furnished your Honor with a copy of it this morning.
7 It deals with restricting the use and dissemination of
8 each of those depositions that were taken for that
9 George Rosado case in the Fairfield Judicial District.

10 THE COURT: Let me just take a look at that.

11 Well, let's take them up one at a time.

12 MR. SWEENEY: Certainly, your Honor. Should we
13 logically start with the February 12th subpoena?

14 THE COURT: Right.

15 MR. SWEENEY: Document group number one.

16 THE COURT: Yes.

17 MR. SWEENEY: I think, your Honor, that as a
18 result of Mr. Santos' concessions in his response of
19 last Friday and the stipulations that I have given him,
20 significant parts of this have been resolved, but just
21 to take them one at a time, document group number one
22 basically seeks two sets of documents. Number one,
23 it's, again, an effort to have us reproduce the Gavin
24 O'Connor documents that have already been produced,
25 but, secondly -- and this is a very fundamental
26 question that again gets into the first amendment
27 constitutional issue -- they also seek to have us

1 produce in this lawsuit records of complaints relating
2 to priests other than Father O'Connor. And, again, I
3 think that gets right back into this first amendment
4 issue.

5 They do have a specification of negligence which
6 basically says we should have had different kinds of
7 rules for dealing with priests generally. And, again,
8 I think that the only issue in this case is what did
9 the diocese know about this particular priest. And
10 this effort to reconstruct or to set up a standard of
11 what would a reasonable diocese have done knowing about
12 complaints about other priests, I think it gets right
13 into this first amendment issue again. We talked about
14 it, but in a different way --

15 THE COURT: Well, it does and it doesn't. This
16 doesn't get into an interpretation of the rules or
17 regulations or proceedings of the church. What the
18 plaintiff is looking for here, as I understand it --
19 and he, of course, can correct me if I'm wrong -- is
20 that he's alleging, I believe, that there was
21 negligence on the part of the defendants in not
22 investigating the prior record, if you will, of the
23 former Father Gavin O'Connor.

24 And I believe his claim -- and I haven't read the
25 complaint recently -- but his claim is that if you have
26 a substantial number of the priests listed here having
27 been accused of or found -- having committed sexual

1 on the part of the management of the psychology clinic
2 to say, Well, wait a minute, maybe we should
3 investigate these people who are coming in here because
4 we've had all these -- or the ones we have here because
5 we've had all these instances of sexual abuse.

6 MR. SWEENEY: Well, the same thing would apply to
7 the court system. By the way, we happen to have about
8 180 or so priests in the diocese of Bridgeport, which
9 is not that much different than the number of Superior
10 Court judges we have in the court system. He's picked
11 out about 20 of them here.

12 MR. SANTOS: Not 20.

13 THE COURT: Whatever there are. Let's see.

14 MR. SWEENEY: More than 10.

15 MR. SANTOS: I think there are 12.

16 MR. SWEENEY: In any event, he wants to get into
17 the personnel files of other priests, which, for
18 multiple reasons, I think, is inappropriate.

19 Number one, what other priests did is not relevant
20 to what Father O'Connor did. But deeper than that,
21 you're going, Judge, right back into this issue we
22 discussed this morning. In essence, the reason for
23 bringing these things in would be to demonstrate
24 that --

25 THE COURT: They were aware of the problem.

26 MR. SWEENEY: -- they're aware of the fact that
27 other priests may have done something. This would be

1 because of the degree of involvement that must
2 accompany such decisional framework for the civil tort
3 judge."

4 And, your Honor, it's the same federal
5 constitutional principle we discussed this morning, but
6 Mr. Santos now seeks to carry it beyond Father O'Connor
7 and to get into other priests' personnel files, which I
8 respectfully submit, your Honor, are out of bounds,
9 particularly in light of the constitutional issue, but
10 for the other reasons I've mentioned as well.

11 THE COURT: Do you have anything further?

12 MR. SANTOS: No, your Honor.

13 THE COURT: Do you have anything further?

14 MR. SWEENEY: I think I have stated the reasons
15 your Honor, which I have to express I think are very
16 persuasive, and they're different than the things we
17 dealt with this morning. This is a further degree
18 removed. And so I stand on the record.

19 THE COURT: All right. I'm going to deny the
20 motion to quash on paragraph one, and I'm going to deny
21 it for the simple reason that I do not feel this gets
22 into what a reasonable diocese is supposed to do. It's
23 more of a reasonable employer.

24 The cases that have been cited get to the issue of
25 punishment and whether or not the priests involved were
26 subsequently punished by any means. That is not what
27 we're talking about here. We're talking about the

1 issue of notice, notice to the diocese, notice to the
2 churches where they were. And I don't see where that
3 gets into the internal regulations, procedures,
4 et cetera, of the diocese.

5 What they did with those complaints or findings,
6 that, I would say, probably does get into the issue of
7 policies of the diocese. But we're not talking about
8 that. We're talking about the notice, if any, that the
9 defendants had that there were sexual -- there was
10 sexual abuse.

11 The point that Attorney Santos raises is in 1953,
12 no one was aware that this was going on, so why should
13 the diocese be on notice? But if, in fact, there's a
14 pattern of this happening within the diocese, then they
15 are on notice that this thing is likely to happen.

16 Now --

17 MR. SWEENEY: Well, your Honor, if I follow your
18 Honor's rationale, is your Honor saying that we only
19 need produce records of complaints received by the
20 diocese up to and including the time when the plaintiff
21 here turned 18 years of age? Because, obviously, any
22 complaints we received after that time would have no
23 relevance to this issue of notice to the diocese.

24 THE COURT: Well, he is saying at any time prior
25 to December 31, 1984.

26 MR. SWEENEY: Now, these would be complaints
27 received by the diocese up to that point in time?

1 THE COURT: Gentlemen, come on.

2 MR. SWEENEY: Your Honor, there is a big
3 difference between documents about things that are
4 claimed to have happened prior to 1984, and perhaps
5 were learned later, or complaints that came in prior to
6 1984.

7 Now, this is very ambiguous on that, and I know
8 Mr. Santos, being the master of ambiguity when it
9 benefits him, has left it that way, but I've got to get
10 a more precise understanding here.

11 THE COURT: We're going to give it to you.

12 MR. SWEENEY: Are we talking about complaints
13 received up to this point in time or are we talking
14 about incidents that are claimed to have happened up to
15 this point in time that were learned at a later time?
16 That's an ambiguity that I think has to be resolved.

17 THE COURT: Okay. I am going to set it for you.
18 And with all due respect, I don't want to hear anymore
19 on this subject, okay? I'm going to make a ruling and
20 there is no more argument.

21 I'm not Judge Ito, okay, where I hear arguments
22 five times, especially after -- I don't look like him
23 and I don't talk like him and I don't rule the way he
24 does.

25 MR. SWEENEY: We agree, your Honor.

26 THE COURT: Okay. What I'm ordering is the motion
27 to quash paragraph number one is denied, and what it

1 means is that any complaints of sexual misconduct --
2 and he has listed in here what they are --

3 MR. SANTOS: Any documents.

4 THE COURT: I understand that.

5 MR. SANTOS: Because they may have something they
6 call a complaint.

7 THE COURT: Please. I said no more comments,
8 okay?

9 MR. SANTOS: I'm sorry.

10 THE COURT: I'm going to get to it.

11 I notice that you are very specific and you don't
12 use the term "sexual relations."

13 MR. SANTOS: Right.

14 THE COURT: Which apparently somebody in
15 Washington distinguishes that from some other type of
16 sex. However, it's all spelled out there. And it is
17 the complaints and what was done in regard to those
18 complaints -- hear me out -- for example, the reason
19 the entire file should be produced as to these
20 complaints and what was done is not to be critical of
21 the diocese or the church in their response. That I
22 would not -- probably not allow into evidence. But
23 it's -- we would want to know, for example, if an
24 investigation was done and it turned out that the
25 charges were false. That should come out, too.

26 So this is only at this point for the purposes of
27 a subpoena. And I'm ordering that number one be

1 complied with, and it is for any time reported prior to
2 December 31, 1984. It certainly -- in other words, if
3 the sexual abuse occurred on December 15, 1984, but
4 wasn't reported until December 15, 1985, that's not
5 included, because we're talking about what was
6 reported, the notice. We're not talking about whether
7 the acts were committed or not.

8 MR. SWEENEY: That's the clarification I sought,
9 your Honor.

10 THE COURT: Well, you've got it. Now -- and it
11 goes back, I assume, to the time of the diocese, 1953.

12 MR. SANTOS: Right.

13 THE COURT: But it is to include any such reports,
14 files, documents for any of the churches involved here,
15 not just the diocese.

16 MR. SWEENEY: Certainly if the churches have
17 records of these, that, your Honor, we can deal with,
18 but we're going to need some time.

19 But the critical thing that I wanted to
20 verify, and your Honor has, is we're talking about
21 records of complaints received on or before the
22 designated date.

23 THE COURT: Well, complaints. I don't want to be
24 too restrictive here. I mean, I don't want something
25 to be a report and not a complaint.

26 MR. SWEENEY: Your Honor, let me put this right on
27 the table.

1 THE COURT: Okay.

2 MR. SWEENEY: I recognize some of the names here
3 are people about whom complaints did not surface until
4 long after 1984, and that's the reason why I've raised
5 the issue, because we've got to define it.

6 THE COURT: If they did not -- the complaints --
7 if no documents or notice of any kind that -- it could
8 be a telephone note, notice written down on a piece of
9 paper. As to that being a report -- it doesn't have to
10 be a written document submitted; it could be the notes
11 of someone who took the message -- that were received
12 prior to December 31, 1984.

13 Now, for those complaints, documents, that came in
14 after December 31, 1984, as to any of these priests,
15 that's not included. It's the ones that were received,
16 because we are talking about notice.

17 MR. SWEENEY: Yeah. Well, that's why I sought the
18 clarification.

19 Now, your Honor, there is one other aspect of this
20 that we haven't talked about yet, and this is a time
21 frame definitional thing. As your Honor knows from the
22 preliminary requests to charge that I have already
23 filed --

24 THE COURT: Well, I haven't read it, to be honest
25 with you, because I've had enough reading to do.

26 MR. SWEENEY: Well, there is an issue, and I would
27 like to put it on the table right now. And this is the