

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT

Suffolk County Civil Action No. **02-04551-T1**

(Consolidated with C.A. 02-1296)

(Originally entered in Middlesex County as

C.A. No. 02 626)

GREGORY FORD, *et al.*,

Plaintiffs,

v.

BERNARD CARDINAL LAW, *et al.*,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION IN LIMINE
TO ADMIT EVIDENCE OF PRACTICES
AND POLICIES OF THE ROMAN
CATHOLIC ARCHBISHOP OF BOSTON,
A CORPORATION SOLE,
CONCERNING SEXUALLY ABUSIVE
PRIESTS OTHER THAN PAUL R.
SHANLEY

INTRODUCTION

Plaintiffs Gregory Ford ("Greg"), Paula Ford, and Rodney Ford (together, the "Plaintiffs") brought this action against defendants the Roman Catholic Archbishop of Boston, a Corporation Sole (the "RCAB"), Bernard Cardinal Law ("Cardinal Law"), John B. McCormack ("Bishop McCormack"), and Thomas V. Daily ("Bishop Daily") (collectively, the "Defendants") for failing to protect Greg from Paul R. Shanley's ("Father Shanley") sexual abuse. Father Shanley is not a party to this action. Rather, the Plaintiffs have brought negligence claims against the Defendants, who were Father Shanley's supervisors.

Generally, the Plaintiffs claim that the Defendants' negligence was the proximate cause of their harm and, more specifically, fostered an environment which allowed Father Shanley to abuse Greg. As shown below, the irrefutable evidence existing within the RCAB's own files, shows that the Defendants clearly knew or should have known that Father Shanley was a threat to children well before he abused Greg. In addition, the Plaintiffs assert that the Defendants had the duty to take reasonable action to alert the Plaintiffs that Greg had been exposed to Father Shanley to alleviate his continuing harm once they learned definitively that Father Shanley had molested other children.¹ Discovery in this action establishes that, consistent with the RCAB's practices and policies with other sexually abusive priests, the Defendants not only failed to take appropriate action to curtail Father Shanley's conduct by removing him from ministry, they also took actions that fostered his conduct and purposefully concealed their own misdeeds. Those policies and practices are the subject of the Plaintiffs' motion.

The Court already has stated that evidence of what the RCAB did with respect to other priests is relevant to the Plaintiffs' negligence claims. The Court's view is consistent with decisions of other courts, which have admitted similar evidence when addressing sexual abuse cases, particularly with regard to

¹ See Martinelli v. Bridgeport Roman Catholic Diocesan Corp. 196 F.3d 409, 430 (1999) (agreeing that a jury could find "a duty of care including a duty to investigate and warn or inform so as to prevent or alleviate harm to additional victims" that may have been sexually abused by Diocesan priest).

proving proximate cause and analyzing the statute of limitations.² The evidence will reveal the existence of the following RCAB practices, policies, and procedures, which existed from the time of Father Shanley's ordination (1960) through the time that Cardinal Law resigned his position as Archbishop of Boston (2002):

1. retention and reassignment of priests known to have abused minors;
2. failing to inform parishioners that priests assigned to their parishes were a threat to their children;
3. ignoring warnings from medical professionals retained by the Archdiocese that certain priests were potentially dangerous to children and others;
4. lying to victims who requested information about priests who abused them;
5. failing to provide those medical professionals evaluating abusive priests with the necessary facts and, in some cases, lying to them about the priest's background or concealing material facts;
6. ignoring warnings from others within the RCAB who believed that certain priests were a threat to children;
7. failing to report the crimes committed by certain priests to law enforcement and obstructing or interfering with law enforcement investigations concerning abusive priests;
8. failing to alert parishioners at previous parishes where abusive

² See generally, Armstrong v. Lamy, 938 F. Supp 1018, 1033 (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).

priests had served that their children were exposed to known or suspected child molesters;

9. making decisions which reflected that the interests of abusive priests and the desire to avoid scandal to the Church were vastly superior and more important than the interests of children who had been abused by priests;
10. using Church influence to alter the outcome of the criminal legal process relating to priests who had been engaging in illegal sexual acts; and
11. fostering an environment and culture where abuse of children could flourish and in which it was clear that there was no accountability for criminal acts towards children.

The RCAB's policies, practices, and procedures also are relevant to Defendants' statute of limitations and charitable limitation of liability affirmative defenses. In particular, prior to the wide-spread publicity during the beginning of 2002 concerning sexual abuse of minors by RCAB priests, which triggered Greg's memories of Father Shanley's abuse, the Plaintiffs did not know and could not have known that the Defendants' wrongful conduct was the proximate cause of their harm. The RCAB's policies, practices, and procedures also represent the only practical way the Plaintiffs may show what actions the Defendants took or failed to take with regard to Father Shanley, where the Defendants cannot recall what they did or did not do based on the passage of time or failed memories.

Furthermore, the RCAB's policies and practices rebut key defenses raised by the Defendants, such as the lack of institutional memory and poor record

keeping. The fact that sexual abuse was so pervasive and that virtually every other priest who came to the attention of the Defendants for molesting children (during the time that Greg was abused) was returned to ministry without restriction undercuts the Defendants' claims that they would have done something about Father Shanley, had they had access to all of the relevant information. The Defendants' pattern of conduct also undermines the defense asserted by the Defendants that there was no institutional memory about abusive priests and that there was "inadequate record keeping" with respect to abusive priests. As shown below, the record keeping was hardly inadequate. For all of these reasons the Court should grant the Plaintiffs' motion in limine.

RELEVANT FACTS

In addition to the extensive discovery taken by deposition, the Plaintiffs obtained more than forty-five (45,000) thousand documentary pages pertaining to one hundred and forty-one (141) priests who are alleged to have sexually abused minors. In order to illustrate the patterns of conduct that have characterized the actions of the Defendants, what follows represents a factual sampling and summary of 25 priests, in which those patterns of conduct become apparent.

A. Father Paul R. Shanley

The following represents a general summary of the evidence the Plaintiffs