

IN THE CIRCUIT COURT OF WILL COUNTY
TWELFTH JUDICIAL CIRCUIT

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

No. 2007-L-283

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

2011 JAN 27 PM 1:06

FILED

NOTICE OF MOTION

To: See Attached Services List

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

PROOF OF SERVICE

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

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

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

DAVID RUDOFSKI,

Plaintiff,

vs.

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

Defendants.

No. 07 L 283

CLERK, CIRCUIT COURT
WILL COUNTY, ILLINOIS
WILL COUNTY COURT ANEX

John J. Spina

2011 JAN 27 PM 1:06

FILED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BASIS FOR THE APPEAL

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

-A CASE OF FIRST IMPRESSION-

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

-A CASE OF FIRST IMPRESSION-

AND

ERROR OF LAW

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

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

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

-CONSTITUTIONAL RIGHT TO PRIVACY-

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

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

Article I, Section XII

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

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

RIGHT OF PRIVACY
NON-CREDIBLE ACCUSATIONS
FALS ACCUSATIONS
ANONYMOUS ACCUSATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

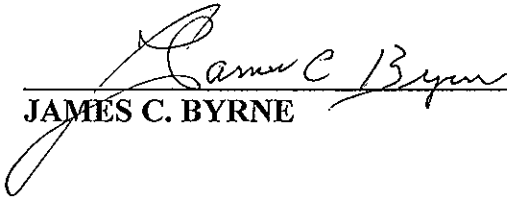
WHEREFORE, the Defendant, the Roman Catholic Diocese of Joliet, Inc., a Trust, respectfully prays the Court as follows:

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

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

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

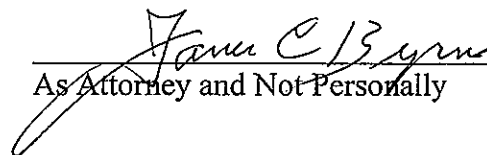
Respectfully submitted,



JAMES C. BYRNE

CERTIFICATE OF ATTORNEY

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



As Attorney and Not Personally

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

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

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

10 -vs-

11) NO. 2007 L 283

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

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

19 APPEARANCES:

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

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

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

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

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

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

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

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

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

11 MR. BRESSLER: Stuart Bressler for defendant.

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

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

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

21 THE COURT: Mr. Johnson?

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

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

7 MR. JOHNSON: Okay.

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

10 MR. JOHNSON: Yes, your Honor.

11 MR. LARAIA: Yes, your Honor.

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

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

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

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

5 MR. JOHNSON: Okay.

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

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

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

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

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

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

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

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

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

1 them. And, your Honor --

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

6 MR. JOHNSON: Yes.

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

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

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

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

22 THE COURT: Okay.

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

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

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

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

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

17 MR. JOHNSON: Right. I agree.

18 THE COURT: Okay.

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

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

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

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

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

1 THE COURT: Reported to the diocese?

2 MR. JOHNSON: Reported to the diocese.

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

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

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

8 MR. JOHNSON: Yes, your Honor.

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

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

14 THE COURT: Okay.

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

18 THE COURT: Okay.

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

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

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

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

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

12 MR. JOHNSON: Yes, your Honor.

13 THE COURT: Okay.

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

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

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

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

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

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

20 THE COURT: Notice to the diocese.

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

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

1 prior to this occurrence in 1983.

2 MR. BYRNE: Yes.

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

4 THE COURT: All right.

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

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

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

14 THE COURT: All right. All right.

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

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

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

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

1 allegations --

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

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

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

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

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

10 THE COURT: All right.

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

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

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

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

8 MR. JOHNSON: There is a --

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

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

14 THE COURT: All right.

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

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

19 MR. JOHNSON: Yes, your Honor.

20 THE COURT: All right. I got it.

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

1 with respect to diocesan order priests.

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

4 MR. JOHNSON: Yes.

5 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 documents.

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

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

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

24 MR. JOHNSON: Yes.

1 THE COURT: What are you specifically looking for?

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Response?

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

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

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

1 count?

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Now you are talking about a different