

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

TRIAL COURT
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 94-1158

EDWARD L. GAGNE,
Plaintiff,

VS.

BRENDON O'DONAHUE, PETER J.
INZERILLO, BERNARD J. FLANAGAN,
TIMOTHY J. HARRINGTON, and
ROMAN CATHOLIC BISHOP OF WORCESTER,
Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS TIMOTHY J.
HARRINGTON, BERNARD J. FLANAGAN AND ROMAN
CATHOLIC BISHOP OF WORCESTER'S OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL FURTHER ANSWERS
OF DEPONENT THOMAS A. KANE TO DEPOSITION QUESTIONS

I. STATEMENT OF THE CASE

This is a tort action which arises out of allegations that the plaintiff Edward L. Gagne (hereinafter "Gagne") was sexually molested by the defendant, Brendan O'Donahue (hereinafter "O'Donahue") in 1978 and by the defendant Peter J. Inzerillo (hereinafter "Inzerillo") in 1985 and 1986. Both of these defendants were priests associated with defendant Roman Catholic Bishop of Worcester (hereinafter the "Diocese") and deny the accusations made by Gagne. The defendant Bernard J. Flanagan (hereinafter "Flanagan") was the Bishop of the Diocese during 1978. The defendant Timothy P. Harrington (hereinafter "Harrington") was the Bishop of the Diocese during 1985 and 1986.

On July 9, 1997, Gagne's attorney took the deposition of Father Thomas A. Kane (hereinafter "Kane"). Kane was ordained as a Catholic priest on May 15, 1969. See Exhibit "A", Kane deposition, pp. 13-14, attached hereto. From 1972 to 1986, Kane was Executive Director of the House of Affirmation, (hereinafter the "House") a treatment center for the "religious" in Whitinsville, Massachusetts that offered therapy, including psychotherapy, in a "milieu" or community format. See Exhibit "A", Kane deposition pp. 53, 98, attached hereto. After the House opened in Whitinsville, two other Houses were opened in Missouri and Florida. See Exhibit "A", Kane deposition p. 66, attached hereto. The House treated priests for a variety of spiritual problems, including but not limited to psychosexual disorders. Upon information and belief, Kane's testimony was elicited by Gagne's attorney ostensibly to show that the Diocese had notice that pedophilia was a problem affecting some priests in the Diocese.

Gagne's attorney now brings his motion to compel Kane's further deposition testimony on three subjects that surfaced during Kane's deposition and which Kane was instructed not to expound upon by his attorney: 1) evidence of the Diocese's notice and knowledge of the treatment of pedophilic priests at the House during a specific time frame; 2) allegations that Kane misappropriated funds while he was Executive Director

of the House, which, according to Gagne's attorney, pertain to Kane's credibility as a witness; and 3) Kane's condoning or encouragement of sexual relationships between priests and minors while he was Executive Director of the House.

The Diocese, Harrington and Flanagan continue to take the position that Gagne's attorney's questioning of Kane on these issues and the issues themselves were outrageous, inappropriate, irrelevant, immaterial, not reasonably calculated to lead to the discovery of admissible evidence and privileged to the point Kane was rightfully instructed not to answer.

II. ARGUMENT

A. KANE'S TESTIMONY IN GENERAL AND SPECIFIC TESTIMONY CONCERNING THE DIOCESE, HARRINGTON OR FLANAGAN'S NOTICE OF THE PROBLEM OF PEDOPHELIA AMONGST PRIESTS OF THE DIOCESE IS WHOLLY IRRELEVANT AND/OR PRIVILEGED WITH RESPECT TO THE ISSUES OF THIS CASE

Gagne's counsel's questioning directed at Kane's knowledge of the treatment of priests not involved in this civil action for pedophilia at the House was not only irrelevant, but was so far beyond proper discovery as to constitute the very kind of harassment and discovery abuse which would have warranted the suspension of the deposition under Mass.R.Civ.P. 26(c).

Kane testified that he had no memory of any specific instance where the House in Whitinsville undertook treatment of a priest where allegations involved sexual contact with a child. See Exhibit

"A", Kane deposition p. 157, attached hereto. Kane did recall that a House outside of Massachusetts had undertaken the treatment of a priest or priests where it was alleged that the priest had engaged in sexual misconduct with a child, but such treatment is wholly irrelevant to the issue of this Diocese's notice of the problem of pedophilia amongst the priests of its Diocese. See Exhibit "A", Kane deposition pp. 155-156, attached hereto.

Kane had no memory of personally counseling any person at the House for pedophilia. See Exhibit "A", Kane deposition pp. 64-65, attached hereto. Kane recalled having one discussion with Harrington or Flanagan regarding patients in the House who were treated for pedophilia. See Exhibit "A", Kane deposition pp. 84-86, attached hereto. However, Father Kane cannot be compelled to answer further questions concerning such discussions, including its time frame, because such information is privileged. Discovery is permissible only of nonprivileged material which is reasonably calculated to lead to the discovery of evidence which might be admissible in the pending action. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 414 Mass. 609, 609 N.E.2d 460 (1993). Mass. R. Civ. P. 30(c) does not mandate the disclosure of privileged information merely because a deposition question calling for such information has been asked and a witness may properly

refuse to disclose such information. Paparelli v. Prudential Ins. Co. of Amer., 108 F.R.D. 727, 730-731 (D. Mass. 1985).

Although it is true that Kane was not a licensed psychotherapist during his tenure as the Executive Director of the House, thus preventing him from invoking the psychotherapist/patient privilege, Kane was a priest during that time and cannot respond further to Gagne's counsel's questions concerning his discussions of a patient of the House's suffering from pedophilia due to the priest/penitent privilege and the stringent safeguards concerning the patient confidentiality imposed by the House. G.L. c. 233 20A created a privilege designed to protect against forced disclosure of communications made to a priest by any person "in seeking religious advice or comfort." M.G.L. c. 233 §20A. See also, Com. v. Zezima, 365 Mass. 238, 310 N.E.2d 590 (1974). Anything said to Kane by a patient at the House is inherently covered by this privilege and, therefore, Kane cannot reveal communications by patients of the House. Furthermore, a patient treating at the House was assured that such treatment and reports of treatment would be strictly confidential, with only those persons given license by the patient to receive written reports regarding that patient's treatment ever receiving any information about a particular

patient's treatment. See Exhibit "A", Kane deposition pp. 75-78, attached hereto.

The specific discussion that Gagne's counsel seeks to pose and have Kane answer further questions about, including the time frame of such discussion, is statutorily privileged, as well as confidential under the House's governing policy of anonymity, as such questions may overtly or implicitly reveal the identity of a particular patient and/or reveal the nature, substance or circumstances of the communications involving "religious or spiritual advice or comfort" that were sought by said patient.

Furthermore, testimony from Kane relating to what priests, other than Inzerillo and O'Donahue, received treatment for or did is simply not relevant to the present case and is not going to help Gagne's counsel locate admissible evidence. Discovery is not a "fishing expedition". Surpitski v. Hughes-Keenan Corp., 362 F.2d 254 (1st Cir. 1966). Discovery is not allowed where the information sought has no possible bearing on the subject matter of the action. Gagne v. Reddy, 104 F.R.D. 454 (D. Mass. 1984).

Evidence of one priest's misconduct does not prove notice of another priest's misconduct. Pedophilia is not a contagious disease or the equivalent of an unsafe condition in rental housing. The fact that a priest may have been treated at the House for pedophilia has no bearing on whether

O'Donahue and Inzerillo sexually abused the plaintiff or whether the Diocese, Harrington or Flanagan should be held accountable therefor.

Kane's only knowledge of the allegations against Inzerillo stemmed from what he read in the paper and Kane had no knowledge regarding whether Inzerillo ever treated at the House. See Exhibit "A", Kane deposition p. 206, attached hereto. Kane never counseled O'Donahue at the House concerning allegations of pedophilia against O'Donahue. See Exhibit "A", Kane deposition, pp. 64-65. Knowledge or information Kane may have, if any, with respect to O'Donahue's treatment at the House by others would be privileged under G.L. c. 233 §20A and confidential under the House's strict policy. Moreover, Kane testified that he had no memory of any priest being treated at the House in Whitinsville for pedophilia. See Exhibit "A", Kane deposition, p. 157, attached hereto. The report concerning O'Donahue referred to by Gagne's counsel does not mention sexual contact with boys and was not even written by Kane.

B. FURTHER DEPOSITION TESTIMONY FROM KANE CONCERNING ACCUSATIONS OF FINANCIAL IMPROPRIETIES WHILE KANE WAS EXECUTIVE DIRECTOR OF THE HOUSE SHOULD NOT BE COMPELLED AS SUCH TESTIMONY IS IRRELEVANT AND/OR CONFIDENTIAL

Gagne's counsel seeks to pose further questions to Kane regarding allegations that Kane misappropriated House funds while he was Executive

Director of the House. Gagne's counsel argues that such testimony relates to Kane's credibility or bias as a witness. However, as argued supra, Kane's entire deposition testimony is irrelevant to the issues of this action. Therefore, Kane's credibility as a witness is irrelevant to the subject matter of this action and Gagne's counsel's efforts to discredit Kane are designed merely to embarrass, harass and humiliate him.

Gagne's counsel in his Motion maintains that "Massachusetts case law permits cross-examination concerning prior discreditable conduct by a witness provided that there is a good faith basis to support such questioning." Commonwealth v. Homer, 235 Mass. 526, 534-535 (1920). However, it is equally well settled in Massachusetts case law that a witness cannot be asked on cross-examination, in order to affect credibility, about his part in matters irrelevant to issues on trial. Jones v. Commonwealth, 327 Mass. 491, 99 N.E.2d 456 (1951); Commonwealth v. Gonzalez, 11 Mass. App. Ct. 932, 416 N.E.2d 539 (1981); Benjamin v. Felton & Sons, 404 N.E.2d 125 (1980); Commonwealth v. Schaffner, 146 Mass. 512, 515-516, 16 N.E. 280 (1888). Whether or not Kane misappropriated funds has absolutely no bearing on the issues of this action and Kane should not be pressed to answer further deposition questions on that subject.

Furthermore, Kane testified at his deposition that he resigned and was not terminated from his position as Executive Director of the House. See Exhibit "A", Kane deposition p. 101, attached hereto. He resigned because of "burnout" after 15 years. See Exhibit "A", Kane deposition p. 102, attached hereto. The only allegation of financial impropriety that Kane heard about came from the media, not from anyone else. See Exhibit "A", Kane deposition p. 103, attached hereto. Additionally, a confidentiality agreement exists between Kane and the Diocese concerning these matters. See Exhibit "A", Kane deposition pp. 104-105, attached hereto. A deposition witness may be instructed not to answer questions pertaining to confidential matters. See Paperelli v. Prudential Ins. Co. of America, 108 F.R.D. at 731. Kane answered several questions posed by Gagne's counsel relating to his alleged misappropriation of House funds, despite the existence of the confidentiality agreement with the Diocese. That confidentiality agreement allowed Kane's attorney to rightfully instruct him not to answer any questions probing this issue and that confidentiality agreement precludes Kane from being compelled to answer any other questions on the misappropriation matter.

Gagne's attorney contends that the confidentiality agreement, coupled with the fact that Kane is still a priest in good standing in the Diocese

and receives a monthly stipend, indicates the "likelihood of bias on Kane's part in favor of some of the defendants in this case." This argument is tenuous, at best. Where the tendency of evidence to show bias becomes attenuated, then that evidence may be excluded. See Commonwealth v. Russo, 30 Mass. App. Ct. 923, 567 N.E.2d 1255, 1259 (1991). Moreover, examination of a witness in an attempt to show bias may be excluded based on the immateriality of the testimony. See Commonwealth v. Huertas, 34 Mass. App. Ct. 939, 941, 613 N.E.2d 113 (1993) quote from Commonwealth v. Johnson, 16 Mass. App. Ct. 935, 936-937, 450 N.E.2d 1087 (1983). Where neither the witness nor his credibility is critical to the issues of a case, testimony elicited to show bias will not be deemed essential to the case and the testimony will be properly excluded. See Commonwealth v. Quegan, 35 Mass. App. Ct. 129, 617 N.E.2d 651 (1993). Kane's deposition testimony is irrelevant to the issues of this case. He is not a key witness. Therefore, any testimony as to his credibility or bias should be excluded as immaterial and irrelevant to the issues of this action.

C. ANY ALLEGATIONS OF SEXUAL MISCONDUCT ATTRIBUTED TO KANE IS WHOLLY IRRELEVANT TO THIS MATTER.

Potential deposition testimony by Kane regarding allegations of sexual misconduct against him is completely irrelevant to the issues in this action and

represent Gagne's counsel's efforts to embarrass, harass and humiliate Kane. There is no link between any allegations made against Kane regarding sexual contact with children and the allegations made against Inzerillo or O'Donahue. Kane's sexual activity, if any, is not relevant to the allegations brought against Inzerillo and O'Donahue by Gagne.

Gagne's counsel argues that evidence of Kane's sexual activity and/or allegations of sexual abuse of boys is "probative of whether the [House] was in fact a facility dedicated to treating pedophilic priests in the Diocese or whether its own chief executive officer used it as an underground network for perpetuating and encouraging the very behavior that he claimed was his mission to alter." Gagne's counsel's concern is whether Kane encouraged or condoned improper sexual contact with boys through his actions while he was Executive Director of the House.

First, O'Donahue did not go to the House until after he allegedly molested Gagne. Therefore, Kane could not have encouraged or condoned any of O'Donahue's alleged sexual contact(s) with Gagne, when such alleged contact was over by the time O'Donahue was treated at the House.

Second, Kane's only knowledge of the allegations made by Gagne against Inzerillo came from the media, he has no knowledge regarding whether Inzerillo was treated at the House and Gagne has offered no evidence

that Inzerillo was ever a patient at the House. Therefore, Kane could not have encouraged or condoned Inzerillo's alleged behavior with Gagne.

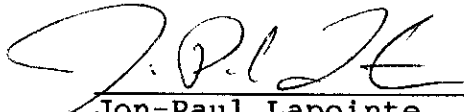
Third, in Barry v. The Roman Catholic Bishop of Worcester, et als., (Suffolk Superior Court No. 93-2438F), wherein the plaintiff alleged that Kane had sexually abused him, Kane denied all of the plaintiff's allegations. See Exhibit "B", Confidentiality Agreement, attached hereto. That suit was resolved subject to a confidentiality agreement and Kane cannot be compelled to testify at his deposition concerning the allegations underlying the agreement, which are confidential. See Exhibit "B", Confidentiality Agreement, attached hereto; See also Paparelli v. Prudential Ins. Co. of Amer., 108 F.R.D. at 731.

Finally, Gagne's counsel asked Kane if he encouraged or condoned sexual activity between priests and children at Kane's deposition. See Exhibit "A", Kane deposition p. 161, attached hereto. Kane responded in the negative. See Id. Gagne's query whether Kane encouraged or condoned such activity has been asked and answered. Any further inquiry into Kane's sexual activity is merely a guise by Gagne's attorney to embarrass, humiliate and harass Kane and waste Kane's time with more irrelevant questions.

III. CONCLUSION

For the foregoing reasons, defendants the Diocese, Flanagan and Harrington respectfully request that this Honorable Court deny the Plaintiff's Motion to Compel.


Defendants,
Timothy J. Harrington,
Bernard J. Flanagan and
Roman Catholic Bishop of
Worcester,
By their attorneys,
GRIFFIN & GOULKA



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CERTIFICATION

I, Jon-Paul Lapointe, attorney for the defendants in the above entitled action hereby certify that a true copy of this document was served upon attorney of record for the plaintiff by hand and upon all other attorneys by regular mail on August 26, 1997.



Jon-Paul Lapointe

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COMMONWEALTH OF MASSACHUSETTS

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DEPARTMENT OF THE TRIAL COURT
SUPERIOR COURT DIVISION
Docket No. 94-1158

EDWARD L. GAGNE,
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BRENDAN O'DONOGHUE, PETER J.
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TIMOTHY J. HARRINGTON, and ROMAN
CATHOLIC BISHOP OF WORCESTER,
Defendants

COPY

DEPOSITION OF THOMAS A. KANE, taken on behalf of the Plaintiff, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Deborah Meeks Svirtunas, a Registered Professional Reporter and Notary Public within and for the Commonwealth of Massachusetts, at the offices of Klieman, Lyons, Schindler & Gross, 21 Custom House Street, Boston, Massachusetts, on Wednesday, July 9, 1997, commencing at 10:20 a.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC..
15 Broad Street
Boston, Massachusetts 02109
(617) 742-6900

1 right? And then I think there's another
2 summer, I don't remember, a summer or two along
3 the line over the years, I was at Rutgers to
4 get the degree in alcoholic studies. It's very
5 different from its requirement now. Now
6 there's an alcohol therapist studies, but in
7 those days, the institute of alcoholic
8 studies. All right?

9 Q So, you have two certificates from Rutgers
0 University?

1 A Yes.

2 Q One in teaching journalism and one, a
3 certificate in alcohol counseling?

A Alcohol studies.

Q Excuse me. Thank you for correcting me.

And did you say that you attended Christ
the King Seminary?

A Yes, I did. That's, that is St. Bonaventure
University.

Q I see.

A It's a theological school at St. Bonaventure
University. However, now they're two
autonomous schools.

Q And you were ordained a Catholic priest on

May 15, 1969?

A Yes.

Q Now, during your description of your educational background, you had mentioned that you began serving as a parish priest after your graduation from Bonaventure University.

Can you now describe for me the positions that you held in chronological order, if possible, as a curate or a parish priest in the Worcester Diocese? I believe, did it begin with Saint Stephen's or was it Saint Mary's that you began at?

A No. It would have been -- actually, yes, it did begin at Saint Stephen's. I was a deacon there and then, after I was ordained, I was there for a few months.

Q So, you were at Saint Stephen's for four or five months?

A I don't remember how many months. Before I went to BU. Right.

Q It was less than a year?

A I was ordained in May, they had me stay at Saint Stephen's until September, when I moved to Boston to do graduate studies.

1 for Clergy and Religious counseling?
2

3 MR. LAPOINTE: Objection.

4 A Well, the House of Affirmation dealt with
5 mainly religious, spiritual, emotional issues.
6 It could be a vocational issue.

7 If people came in with the diagnosis of
8 alcohol, they were all referred out. Some of
9 them had psychosexual issues that would be
10 dealt with by their therapist. And it was also
11 done within the new modalities then called
12 milieu therapy or therapeutic communities. And
13 it would be important to understand a little
14 bit about that literature as to why putting a
15 priest who was suffering emotional problems in
16 a typical hospital setting where he then had to
17 stay with his role, priest, and he was focused
18 on more as priest than as a human person who
19 was depressed. All right? That if you put in,
20 it was thought, if you put him in the milieu
21 where people appreciated religious values but
22 didn't force them onto people, that there would
23 be a better healing process.

24 Q And this was a service that was not available
at the previous center because it would require

1 Missouri, which is in the suburbs. And in
2 Florida, in Clearwater, Florida.

3 Q Was there also one in England?

4 A That was not part of the House of Affirmation.

5 Q So, there was the center in Worcester, in
6 Whitinsville; correct?

7 MR. REARDON: Objection as to form.

8 A They call it Whitinsville. Yes.

9 Q Thank you for correcting me.

10 A All right.

11 Q There was a center in Florida?

12 A Yes. Later on.

13 Q Excuse me?

14 A Years later. Not at this time.

15 Q There was eventually a center in Webster
16 Groves, Missouri?

17 A Right.

18 Q And by the way, was the House of Affirmation
19 always located at the Whitinsville location?

20 A The Whitinsville one was always located in
21 Whitinsville.

22 Q But there was another center at some point?

23 Did you move into a new facility?

24 A We built a wing there.

1 board?

2 MR. REARDON: Objection as to the form.

3 A Is his name there? Oh, yes. He would have
4 been on the international advisory board.

5 Q Do you remember Bishop Harrington ever having
6 anything to do with the running of the House of
7 Affirmation, either in an advisory capacity or
8 in any other capacity?

9 A He would often come to celebrate mass for us.

10 Q Other than to celebrate mass, did he receive
11 reports from you or anyone else at the staff on
12 the activities going on at the House of
13 Affirmation?

14 A Yes. There would be -- not from me, I don't
15 think, anyway. If they went out under my
16 signature, they would have Dr. Polcino's
17 signature, too.

18 One of the things the house was built upon
19 and the bishops agreed upon and got its
20 credibility in the early days was that
21 confidentiality of the priest and religious was
22 assured. Prior to that, priest and religious,
23 and even today, some feel that their bishops
24 have privy to the most personal things of that,

1 their therapist. It was set up very clearly
2 with Bishop Harrington and that is that priests
3 and sisters would have anonymity when they came
4 to the house, but they also required that a
5 report would be sent and the patient would be
6 shown the report. The patient wouldn't have,
7 in any case, have any control over that,
8 whether it would be sent, but they would know
9 it was being sent to their superiors.

10 Also, Bishop Harrington also did do one
11 other thing at the House of Affirmation. He
12 sat in and did for a couple years, would come a
13 few times a year to, this sounds funny, I don't
14 know how he ever did it, but he had a lot of
15 humility and he was a very kind man, "Take your
16 anger out on the bishop sessions." All right.
17 So, all these priests who were angry at the
18 bishops, he would sit there -- not necessarily
19 Worcester priests -- and they'd direct their
20 anger and he would try to deal with, not as a
21 therapist, although he was a social worker, but
22 as a bishop. And that was very helpful to some
23 of the priests.

24 Q Can I back you up to a part of your answer? I

1 believe you said that one of the activities of
2 the House of Affirmation would be to provide
3 the diocese with some sort of report concerning
4 the persons who had come under its treatment.
5 Is that correct?

6 A Well, we have to be precise there, because it
7 was very clear to us that this was not going to
8 the diocese. This was going to the bishop or
9 the bishop's representative, personnel
10 director, it could have been over the years.
11 Some bishops had a pastoral director. All
12 right?

13 Q Well, then, let me be as precise as possible.
14 Who was it that these reports would be provided
15 to? Can you name the persons?

16 A No. What I could tell you -- when a client
17 came in, they had to sign, "Do you want reports
18 sent to someone, who is that person, do you
19 authorize it." And so it would be sent to that
20 person and only that person.

21 If a bishop called and said, "Father
22 So-and-so is there" -- Bishop Harrington and
23 Bishop Flanagan never did this, but sometimes
24 other bishops -- "I want to know what's going

on, boom, boom, boom."

And we would say we could not say anything without the client giving us permission to do that. If the client had not signed a release, then we couldn't say even if the client was there. That was set up by Dr. Polcino.

Q So, as I understand your answer, the reports were only made when the client authorized ---

A Absolutely.

Q --- a report to be made?

A And only to that person. Not to an institution or ---

Q When you say "that person," you're referring to a particular person, either the bishop or, as you describe, one of the other individuals who were authorized by the patient to see the report?

MR. REARDON: Objection. That's not what he said.

A No. What I'm saying is, it was not given to an office, like a bishop or a personnel director. It was, authorization was given precisely to, say, Bernard Flanagan. Couldn't say "the Bishop of Worcester." It had to give us a

1 Q (By Mr. Lyons) Can you tell me, physically, at
2 this time, do you know the whereabouts of the
3 records of the House of Affirmation?

4 A I have absolutely no knowledge as to where they
5 are.

6 MR. REARDON: I'm sorry, Father. I can't
7 hear you down here.

8 A I have absolutely no knowledge as to where the
9 records of the House of Affirmation are.

10 MR. REARDON: I hear you now, Father.

11 MR. DONIGER: Is that a stress ball here?

12 MR. REARDON: Yes. I'm under stress
13 here. I broke both wrists.

14 Q (By Mr. Lyons) At any time while you were in
15 the position of executive director of the House
16 of Affirmation, did you have any discussions
17 with either Bishop Flanagan or Bishop
18 Harrington regarding patients who were treated
19 at the House of Affirmation for pedophilia?

20 MR. REARDON: Objection. As I previously
21 stated, I think that crosses the line and
22 impinges upon the very strict statute construed
23 in Massachusetts law and I strongly suggest
24 that he has no right to talk about that.

1 MR. DONIGER: I'm going to let him answer
2 that in the very general form that you present
3 it, Steve, because I don't believe that the
4 statute precludes a general question like
5 this.

6 MR. REARDON: He might answer yes or no.

7 MR. DONIGER: Exactly.

8 MR. REARDON: All right. After that ---

9 THE WITNESS: Could you re-ask the
10 question?

11 MR. LYONS: Why don't we have the Reporter
12 read it back this time.

13 MR. REARDON: Great.

14 (The Court Reporter read back the pending
15 question, beginning at page 84, line 14.)

16 MR. REARDON: I still object to it.

17 MR. DONIGER: Just a yes or no.

18 A Yes.

19 Q And can you tell me, to the best of your
20 recollection, how many times you may have had
21 such discussions?

22 MR. REARDON: Objection.

23 MR. LAPOINTE: Objection.

24 MR. DONIGER: You can answer that.

1 A Once.

2 Q And can you tell me when in time? In other
3 words, a year, as precisely as you can recall,
4 this discussion that you are referring to took
5 place?

6 MR. REARDON: Objection.

7 MR. LAPOINTE: Objection.

8 MR. REARDON: That might then suggest the
9 name of the participant or the person who was
10 allegedly being treated.

11 MR. DONIGER: He wasn't -- I don't
12 understand.

13 MR. REARDON: Well, you may zero in on the
14 year and say, look it, that's, that's the
15 particular time that Mr. Lyons may be talking
16 about. So it may identify a person, so I
17 object to the year coming forth because I think
18 that then zeroes in on a particular
19 individual. I would say that the ---

20 MR. DONIGER: Well, okay. Under those
21 circumstances, I think I'm going to have to
22 instruct him not to answer. I don't know
23 enough about this case and that may very well
24 be the case, that a particular year will have

1 established for persons who wanted to go to the
2 center for treatment; is that correct?

3 MR. REARDON: Objection to form.

4 A I think there was a waiting list. Yeah, there
5 was a waiting list, but I don't know when it
6 was.

7 Q How long were you executive director of the
8 House of Affirmation?

9 A Oh, from 1972 to 1986.

10 Q And have you described for me all of your
11 duties and responsibilities for that position
12 at least in general terms for your entire
13 tenure?

14 A No.

15 Q At some point, did your duties and
16 responsibilities change appreciably?

17 A It got a lot more administrative, giving a lot
18 more retreats, spiritual retreats for priests
19 and sisters, a lot of publishing, things like
20 that. Yeah.

21 Q When did you begin giving retreats for priests
22 and religious persons?

23 A Well, somewhere in the seventies.

24 Q And what type of retreats did you ---

1 meditate on that maybe. Maybe some places, you
2 gave two conferences a day plus mass.

3 (Recess taken from 12:06 to 12:15 p.m.)

4 Q (By Mr. Lyons) How long were you at the House
5 of Affirmation, until what date?

6 A Until October of, the 26th -- I mean, October
7 of '86. Then I went on sabbatical and I was
8 off the payroll, I think, the following spring,
9 in '87.

10 Q And can you tell me, please, what was the
11 reason for your leaving the House of
12 Affirmation?

13 A I resigned.

14 Q And were you asked to resign the House of
15 Affirmation?

16 A Nope.

17 Q It's your testimony that you were not
18 terminated from your position as executive
19 director; is that correct?

20 A No. I resigned.

21 Q Did any event precipitate your decision to
22 resign from the House of Affirmation?

23 A Yes. I think there was a lot of burnout on my
24 part. And I was on sabbatical and I felt that

1 it was just best ---

2 MR. REARDON: I'm having trouble again
3 hearing you. I'm sorry.

4 A I was just on sabbatical and I thought it was
5 in my best interests. And then Bishop
6 Harrington said he was going to reassign me,
7 so ---

8 Q And was your decision to resign or the decision
9 of the bishop to reassign you based in any way
10 on allegations of financial impropriety at the
11 House of Affirmation on your part?

12 MR. DONIGER: Objection.

13 MR. LAPOINTE: Objection.

14 MR. DONIGER: Why don't you break the
15 question up? Because you're asking him if he
16 knows what was in the Bishop's mind.

17 Q Sure. Was your decision to resign in any way
18 based upon allegations involving financial
19 improprieties on your part at the House of
20 Affirmation?

21 A No.

22 Q Was it at any time alleged that you had
23 misappropriated funds from the House of
24 Affirmation to purchase properties in Florida

1 and Maine?

2 MR. DONIGER: Was it alleged?

3 MR. LYONS: Yes, sir.

4 A By whom?

5 Q By anyone?

6 A By the media.

7 Q This was something that was alleged only by the
8 media?

9 A I never got allegations from anybody else.

10 Q At any point, were allegations such as I've
11 described for you conveyed by anyone from the
12 Worcester Diocese to you?

13 MR. DONIGER: Objection.

14 MR. REARDON: I object. It's nothing to
15 do with this particular case, whether the
16 diocese found financial difficulty or did
17 financial difficulty. You're representing
18 someone who alleged some sexual improprieties.
19 What the diocese did or did not do with regard
20 to his money, I don't admit that they did, has
21 nothing to do with the present situation. I
22 think it's outside of the scope of the case.

23 Q Do you have in mind my question?

24 A Um-hum.

1 THE WITNESS: Could you read the question
2 back?

3 MR. LYONS: Let me ask it again.

4 Q Are you aware generally from any source whether
5 or not the House of Affirmation undertook the
6 treatment of any priest where it was alleged
7 that that priest had engaged in inappropriate
8 sexual contact with children?

9 MR. FARREY: Objection.

10 MR. REARDON: Objection.

11 MR. DONIGER: Now you're asking a slightly
12 different question. I thought what you were
13 asking was, did the House of Affirmation ever
14 treat a priest for pedophilia, as opposed to
15 the question you just asked, which is,, did the
16 House of Affirmation treat a priest for
17 anything as to whom it had been alleged that he
18 had -- I mean, they might have been treating
19 him for alcohol abuse.

20 MR. LYONS: I'll choose the first one.
21 That's what I've been attempting to get at.

22 MR. DONIGER: And that's what I'm going to
23 let him answer.

24 MR. REARDON: May I make an-objection now?

1 MR. DONIGER: Indeed.

2 MR. REARDON: Just to go on the record for
3 consistency ---

4 MR. FARREY: I object.

5 THE WITNESS: Can I ask a question?

6 MR. DONIGER: If you don't understand the
7 question that's being asked, then don't answer
8 the question. No, you don't ask any
9 questions. Mr. Lyons asks the questions.

10 Q (By Mr. Lyons) Would you like to have the
11 question reread to you?

12 THE WITNESS: Can I consult with my
13 attorney for a moment?

14 MR. LYONS: Absolutely.

15 MR. DONIGER: Of course.

16 MR. LYONS: For privacy sake, why don't
17 you go outside.

18 (Mr. Doniger and the witness leave the
19 room to confer and subsequently return.)

20 A The answer to the question is yes.

21 MR. DONIGER: And by "House of
22 Affirmation," just so we're -- we're talking
23 about any number of the centers, both in this
24 country and abroad.

1 MR. LYONS: That's fine.

2 Q Can I ask the same question with respect to the
3 House of Affirmation in the Worcester Diocese?

4 MR. REARDON: My objection.

5 Q Are you aware of any instance where it
6 undertook the treatment of a priest where there
7 were allegations involved of inappropriate
8 sexual contact with a child?

9 MR. FARREY: I object.

10 MR. REARDON: Objection.

11 MR. LAPOINTE: Objection.

12 MR. DONIGER: You can answer that.

13 A No.

14 Q Did you ever discuss with Sister Anna Polcino
15 the policy of the House of Affirmation with
16 respect to the reporting to law enforcement
17 authorities of allegations involving childhood
18 sexual abuse?

19 MR. REARDON: Objection.

20 A Yes.

21 Q When did that conversation take place to the
22 best of your recollection?

23 A I was coming back to Whitinsville, I had been
24 in, like out in the Midwest or far west, and

1 MR. REARDON: If he says yes, what's he
2 saying yes to?

3 MR. DONIGER: Exactly. Condoned,
4 encourage, you got all sorts of words in
5 there.

6 MR. LYONS: Let me break it down.

7 Q During your tenure at the House of Affirmation,
8 did you personally in any way encourage sexual
9 relationships between priests and adolescent
0 boys?

1 A No.

2 Q Did you in any way condone such activity?

3 A No.

4 Q Did you in any way by your actions or by
5 example condone such activity?

6 A No.

7 Q Do you know whether anyone else at the House of
8 Affirmation ever condoned such activities?

9 A With adolescent boys?

0 Q Yes, sir.

1 A No.

2 Q Do you know -- and by that I mean, do you know
3 whether or not anyone else at the House of
4 Affirmation, through actions or examples that

A I was in the seminary when he was in the seminary. I was a year or two ahead of him.

Q Are you aware of any complaints having been made about Peter Inzerillo involving inappropriate sexual contact with adolescents?

A I was shocked to read that in the paper. That's my only knowledge.

Q Prior to that, prior to reading about it in the newspaper, did you have any knowledge of such activities with Peter Inzerillo?

A No. Shocked. No.

Q Do you know whether or not, this is a yes or no question, do you know whether or not Peter Inzerillo was ever treated at the House of Affirmation for any reason?

MR. REARDON: Objection.

MR. FARREY: I object.

MR. DONIGER: Just if you have knowledge.

A I have no knowledge.

MR. LYONS: Maybe if I take a five-minute break, I can wrap up real fast.

(Recess taken from 2:54 to 2:59 p.m.)

(Copy of a article entitled "The House of Affirmation" from "Brothers Newsletter" marked

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SETTLEMENT, RELEASE AND CONFIDENTIALITY AGREEMENT

This agreement is made Oct 6th, 1995, by and among The Roman Catholic Bishop of Worcester, A Corporation Sole (hereinafter "The Corporation"), The House of Affirmation, Inc. (hereinafter "The House"), Thomas A. Kane (hereinafter "Kane") and Mark Barry (hereinafter "Barry");

WHEREAS, Barry has made certain allegations directly or indirectly relating to The Corporation, The House, Kane and certain priests which he alleges or could allege would entitle him to be compensated for alleged injuries and damages; and

WHEREAS, Barry has commenced a lawsuit entitled, Mark Barry v. The Roman Catholic Bishop of Worcester, A Corporation Sole and Thomas A. Kane, Docket No. 93-02438 in the Suffolk Superior Court; and

WHEREAS, The Corporation, The House, and Kane deny that they or any other person, priest, or entity related in any way or manner to them has any liability whatsoever to Barry whether based on disclosed or undisclosed allegations or on any other basis; and

WHEREAS, The Corporation, The House, Kane and Barry desire and intend to terminate any disputes that may exist between The Corporation, The House, Kane and Barry; and

NOW, THEREFORE, in consideration of the terms, conditions and undertakings set forth herein, the parties have agreed to resolve and terminate any and all claims as follows:

1. Barry shall be paid the sum of Forty- two Thousand Five Hundred and no/cents (\$42,500.00) Dollars upon execution of this agreement and the filing of the stipulation specified in paragraph 2.

2. Barry shall file or cause to be filed a Stipulation of Dismissal of civil action No. 93-02438, entitled Mark Barry v. The Roman Catholic Bishop of Worcester, A Corporation Sole and Thomas A. Kane, which shall specify that the stipulation is with prejudice, without costs and waiving all rights of appeal.

3. In consideration of the payment set forth in paragraph 1, Barry hereby remises, releases and forever discharges The Corporation, The House, The Reverend Thomas A. Kane, The Reverend Thomas Teczar, The Reverend Robert Shauris, The Reverend Monsignor Brendon Reardon and each of their present and former Bishops, officers, directors, administrators, trustees, employees, therapists, counselors, servants, agents, priests, religious, affiliates, subsidiaries, insurers, successors in interest and assigns, (the "Releasees") from any and all debts, demands, claims, actions, causes of action, suits, damages, costs, loss of service, expenses (including attorney's fees) and any other compensation of any kind whatsoever (including, but not limited to, any claims relating to therapy), both in law and in equity, which Barry has, owns, or holds, or claims to have, own, or hold, or claimed to have, own, or hold against each or any of the Releasees, specifically including, but not limited to, (i) all claims for any injury and damage, whether known or unknown or unanticipated, and all consequences thereof, and (ii) all claims which were or could have been made in the case of Mark Barry v. The Roman Catholic Bishop of Worcester, A Corporation Sole and Thomas A. Kane, Docket No. 93-02438.

4. Barry represents that except for the case to be dismissed herein, he has not filed nor will he file any claims against the Releasees with any local, state or federal agency or court, and that if any such claim has been or is filed, it shall be forthwith withdrawn or dismissed with prejudice.

5. As a material inducement to the other parties to enter into this agreement and as part of the consideration therefore, Barry acknowledges and agrees to the

following confidentiality terms:

a) Barry agrees that he will not disclose (nor permit disclosure of) the existence of this agreement or any of its terms to any person or entity.

b) Barry agrees that they will not disclose (nor permit disclosure of) any information, facts, allegations or other material of any nature, oral or written, concerning the Releasees which is or may be related in any manner, shape, or form to any activity of the Releasees which is or may be contrary, in whole or in part, to the proper and authorized functions of the Releasees; or which would cause scandal, embarrassment, ridicule or the like to the Releasees; or which would subject the Releasees to any claims of third persons; or which relate in any way to the subject matters covered by this agreement.

c) Notwithstanding the foregoing, Barry may disclose to a licensed mental health professional, for purposes of bona fide therapy only, so much of the matters Barry has agreed to keep confidential and which are part of treatment, provided that Barry shall do so only after said professional agrees to keep such matters confidential as set forth above.

d) Without limiting the scope of (a) and (b) above, Barry specifically agrees not to disclose in any shape, form or manner any of the subject matters referenced herein to any form of media.

6. Barry acknowledges that the Releasees have denied his allegations and have denied any liability to him whatsoever and that this agreement is to avoid the burden and expense of protracted litigation; neither the execution of this agreement nor any payment made pursuant to this Agreement shall be construed as an admission of liability to any extent whatsoever.

7. The agreement shall inure to the benefit of and shall be binding upon Barry and his heirs, administrators, representatives, executors, successors, and assigns.

8. This agreement contains the entire understanding of the parties hereto and there have been no promises or inducements between the parties except as contained herein. Any representations, statements, understandings, negotiations, offers, or agreements between the parties prior to the execution of this agreement are null and void and of no effect, it being the intent of the parties to be bound upon the terms and conditions set forth in this agreement.

9. The failure of one or more of the Releasees to insist on strict compliance with the terms and conditions of this agreement in any given instance shall not be considered or construed as a modification of this agreement or as a waiver of any rights they have hereunder, including the right to insist on strict compliance at all other times.


10. This agreement may be amended or modified only by a written instrument signed by the parties hereto.

11. Barry represents and agrees that he has carefully read and fully understands all of the terms and provisions of this agreement and that he is voluntarily entering into this agreement and executing it as his free act and deed. Barry further represents and agrees that he has had the benefit and advice of legal counsel of his own choosing and that he understands and agrees to the legal significance of this agreement.

12. This agreement has been deemed to be made and entered into in the Commonwealth of Massachusetts, and shall in all respects be interpreted, enforced and governed under the laws of said Commonwealth.

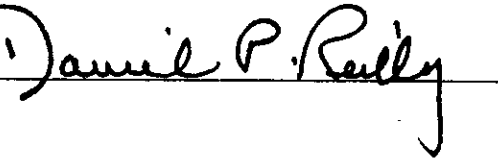
13. If any part of this agreement shall be void, voidable or unenforceable, then the remaining parts hereof shall remain in full force and effect and be binding on the parties.

Signed as a sealed instrument on the date first set forth above.


Mark Barry


Thomas A. Kane

The Roman Catholic Bishop of Worcester,
A Corporation Sole,

by: 

The House of Affirmation, Inc.

by: 