

FILED

1994 APR 25 PM 2: 28

ERIE COUNTY  
CLERK'S OFFICE

JANE DOE AND JAMES DOE,  
individually and as parents and  
natural guardians of JOHN DOE,  
an infant using a pseudonym pursuant  
to New York Civil Rights Law, §50-b,  
Niagara County, New York, and

Plaintiffs,

FIRST AMENDED  
VERIFIED COMPLAINT

-I-

ROMAN CATHOLIC DIOCESE  
OF BUFFALO, NEW YORK,  
-II- Main Street  
Buffalo, New York, 14203, and

INDEX NO. 13555-93

REVEREND BERNARD MACH,  
St. Mary's Rectory  
-III- Saxton Street  
Lockport, New York 14094

Assigned Justice:  
BARBARA HOWE, J.S.C.

Defendants.

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Plaintiffs Jane Doe and James Doe, individually and as parents and natural guardians of John Doe, an infant, by their attorneys Murray & Coleman, for their Complaint against the Defendants, allege as follows:

1. The Plaintiffs Jane Doe and James Doe ("Mrs. Doe" and "Mr. Doe") and their son John Doe ("John Doe"), a minor, reside in Niagara County, in the State of New York.

2. John Doe is using a pseudonym in this action because the claims herein concern, in part, sexual offenses committed against him, and pursuant to

New York Civil Rights Law, §50-b, victims of sexual offenses may protect their identity in a civil action related to the sexual offense. Mrs. and Mr. Doe are using pseudonyms pursuant to New York Civil Rights Law, §50-b, because identifying them would tend to identify John Doe.

3. Upon information and belief, the Defendant Roman Catholic Diocese of Buffalo, New York ("Diocese") is a religious corporation, incorporated under the laws of the State of New York, with its principle place of business (known as the "Chancery") located at 795 Main Street, in the City of Buffalo, County of Erie, State of New York. The Diocese is part of the world-wide Roman Catholic Church ("RC Church").

4. Upon information and belief, since at least January, 1991, the defendant Reverend Bernard Mach ("Father Mach") has been the parochial vicar and pastor of St. Mary's Roman Catholic Church ("St. Mary's") and has resided in its Rectory at 5 Saxton Street, Lockport, New York, County of Niagara.

5. Upon information and belief, prior to assuming the position of pastor at St. Mary's, Father Mach was on a leave of absence from the Diocese.

6. Upon information and belief, the highest ranking local official for the Diocese is the Bishop ("Bishop"); at the present time the Bishop is the Very Reverend Edward D. Head ("Bishop Head").

7. At all times relevant hereto, the RC Church is and was an hierarchical organization, administered by celibate male clerics, which has as its leader the Bishop of Rome, known as the Pope, currently Pope John Paul II.

8. The RC Church requires its members in the Diocese to obey its teachings and doctrine and submit to local authority represented by the Bishop.

9. The Bishop exercises his authority and ministry in the Diocese through adult celibate men, ordained as priests, and assigned by the Bishop to serve as pastors of local parishes.

10. Non-ordained members of the RC Church are known as "lay-persons" and are bound by the RC Church's teachings to respect and obey the Bishop and priests and take instruction from them about many domestic and spiritual matters, including sexuality.

11. According to the teaching of the RC Church, a lay-person's failure to submit to the authority of the RC Church or conform to its teachings is a sin, which causes the person to become separated to some extent from the Church and God's love.

12. From at least January, 1991 through January, 1993, the plaintiffs were practicing, non-ordained members of the RC Church and parishioners at St. Mary's parish.

13. From at least January, 1991 through the present, the Diocese, Bishop head and Father Mach, had and has a duty to exercise care and concern for Plaintiffs, to not exploit their position of authority and power over Plaintiffs and to not abuse Plaintiffs' trust.

14. At all times relevant hereto, in addition to being part of the RC Church, the Diocese was a New York state corporation which benefited from the privileges and benefits conferred by State law on religious corporations.

15. Since at least the time Father Mach became pastor of St. Mary's, through at least January of 1993, Mr. and Mrs. Doe devoutly believed in the RC

Church, its mission, teachings, and the goodness and trustworthiness of the Bishop, his agents and priests.

16. According to the teaching of the RC Church and the instruction of Bishop Head, ordained priests are proscribed from engaging in sexual relationships whether heterosexual or homosexual.

17. Upon information and belief, while Father Mach was serving as a priest at St. Vincent's, sometime before he was assigned to St. Mary's, the Diocese and its Bishop required Father Mach to attend psychological counseling and testing.

18. Father Mach grabbed John Doe in the crotch.

19. On a Saturday night sometime in or around October or November, 1991, Father Mach had a function to attend that would keep him out late; for that occasion he asked Mr. and Mrs. Doe to allow John Doe to stay at the Rectory to watch Father Mach's two dogs.

20. On a Saturday night sometime in or around October or November, 1991, John Doe stayed overnight at the Rectory at St. Mary's.

21. On that Saturday night, and early in the morning of the following day ("That Evening"), the following transpired:

A. John Doe, then 12 years old, was dropped-off at the Rectory by Mrs. Doe. He spoke with Father Mach briefly and then Father Mach went out.

B. John Doe fell asleep on Father Mach's couch while watching television and was sleeping when, very late, Father Mach returned home.

C. Father Mach awoke John Doe by tickling him. John Doe was startled and told Father Mach that he had been watching scary movies. Father Mach asked if John Doe wanted to sleep in Father Mach's bed so John Doe wouldn't be afraid.

D. John Doe, dressed in night-clothes, got into bed. Then Father Mach got into bed.

E. Once in bed, Father Mach told John Doe that he "slept in the buff." He talked to John Doe about pornographic movies and asked John Doe whether he had ever watched one. John Doe said he had not. Father Mach said that he was going to watch a pornographic movie and invited John Doe to watch it with him.

F. Father Mach left the bed, put on under shorts and a robe, and went into the living room; he put a video in the VCR and started to watch a pornographic movie.

G. John Doe was afraid to be alone and went into the living room and sat in a chair opposite Father Mach. Father Mach began to masturbate while watching the movie.

H. Father Mach said that he often did "this" with the young man he lived with but that the young man now had a girl-friend and didn't have much time for Father Mach.

I. John Doe was afraid; he left the room and locked himself in a bathroom.

J. After some time in the bathroom, John Doe returned to the living room. Father Mach called John Doe over to him. John Doe refused to go near him. Then John Doe went to retrieve a can of soda from a table near Father Mach. Father Mach grabbed John Doe and began to reach in John Doe's shorts. Father Mach exposed himself to John Doe and asked to see John Doe's penis. John Doe said No. Father Mach pulled John Doe's pants down and began to fondle John Doe. Father Mach also forced one of John Doe's hands onto Father Mach's penis and used John Doe's hand to masturbate. John Doe protested but could not get free of Father Mach's grasp. Father Mach told John Doe that John Doe "wanted" Father Mach's hands on him. Father Mach experienced orgasm and ejaculated on himself.

K. After he ejaculated, Father Mach got up to go and clean himself off. He told John Doe it was time for bed. Again Father Mach got into bed with John Doe. John Doe was crying and Father Mach hugged him and said: "God forgives us for all our sins." Father Mach also told John Doe that what he had done was "normal."

22. The morning after That Evening, Father Mach commented that John Doe had "made an old man feel good" and that John Doe "made rockets go off last night." Father Mach gave John Doe an expensive camera and told John Doe not tell anyone what had happened because it would ruin Father Mach's reputation as a priest.

23. The morning after That Evening, a Sunday, John Doe met his parents for mass and afterwards went home with them. He showed his parents the camera and they were surprised that Father Mach made such a gift to John Doe. Sometime that week, John Doe buried the camera in his backyard.

24. On or about December 23, 1991, John Doe told his mother, Jane Doe, what had transpired That Evening with Father Mach. He sobbed as he told his mother stating that he felt "dirty," that he wanted to start the New Year "clean," and that he was afraid his parents and God wouldn't love him anymore because of what had happened.

25. Thereafter, and for approximately 10 months, Mrs. and Mr. Doe did not know how to respond to John Doe's revelation. Both Mr. and Mrs. Doe were at that time very involved in church and parish life, they believed that Father Mach was their friend and trusted confidant, and Mrs. Doe was an employee of the Diocese.

26. On more than two occasions after November 1, 1991, Father Mach made gifts of money to John Doe, and on one occasion Father Mach gave John Doe an expensive leather and canvass jacket.

27. From That Evening and continuing thereafter, John Doe was depressed; his grades and behavior in school were affected; he protested going to church; he was compulsive about washing even to the point of using bleach to wash his hands; he often showered several times a day and for protracted periods of time; he was fanatical about having clean clothes; he experienced intrusive memories of the events of That Evening; he was anxious; experienced periods of sleeplessness; and he had thoughts about suicide.

28. In or around October, 1992, Plaintiffs consulted with a psychologist about the events of That Evening and the problems John Doe was experiencing.

29. On or about January 13, 1993, Mr. and Mrs. Doe had a meeting with Father Mach at which they discussed John Doe's accusations. At that meeting

Father Mach stated that he knew what they wanted to talk to him about, even before they told him, because someone Mrs. Doe had confided in had told Father Mach. Father Mach stated that he had been in counseling some time previously because the Diocese thought he was having an affair and had forced him to go for counseling. Father Mach stated that when he was in therapy he had tests that showed he did not have "any of those tendencies" in his background.

30. On or about March 17, 1993, Mr. and Mrs. Doe had a meeting ("Meeting") with Monsignor Robert Cunningham, Chancellor of the Diocese ("Msgr. Cunningham") to discuss the allegations concerning Father Mach.

31. Upon information and belief, at the Meeting Msgr. Cunningham was acting in his official capacity as a duly appointed and authorized agent for Bishop Head and the Diocese.

32. At that Meeting Msgr. Cunningham told Mr. and Mrs. Doe that the Bishop Head's main concern was John Doe. Msgr. Cunningham stated: "We want to assure you that we will take care of any costs for counseling that insurance doesn't cover for [John Doe] and anyone else in your family."

33. Sometime in or around April, 1993, the psychologist referred John Doe to another licensed psychologist for treatment. During that same period, Mrs. Doe sought counseling with a licensed psychologist. Thereafter Plaintiffs submitted their bills for those counseling services to the Diocese for payment. The Diocese refused to make payment.

34. On and after April 1, 1993, Mrs. Doe was unable to continue to work for the Diocese because of the stress generated by the events involving Father Mach. Her psychologist determined that stress and dysphoria disabled

Mrs. Doe from working under the circumstances, because her job required frequent contact with Father Mach.

35. In addition to the situation involving her son, Father Mach often subjected Mrs. Doe to vulgar, demeaning and harassing comments and treatment in the workplace. He often called her a "slut" or a "whore" and he often snapped her bra strap and pinched her buttocks.

36. Upon information and belief, at all times relevant hereto, the Diocese and Bishop Head knew or should have known, that Father Mach's conduct in the workplace, and with respect to Mrs. Doe, created and maintained a hostile and demeaning work environment.

37. As a result of the matters alleged herein, John Doe has and will continue from time to time to experience the following: poor concentration which negatively affects his academic performance; loss of interest and enjoyment in his usual hobbies and recreation; depression; anxiousness; panic; sleeplessness; confusion and fear about his psychological and emotional health and well-being; a loss of faith in the RC Church, its teachings and its clergy; intrusive and disturbing memories of That Evening; feelings of guilt and emptiness; thoughts of suicide; obsessive-compulsive behavior; Adjustment Reaction; Identity confusion; and phobic behavior.

**FIRST CAUSE OF ACTION**  
AGAINST THE DIOCESE

38. Plaintiffs repeat and reallege paragraphs 1 through 37 as if fully set forth herein.

39. Upon information and belief, the Diocese educated and trained Father Mach to become a priest.

40. At all times relevant hereto the Diocese had an obligation to assure that Father Mach was faithful to the RC Church's teachings and that he did not abuse the trust placed in him by lay-persons.

41. Upon information and belief, the Diocese had at all times relevant hereto a duty to provide adequate and appropriate educational and psychological services to its priests, including Father Mach on matters concerning sexuality.

42. Upon information and belief, the Diocese never provided Father Mach with adequate psychological counseling or treatment even though it knew or should have known that Father Mach engaged in inappropriate sexual behavior.

43. The Diocese, its agents and servants, created and maintained a dangerous and toxic instrumentality in Father Mach, which it released into the Diocese and specifically to St. Mary's parish, thereby causing the injuries alleged herein.

**SECOND CAUSE OF ACTION**  
**AGAINST THE DIOCESE**

44. Plaintiffs repeat and reallege paragraphs 1 through 43 as if fully set forth herein.

45. Upon information and belief, the Diocese and Bishop Head knew or should have known, at the time Father Mach was assigned to St. Mary's, that he

possessed propensities which made him a risk to commit acts of sexual abuse against minors.

46. The Diocese was negligent insofar as it failed and refused to take effective and appropriate measures to protect John Doe from Father Mach while simultaneously holding Father Mach out to Plaintiffs as a person worthy of their trust, respect and obedience, all of which caused the injuries alleged herein.

**THIRD CAUSE OF ACTION**  
AGAINST THE DIOCESE

47. The Plaintiffs repeat and reallege paragraphs 1 through 46 as if fully set forth herein.

48. The conduct of the Diocese in exposing John Doe to Father Mach constituted negligent, callous, reckless, wanton and intentional disregard for his health, safety and welfare and was the proximate cause of the injuries and damages alleged herein.

**FOURTH CAUSE OF ACTION**  
AGAINST THE DIOCESE

49. Plaintiffs repeat and reallege paragraphs 1 through 48 as if fully set forth herein.

50. At all times relevant hereto, the RC Church and the Diocese knew or should have known that the Plaintiffs reposed great trust and confidence in the RC Church, the Diocese and its agents and servants, including Father Mach, and that the Plaintiffs believed in and relied upon the teachings and counsel of the RC Church, the Diocese and Father Mach.

51. At all times relevant hereto the Diocese, through the Bishop, its priests and Father Mach, represented to Plaintiffs that it knew what was best for them in their personal, spiritual and sexual lives; that it would protect and guide them; that it would protect their trust; and the Diocese induced, and under pain of excommunication, sin and separation from God's love, coerced Plaintiffs to rely upon the RC Church and the Diocese and to place their trust and confidence in the RC Church, the Diocese and its agents including Father Mach; thereby assuming a fiduciary duty to Plaintiffs and duties of good faith and fair dealing.

52. The Diocese breached the trust and confidence placed in it by Plaintiffs and violated its fiduciary duties and duties of good faith and fair dealing owed to Plaintiffs thereby causing the injuries alleged herein.

**FIFTH CAUSE OF ACTION**  
AGAINST THE DIOCESE

53. Plaintiffs repeat and reallege paragraphs 1 through 52 as if fully set forth herein.

54. The Diocese knew or should have known that the Plaintiffs would rely on its agreement to pay for Plaintiffs' counseling expenses in excess of those covered by insurance.

55. Upon information and belief, at the time the Diocese promised to pay Plaintiffs' counseling expenses in excess of those covered by insurance, it knew that it did not intend to honor that promise.

56. By virtue of the forgoing, the Diocese committed a fraud on Plaintiffs and breached an agreement with the Plaintiffs all of which has caused the Plaintiffs to incur expenses for counseling.

**SIXTH CAUSE OF ACTION**  
AGAINST THE DIOCESE

57. Plaintiffs repeat and reallege paragraphs 1 through 53 as if fully set forth herein.

58. The Diocese is liable for the acts of Father Mach pursuant to the doctrine of *respondet superior*.

**SEVENTH CAUSE OF ACTION**  
AGAINST THE DIOCESE  
AND FATHER MACH

59. Plaintiffs repeat and reallege paragraphs 1 through 58 as if fully set forth herein.

60. The Defendants committed a fraud on Plaintiffs which was the proximate cause of the injuries alleged herein.

**EIGHTH CAUSE OF ACTION**  
AGAINST THE DIOCESE  
AND FATHER MACH

61. Plaintiffs repeat and reallege paragraphs 1 through 60 as if fully set forth herein.

62. At all times relevant hereto, the Diocese has and had more than 100 employees.

63. The Defendants created and maintained a hostile work environment for Mrs. Doe.

64. Mrs. Doe experienced mental anguish and distress as a result of the hostile work environment; she became disabled from working and has suffered economic loss as a result thereof.

**NINTH CAUSE OF ACTION**  
AGAINST FATHER MACH

65. Plaintiffs repeat and reallege paragraphs 1 through 64 as if fully set forth herein.

66. Father Mach committed assault and battery and trespass against the person of John Doe thereby causing the injuries alleged herein.

**TENTH CAUSE OF ACTION**  
AGAINST FATHER MACH

67. Plaintiffs repeat and reallege paragraphs 1 through 66 as if fully set forth herein.

68. As a result of the foregoing, Mrs. and Mr. Doe have and will continue to expend divers sums to obtain counseling and treatment for themselves and John Doe and they have been denied the normal and usual services and companionship of John Doe.

**ELEVENTH CAUSE OF ACTION**  
AGAINST FATHER MACH

69. Plaintiffs repeat and reallege paragraphs 1 through 68 as if fully set forth herein.

70. By virtue of the foregoing, Father Mach committed clergy malpractice and clergy malpractice *per se*.

**TWELFTH CAUSE OF ACTION**  
AGAINST FATHER MACH

71. Plaintiffs repeat and reallege paragraphs 1 through 70 as if fully set forth herein.

72. Father Mach negligently and/or intentionally inflicted emotional distress on John Doe.

WHEREFORE, the Plaintiffs demand judgment against the Defendants as follows:

A. On each of the First, Second, Third, Fourth, Sixth, Seventh, Ninth, Eleventh and Twelfth Causes of Action, compensatory damages in the amount of two million dollars (\$2,000,000.00);

B. On the Fifth Cause of Action, twenty-five thousand dollars (\$25,000.00);

C. On the Eighth Cause of Action twenty thousand dollars (\$20,000.00);

D. On the Tenth Cause of Action forty-five thousand dollars (\$45,000.00);

Together with the attorney fees and costs of this action and such other and further relief as to this court seems just and proper.

DATED: Buffalo, New York  
April 25, 1994

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**TO:**  
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JANE DOE AND JAMES DOE,  
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an infant using a pseudonym pursuant  
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Niagara County, New York, and

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-II- Main Street  
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Defendants.

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**FIRST AMENDED  
VERIFIED COMPLAINT**

INDEX NO. 13555-93

Assigned Justice:  
BARBARA HOWE, J.S.C.

**MURRAY & COLEMAN**  
Jennifer A. Coleman, Esq., of Counsel

*Attorneys for*

**Plaintiffs**

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420 MAIN STREET  
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STATE OF NEW YORK, COUNTY OF ERIE, ss:

I, DAVID J. SWARTS Clerk of said County, and also Clerk of Supreme and County Courts of said County, do hereby certify that I have compared the annexed copy with the original,

First Amended Verified Complaint.  
filed in my office and that the same is a correct transcript there from and of the whole of said original.

WITNESS my hand and seal of said County and Courts on day of NOV 21 1919

*David J Swarts*  
COUNTY CLERK