

Hearing: June 21, 2007 at 9:30 a.m.

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

CHRISTOPHER YOUNG  
*Plaintiffs*

v.

C.A. No. 03-1302

LOUIS E. GELINEAU *et al.*  
*Defendants*

**DEFENDANTS' MOTION FOR CONDITIONAL ORDER OF DISMISSAL**

Now come Defendants, Louis E. Gelineau, Thomas J. Tobin, Daniel P. Reilly, Kenneth A. Angell, Robert E. Mulvee, Church of the Holy Family, and Roman Catholic Bishop of Providence, a corporation sole, and move this Honorable Court for an order dismissing plaintiff's complaint for plaintiff's failure to respond to defendants' motion for summary judgment pursuant to Rhode Island Rule of Civil Procedure 56.

Defendants' motion for summary judgment, brought pursuant to Rule 56(b) of the Rules of Civil Procedure, and their accompanying memorandum of law were filed with the Court on or about February 12, 2007. (Exhibit A). Plaintiff has had four (4) months to respond to the summary judgment motion. However, plaintiff has not filed a single paper in opposition to defendants' motion for summary judgment as of the date of filing this motion.

In response to this motion, plaintiff's counsel may argue that he needs to review documents located at the Office of Education and Compliance, Cranston, Rhode Island, and/or the Chancery Offices, Providence, Rhode Island. This argument is entirely unpersuasive as these documents are wholly irrelevant to the issues contained within

FILED IN PROVIDENCE COUNTY  
SUPERIOR COURT  
DATE 6/18/07  
TIME \_\_\_\_\_  
J FRK [Signature]

defendants' summary judgment motion. Even so, plaintiff has had ample opportunity to review them and scan copies of whatever plaintiff deems relevant. These documents have been available to plaintiff's counsel every business day from 9 am - 4 pm since April 25, 2007.<sup>1</sup>

Rule 56 (c) of the Rules of Civil Procedure states that "When a motion for summary judgment is made . . . an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Plaintiff has failed to file any response to defendants' motion for summary judgment. Plaintiff should not be allowed to delay the inevitable simply by his own inaction. Defendants are entitled to a hearing and a ruling. Therefore, Defendants request that unless he file a response to the summary judgment motion within twenty days, the court sanction him by dismissing his action.

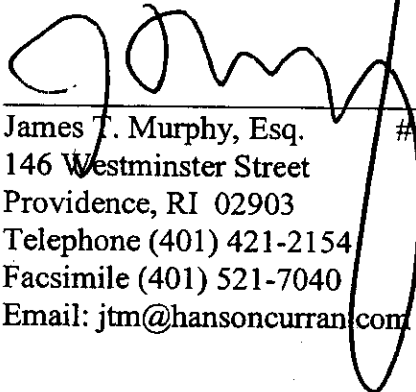
WHEREFORE, Defendants request a Conditional Order of Dismissal granting the within Motion if Plaintiff does not provide a response in accordance with Super. R. Civ. P. 56 to defendants' summary judgment motion within twenty (20) days from the date set forth for hearing.

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<sup>1</sup> Plaintiff's counsel has been to the Cranston facility six times for a total of 13 hours, and to the Chancery Offices only once for approximately one hour. Thus far plaintiffs counsel has reviewed files on only two priests (Abreu and Azzarone) out of the approximately 85 priest files. They have not reviewed any files containing administrative, educational, procedural or other non-priest specific materials made available for inspection.

Respectfully submitted,  
Defendants, Louis E. Gelineau *et al.*  
By their attorneys,

HANSON CURRAN LLP



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**NOTICE OF HEARING**

Please take notice that the within *Motion* shall be called for hearing before this Honorable Court on *Thursday, June 21, 2007 at 9:30 AM.*

**PROOF OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of June 2007, I mailed a copy of the within document to **Timothy J. Conlon, Esq.**, 76 Westminster Street, Suite 1310, Providence RI 02903; **Carl DeLuca, Esq.**, DeLuca and DeLuca, 631 Jefferson Boulevard, Warwick, RI 02886; and **William T. Murphy, Esq.**, 312 Turk's Head Building, Providence, RI 02903, at their usual business addresses as hereinabove set forth.



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of Hanson Curran LLP

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

CHRISTOPHER YOUNG

V.

C.A. No. 03-1302

LOUIS E. GELINEAU;  
DANIEL P. REILLY; KENNETH A.  
ANGELL; ROBERT E. MULVEE;  
CHURCH OF THE HOLY FAMILY;  
THE ROMAN CATHOLIC BISHOP OF  
PROVIDENCE, a Corporation Sole;  
JOHN PETROCELLI; and  
JOHN/JANE DOE 1-250, AND XYZ  
CORPORATIONS 1-250

**HIERARCHY DEFENDANTS'<sup>1</sup> MOTION FOR  
SUMMARY JUDGMENT UNDER RULE 56(b)  
ON THE GROUNDS OF LACK OF NOTICE**

Now come the Hierarchy Defendants to move this Court to enter summary judgment as a matter of law under Rule 56(b) with respect to all claims.

The Hierarchy Defendants submit the accompanying memorandum of law and appendix of exhibits in support of this motion.

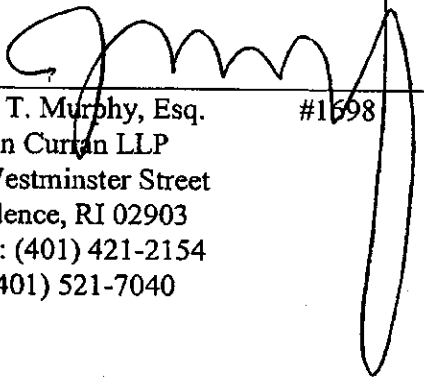
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<sup>1</sup> The designation "Hierarchy Defendants" refers to nonperpetrator defendants Louis E. Gelineau; Daniel P. Reilly; Kenneth A. Angell; Robert E. Mulvee; Thomas J. Tobin, Church of the Holy Family; and the Roman Catholic Bishop of Providence, a Corporation Sole. It does not include the alleged perpetrator John Petrocelli.



Hierarchy Defendants  
By their Attorneys,

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#### PROOF OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of February, 2007, I mailed a true and exact copy of the within document to **Timothy Conlon, Esq.**, The Turks Head Building, 76 Westminster St., Turks Head Bldg., Suite 420, Providence, RI 02903; and **Carl DeLuca, Esq.**, DELUCA & DELUCA LAW OFFICES, INC., 631 Jefferson Boulevard, Warwick, RI 02886.

*Sara Fontes*  
\_\_\_\_\_  
of Hanson Curran LLP

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

CHRISTOPHER YOUNG

V.

C.A. No. 03-1302

LOUIS E. GELINEAU;  
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ANGELL; ROBERT E. MULVEE;  
THOMAS J. TOBIN; CHURCH OF  
THE HOLY FAMILY; THE ROMAN  
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JOHN PETROCELLI; and  
JOHN/JANE DOE 1-250, AND XYZ  
CORPORATIONS 1-250

**HIERARCHY DEFENDANTS' MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
UNDER RULE 56(b) ON THE GROUNDS OF LACK OF NOTICE**

**Introduction**

Proof of foreseeable harm is essential to tort liability. The first notice the defendants had that John Petrocelli posed a sexual threat to children was from plaintiff Christopher Young himself on or about May 6, 2002. Defendants responded to Young's complaints by suspending Petrocelli from ministry. Young's statement – years after the fact of his abuse – was the first notice these defendants received that Petrocelli might pose a danger of sexual molestation to minors. Because the defendants were unaware of any complaints against Petrocelli putting them on notice he might be a danger prior to the time he molested Young, Young's claims fail as a matter of law.

### Statement of the Case

On May 6, 2002, Young contacted Monsignor Paul D. Theroux, Moderator of the Curia for the Diocese of Providence, to report that he "believed" he had been molested by a priest, Father Petrocelli, when he was a young boy. (App. 1). At the time of the allegation, Mr. Young was 23 years old. Mr. Young alleges that the abuse happened over the course of two years beginning in May 1987, (Plaintiff's Answers to Interrogatory # 21, App. 4), or in late 1988 or early 1989. (Depo. p. 126, App. 9). Mr. Young has admitted he is not aware of any other sexual abuse allegations made against Petrocelli. (Depo. p. 140-141, App. 10).

John Petrocelli was ordained a priest on May 8, 1971. After his ordination, Petrocelli was appointed assistant pastor of St. Ann's Parish in Providence, R.I. In 1976, he became the assistant pastor at the Cathedral of SS. Peter & Paul in Providence and remained there until 1981, when he became the assistant pastor of Holy Family Parish in Woonsocket, R.I. In 1990, Petrocelli became the Catholic Chaplain at St. Joseph's Hospital in North Providence, and in 1994, he became the Director of Pastoral Care at St. Joseph's Health Services of Rhode Island. Following allegations of sexual misconduct made by Mr. Young to Msgr. Theroux, and a subsequent investigation by Robert McCarthy, the canonical investigator under Canon 1717 of the Code of Canon Law, Petrocelli withdrew from public ministry on August 22, 2002.

At no time before Mr. Young's complaint were the defendants aware that Petrocelli had a propensity to commit sexual acts against children. Defendant, Louis E. Gelineau, was the Bishop of Providence from 1972 until his retirement in 1997. He stated in his response to interrogatory # 3 that "I have no personal recollection of any notice of sexual assault or sexual misconduct (as I

understand those terms were defined by the court in this case) made against John Petrocelli. My attorneys learned after my retirement that this plaintiff, Christopher Young, made a complaint against John Petrocelli to Monsignor Paul Theroux on May 6, 2002, who in turn conveyed the complaint to Mr. Robert McCarthy for his investigation.” (App. 13).

Defendant, Robert E. Mulvee, was installed as the Coadjutor Bishop of Providence in 1995, and became Bishop of Providence in 1997 until his retirement in 2005. Bishop Mulvee in his sworn interrogatory # 3 answer stated that “I have no personal recollection of any notice of sexual assault or sexual misconduct . . . made against John Petrocelli until this plaintiff made his allegation in 2002.” (App. 17).

Likewise, defendants, Daniel P. Reilly,<sup>1</sup> Thomas J. Tobin,<sup>2</sup> Roman Catholic Bishop of Providence, a Corporation Sole, and Church of the Holy Family reiterated Bishops Gelineau’s and Mulvee’s answers. (App. 21, 25, 29, 33). Bishop Reilly stated “I have no personal recollection of any notice of sexual assault or sexual misconduct . . . made against John Petrocelli until this plaintiff, Christopher Young, made a complaint against John Petrocelli to Monsignor Paul Theroux on May 6, 2002, and subsequently filed a lawsuit against me and other individuals.” (App. 21). Bishop Tobin and Roman Catholic Bishop of Providence, a Corporation Sole, responded identically that each “ha[d] no personal recollection of any notice of any allegations of sexual assault or sexual misconduct . . . made against John Petrocelli . . .”

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<sup>1</sup> Bishop Reilly left the Diocese of Providence to become the Bishop of Norwich, CT in 1975, at least 12 years *before* Mr. Young’s first alleged molestation. He was never the Bishop of Providence.

<sup>2</sup> Bishop Thomas J. Tobin became the Bishop of Providence in 2005, after serving as Bishop in the Diocese of Youngstown, OH. He was not aware of any allegations of sexual misconduct against John Petrocelli until after he was installed as Bishop in 2005. By that time,



before plaintiff's complaint. (App. 25, 29). Responding in similar fashion, the individual responding on behalf of Defendant, Church of the Holy Family, answered "I have no personal recollection of any notice of any allegation of sexual assault or sexual misconduct . . . made against John Petrocelli received by me until this lawsuit." (App. 33).

Bishop Kenneth A. Angell is the only defendant who had any first-hand knowledge of any complaints made about Petrocelli, although never of sexual abuse, and they did not occur until 1992, well after Young was allegedly molested. Bishop Angell was appointed Auxiliary Bishop of Providence in 1974, and remained Auxiliary Bishop until 1992, when he was appointed Bishop of Burlington, VT. Specifically, Bishop Angell stated in his interrogatory answer that: "I have no personal recollection of any notice of sexual assault or sexual misconduct . . . made against John Petrocelli. My attorneys learned, approximately ten years after I had become Bishop of Burlington, VT that this plaintiff, Christopher Young, made a complaint against John Petrocelli to Monsignor Paul Theroux on May 6, 2002, who in turn conveyed the complaint to Mr. Robert McCarthy for his investigation." (Kenneth A. Angell's Answer to Interrogatory # 3, App. 37).

Bishop Angell's interrogatory response describes two instances of complaints he received about Petrocelli in 1992, *subsequent to Petrocelli's alleged molestation of Young*, neither of which concern sexual abuse. The first is an allegation that Petrocelli took youngsters swimming without first obtaining parental permission. Bishop Angell explained the complaint in his interrogatory answer:

[M]y attorneys through their investigation learned that on or about July 7, 1992, Bruce R. Daigle, the then Administrator of the

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Mr. Young's allegation had been investigated and Petrocelli had withdrawn from active ministry. This lawsuit was already pending.

Greater Woonsocket Catholic Regional Schools. . . Woonsocket, RI spoke with me to inform me that three sets of parents from the St. Joseph Intermediate School in Woonsocket reported that Father Petrocelli did not receive their permission to take their children swimming at the CCRI pool. Mr. Daigle also called Brother Daniel Casey, the diocesan Superintendent of Schools, for advice on how to deal with the issue. There were no accusations of any type of sexual assault or sexual misconduct (as defined by the court) on the part of Father Petrocelli. On or about July 13, 1992, I informed Father Petrocelli that he was not to take any more children swimming. On August 19, 1992, Bruce Daigle requested that Father Petrocelli resume his relationship with the St. Joseph Intermediate School in Woonsocket. Mr. Daigle noted that the principal of St. Joseph's Intermediate School, Sister Rachel Morrissette, wanted Father Petrocelli to participate in the upcoming school year's activities.

(Kenneth A. Angell's Answer to Interrogatory # 5B, App. 41).

Also in 1992, Bishop Angell received a second complaint in which the complainant alleged that Petrocelli looked at him inappropriately, but the complainant emphasized that Petrocelli never touched him:

On or about September 10, 1992, Peter Cummings, address unknown, first contacted me and alleged that he was sexually abused by a priest when he was twelve years old while attending a parochial school in Providence, RI. At the time Mr. Cummings contacted me, he was a twenty-five year old patient at Butler Hospital in Providence, RI. I agreed to meet Mr. Cummings at Butler Hospital the next day. On that date Mr. Cummings informed me that while he was a student at Bishop McVinney in Providence, Father John Petrocelli would take him and other boys swimming at the Boys Club on Branch Avenue. Mr. Cummings alleged that Father Petrocelli would look at him, he felt inappropriately, which made him uncomfortable, but that Father Petrocelli never touched him. Mr. Cummings stated that he needed somewhere to stay and was looking for therapy. After the meeting with Mr. Cummings, I contacted Msgr. Frappier, Vicar for Family Life, and Mr. Marcel Charpentier, Executor Director of Catholic Social Services, to find a place for Mr. Cummings to live and to get him therapy.

*Id.*

After Bishop Angell received the two complaints against Petrocelli, he informed Bishop Gelineau and the two met with Petrocelli, and sent him for a psychiatric evaluation. Bishop Angell described the meeting in his interrogatory response:

On or about September 21, 1992, Bishop Gelineau and I met with John Petrocelli and told him to stay away from children and that he was to stop all contact with St. Joseph Intermediate School. On September 23, 1992, I contacted Mr. Daigle and told him that Father Petrocelli would have no further involvement with the Woonsocket school system. On September 30, 1992, I spoke, at Peter Cummings' request, with Mr. Cummings' doctor, Dr. Dalheim, at the Providence Center. Because of confidentiality reasons, she suggested that Mr. Cummings be seen by another doctor to make a recommendation as to Mr. Cummings' therapy. Shortly afterwards, either I or Bishop Gelineau referred Father Petrocelli for a psychiatric evaluation. Mr. Petrocelli was evaluated by a psychiatrist, Dr. Alexander O'Hanley, 113 Belmont St., Belmont, MA in October or November of 1992 as a result of Mr. Cummings' complaint.

*Id.* In his evaluation, Dr. O'Hanley stated that "I find Fr. Petrocelli to be a very normal, hard working priest who, unfortunately, has been the recipient of a grossly irresponsible accusation. It is my belief that the accuser should not be dignified with further attention." No further complaints or allegations were made against Petrocelli until Mr. Young's in 2002. *Id.*

In response to the affirmative statements of the defendants, Mr. Young has failed to produce any evidence that defendants were aware of Petrocelli's alleged propensity to harm children before he was assaulted. Defendant, Louis A. Gelineau's, interrogatory number 10 asks the plaintiff to:

Identify, with particularity, each document or other item of real evidence known to you or your attorneys to support or evidence your claim that the statute of limitations is tolled and/or suspended due to the misrepresentation, fraud and fraudulent concealment of the part of Defendant Louis A. Gelineau and, further, set forth a name, address and telephone number of the person or persons

having possession of each such document or item and whether or not you or your attorneys have copies of the same:

(App. 3). The plaintiff responded with an objection and relied solely on allegations made in his complaint, as well as allegations in a complaint filed on behalf of *another plaintiff against a different priest*:

Objection: This interrogatory calls for disclosure of information that is protected work product developed in anticipation of litigation. This interrogatory is overly broad, unduly burdensome, and seeks information which is beyond the scope of discovery, and more particularly beyond the scope of Super. R. Civ. P. 26(b)(4). Without waving this objection, plaintiff states:

The complaint and the complaint in the related matters of *Heroux v. Carpenter*, et al detail the nature of the organization and defendants' relationship to each other, and the habits and practices which lead to the harm to plaintiff, and in particular, a pattern and practice of misrepresentation and fraud as it relates to the safety of children, specifically the safety of children with priests in the Diocese of Providence. Discovery in these matters produced by defendants to date identify such documents. I allege on information and believe that the documents withheld by defendants, but identified in the affidavits of defendant's counsel also would come within the scope of this request. I have no personal knowledge regarding such documents other than those identified above.

(Young's Answer to Interrogatory # 10, App. 3). Interrogatory # 29 asked Mr. Young to identify the names of any individuals who gave notice of any kind to any of the defendants concerning sexually inappropriate conduct on behalf of John Petrocelli. The interrogatory specifically states:

**Interrogatory No. 29:** Set forth the name and address and current phone number of each person (including, but not limited to lay persons, clergy/religious persons, or law enforcement personnel) known to you or your attorneys to have communicated any information or notice, in any form, to Defendant, Louis A. Gelineau, concerning any sexually inappropriate conduct on the part of the Priest Defendant, at any time and with any person, and for each such person state:

- (a) The date or dates of each such communication;
- (b) The manner in which each such communication was made (e.g. face to face, by telephone, by mail, etc.);
- (c) The name and address of each witness to the communication or otherwise having personal knowledge of it;
- (d) The substance of each communication, including a particular description of the sexually inappropriate conduct as communicated;
- (e) The response, if any, in words or actions to each communication; and
- (f) A description of each document or other item evidencing each communication, together with the name, address and phone number of the person or persons possessing same, and whether or not you or your attorneys have copies.

Again, Mr. Young failed to identify any witnesses in his response. He merely answered, "See my objection and response to interrogatory number 10." (Young's Answers to Interrogatory # 29, App. 6-7).

Additionally, Mr. Young has failed to produce any documents that support his allegations that the defendants knew or had reason to know of John Petrocelli's propensity for harm. Request # 9 asked Mr. Young to provide "each document, or other item of real evidence, known and possessed by you or your attorneys that supports or evidences any alleged failure on the part of defendant, Gelineau,<sup>3</sup> to supervise and/or control the alleged perpetrator priest (John Petrocelli) in this action in order to protect the safety and to prevent injury to children within whom such priests may have had contact." (App. 44).

Mr. Young's replied, "See documents on the accompanying CDROM." (App. 44). The majority of documents provided on Mr. Young's cd-rom have no relation to this request or even to this current lawsuit, and none support his allegations that Bishop Gelineau, or any other defendant, had knowledge that Father Petrocelli might sexually molest children. The documents on the cd-rom consist of the following:

1. Annual Financial Report of the Central Administration Funds and the Diocesan Cemetery Operations of the Diocese of Providence, 2004 – 2005.
2. A note allegedly written about William O'Connell.
3. Mr. Young's answers to interrogatories.
4. Mr. Young's interview by Robert McCarthy in May 2002.
5. Exhibits attached to Mr. Young's complaint.
6. Police report(s) regarding William O'Connell.
7. Articles from the website [www.dioceseofprovidence.com](http://www.dioceseofprovidence.com)
8. Defendants' privilege log in *Banville v. Gelineau., et al.* PC 03-0559 (regarding Roland Lepire).
9. Defendants' privilege log in *Young v. Gelineau, et al.*
10. Defendants' First Response to Mr. Banville's Request for Production of Documents in *Banville v. Gelineau et al.*, PC 03-0559 and accompanying documents.
11. Defendants' First Response to Mr. Young's Request for Production of Documents and accompanying documents.
12. Bishop Louis E. Gelineau's Answers to Interrogatories in *White v. Roman Catholic Bishop of Providence, et al.*, PC 93-0089. (regarding Alfred Desrosiers).
13. Bishop Louis E. Gelineau's Answers to Interrogatories in *White v. Roman Catholic Bishop of Providence, et al.*, PC 93-0089. (regarding Robert Marcantonio).

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<sup>3</sup> Each of the defendants, Daniel P. Reilly, Kenneth A. Angell, Robert E. Mulvee, Church of the Holy Family, and Roman Catholic Bishop of Providence, a Corporation Sole, asked the plaintiff for similar documents. Mr. Young gave the same response to all.

14. Bishop Louis E. Gelineau's Answers to Interrogatories in *White v. Roman Catholic Bishop of Providence, et al.*, PC 93-0089. (regarding Richard Meglio).
15. Bishop Louis E. Gelineau's Answers to Interrogatories in *White v. Roman Catholic Bishop of Providence, et al.*, PC 93-0089. (regarding William O'Connell)
16. Bishop Louis E. Gelineau's Answers to Interrogatories in *White v. Roman Catholic Bishop of Providence, et al.*, PC 93-0089. (regarding James Silva).
17. Bishop Louis E. Gelineau's RFP response as to James Silva as to multiple lawsuits.
18. Bishop Louis E. Gelineau's deposition testimony in an unidentified federal lawsuit regarding Robert Marcantonio.
19. Response of the Hierarchical Defendants to Plaintiff's RFP as to James Silva.
20. Response of the Hierarchical Defendants to Plaintiff's RFP in *Doe v. O'Connell*, PC 86-0077 regarding William O'Connell.
21. Deposition of Bishop Daniel P. Reilly regarding William O'Connell and Robert Marcantonio in federal lawsuits, 93-0615-T; 93-0660-T; 93-0661-T.
22. Corporation certificates for Roman Catholic Bishop of Providence.
23. Witness statements regarding William O'Connell.

The majority of these documents refer to other priests in other lawsuits. Aside from Mr. Young's statements, no document on the cd-rom reflects sexual abuse allegations made against Petrocelli.

Defendants asked Mr. Young to provide evidence of any communications to any of the defendants regarding sexually inappropriate behavior on the part of John Petrocelli. Request #18 asked Mr. Young to "[p]roduce all statements, affidavits, documents or other items in real evidence in the possession of you or your attorneys comprising, documenting or evidencing the communication by any person at any time of any information . . . [to any defendant] concerning any sexually inappropriate conduct on the part of the defendant (perpetrator priest) in this action." Mr. Young again responded: "See documents produced on the accompanying

CDROM.” (App. 45). Other than Mr. Young’s statement to Mr. McCarthy in 2002, there are no statements, affidavits, documents or any other items evidencing communications concerning abuse by Petrocelli.

Defendants asked Mr. Young for evidence of any other sexual abuse alleged against John Petrocelli: “Produce all documents . . . evidencing or corroborating any incident of child sexual abuse upon anyone by the perpetrator priest defendant which you allege occurred before or contemporaneously with the incidents of abuse which you allege were perpetrated upon yourself.” (Defendants’ Request # 28, App. 46). Mr. Young replied “See documents in response to request 1 and on the accompanying CDROM.” (App. 46).

Mr. Young’s reply refers to documents from Angell Street Psychiatry and Ocean Tides. (App. 49-56). These documents do not reflect any incidents of child sexual abuse by John Petrocelli either before or during Mr. Young’s alleged attacks. The records simply indicate that Mr. Young saw a clinician for one appointment at Angell Street Psychiatry, in April of 2005. This appointment took place two years after Mr. Young filed this lawsuit. The intake document indicates that while he “admits to sexual abuse by non-family members,” Mr. Young’s chief complaint was that he was “verbally abusive” with his girlfriend and had a problem with “fighting with other males.” (App. 49, 51). There is no reference to any abuse by Petrocelli.

Mr. Young’s records from Ocean Tides are equally unresponsive to the defendants’ request. (App. 57-61). Mr. Young was treated at Ocean Tides, Narragansett, RI in 1995, when he was 16 years old. He was placed there “for a variety of charges including B&E’s and possession of a handgun.” (App. 57). While at Ocean Tides, Mr. Young was subjected to extensive psychological evaluations, none of which mention sexual abuse. Dr. Lawrence Grebstein, Ph.D., ABPP, evaluated Mr. Young on May 19, 1995. Dr. Grebstein reported:



Chris has been in the Training School twice. The first time he was sent there on charges of possessing a handgun and breaking and entering. His second placement was for violating his probation. He has been getting into trouble since he was about fourteen. He attributes his difficulties to drug use. Although he now drinks occasionally, he denies using any other drugs. Chris said that he used to smoke a lot of marijuana. He and his friends would smoke one half ounce a day and he would be stoned for most of his waking hours. . . . During this time he said that he had no relationship with his family . . .

Dr. Grebstein further reported that Mr. Young's father was a "recovering alcoholic," and that Mr. Young attributes the "cause of his depression to stress." (App. 60-61) Aside from Mr. Young's complaints of depression, Dr. Grebstein stated that "[Mr. Young] does not show signs of any other psychological condition." (App. 61). Dr. Grebstein also cautioned that "[w]hile he appeared sincere in what he said, there is reason to question his candor." *Id.*

Mr. Young's problems at Ocean Tides focused solely on his substance abuse problems, history of violence, and issues with his family members. The records make no reference to any kind of sexual abuse, nor do they refer to any defendant. Mr. Young failed to provide any evidence that corroborates an incident of sexual abuse perpetrated by John Petrocelli either before or contemporaneously with his alleged abuse.

Lastly, defendants asked Mr. Young to produce evidence "corroborating any alleged knowledge on the part of this defendant Gelineau<sup>4</sup> before the filing of your complaint, of any incidents of child sexual abuse alleged to have been perpetrated upon you by the defendant perpetrator priest." (Request # 29, App. 46). Defendants also asked for evidence "corroborating any alleged knowledge . . . of any sexual abuse incidents involving the perpetrator priest defendant with other persons which incidents allegedly occurred at any time prior to or

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<sup>4</sup> Each of the defendants, Daniel P. Reilly, Kenneth A. Angell, Robert E. Mulvee, Church of the Holy Family, and Roman Catholic Bishop of Providence, a Corporation Sole, asked the plaintiff for similar documents. Mr. Young gave the same response to all.

contemporaneously with the incidents of abuse which you allege . . .” (Request # 30, App. 47). Once again, Mr. Young replied to both requests: “See documents produced on the accompanying CDROM.” Once again, there are no documents on Mr. Young’s cd-rom that support his allegation that the defendants were aware of Petrocelli’s propensity to commit child sexual abuse before Mr. Young’s complaint.

Defendants were first aware of allegations of sexual abuse made against Petrocelli when this plaintiff came forward in 2002. The plaintiff in this matter has failed to reveal any prior evidence of notice to the defendants that Petrocelli was, or could become, a sexual predator.

### **Summary Judgment Standard**

A case is ripe for summary judgment when no material facts are in dispute, *Richard v. Blue Cross & Blue Shield*, 604 A.2d 1260, (R.I. 1992), and no ambiguity exists as a matter of law. *Holliston v. Mills, Inc. v. Citizens Trust Co.*, 604 A.2d 331 (R.I. 1992). “[A] party who opposes a motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” *United Lending Corp. v. City of Providence*, 827 A.2d 626, 631 (R.I. 2003) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996)). The plaintiff must “demonstrate that [the plaintiff has] evidence of a substantial nature, as distinguished from legal conclusions, to dispute the moving party on material issues of fact.” *Bourg v. Bristol Boat Co.*, 705 A.2d 969, 971 (R.I. 1998). If the plaintiff cannot point to any genuine issue of material fact, summary judgment must be granted. *See Grande v. Almac’s, Inc.*, 623 A.2d 971 (R.I. 1993).

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## Argument

“[T]he linchpin in determining the existence of any duty owed . . . is the foreseeability of the risk of injury,” *Carroll v. Yeaw*, 850 A.2d 90, 93 (R.I. 2004) (quoting *Splendorio v. Bilray Demolition Co.*, 682 A.2d 461, 466 (R.I. 1996)), and reasonable foreseeability is “[t]he core predicate for imposing liability[.]” *Maliki v. Doe*, 814 So.2d 347, 362 (Fla. 2002).

For Young to recover on his claims against any of the individual defendants, he must prove, at a minimum, that the specific defendant had information or should have had information sufficient to give the defendants a duty to prevent reasonably foreseeable harm from the sexual advances of the alleged perpetrator priest, John Petrocelli, *prior* to the assaults he allegedly suffered (*i.e.* before 1989).<sup>5</sup> *See, e.g., N.H. v. Presbyterian Church (U.S.A.)*, 998 P2d 592, 600 (Okla. 1999) (“The critical element for recovery is the employer’s prior knowledge of the servant’s propensities to create the specific danger resulting in damages.”); *Lisa P. v. Attica Central School District*, 27 A.D.3d 1080, 1081, 810 N.Y.S.2d 772, 772 (2006) (To impose liability on a school district for negligent supervision “the plaintiff generally must demonstrate the [school district’s] prior knowledge or notice of the individual’s propensity or likelihood to engage in such conduct, so that the individual’s acts could be anticipated or were foreseeable.”).

The plaintiff cannot recover without evidence that notice of sexual abuse by Father Petrocelli was reported to the defendants prior to the time he was molested. *See Isely v.*

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<sup>5</sup> Or before March 1991 if his deposition testimony is accepted in lieu of his contradictory answers to interrogatories concerning when the abuse occurred – in which case his claims would be barred by the statute of limitations. (*See* Defendants Memoranda in Support of Sum. Judg. on statute of limitations grounds).

*Capuchin Province*, 880 F.Supp. 1138, 1151 (E.D. Mich. 1995) (Without evidence that abuse was reported to church defendant, no liability would be imposed.).

Young cannot prevail here because the first notice that Petrocelli might pose a danger was by Mr. Young himself in 2002 - - well after the fact. Mr. Young has acknowledged that he was not aware of any other allegations of sexual misconduct made against Father Petrocelli, and his discovery materials have failed to reveal any such prior notice. The notice received in 1992 did not concern sexual abuse, and more importantly, it occurred well *after* the abuse alleged by Mr. Young.

### Conclusion

For all the above-stated reasons, plaintiff's claims against the defendants must fail as the defendants did not have notice of Father Petrocelli's propensity to commit sexual abuse until Mr. Young's own report in 2002 - over a decade after he says he was molested. As there is no genuine issue of material fact on the issue of notice, and the evidence fails to show any notice that would support imposition of liability, the Hierarchy Defendants are *each* entitled to judgment as a matter of law.

Hierarchy Defendants  
By their Attorneys,

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