SB

112

Alaska State Legislature

Senator Hollis French

Letter of Intent

SB112 - Statute of Limitations for Sexual Offenses

SB 112 creates a one year period in which civil action may be brought against all felony sexual assault of a minor cases that are currently time barred by Alaska statute of limitations laws.

In 2001, the Alaska Legislature passed House Bill 210, an act that removed the statute of limitations for all felony sexual assault cases. This act makes any sex assaults that take place after October 1, 2001 free of any statute of limitations. The bill passed unanimously in both bodies.

Unfortunately, HB 210 left one class of victims out: those who were assaulted while the old statute of limitations was in effect. SB 112 cures this injustice by allowing victims of legitimate claims the opportunity to have their day in court.

Experts have found there are several reasons that a victim, especially a child, will not report sexual abuse. Multiple studies have shown:

- Victims of childhood sexual assault are often extremely embarrassed by the abuse, and may not disclose the crime against them until adulthood.

- Children who are victims will often fail to report sexual abuse due to fear of the consequences; a child may also feel guilty for reporting the perpetrator or fear retaliation from his or her abuser.

- It can take months, even years, before a victim understands the connection between the problems they are experiencing as an adult and the abuse they experienced as a child.

- There are many effects that untreated childhood sexual abuse can delay into adulthood. Long-term effects that are frequently reported and associated with

sexual abuse include depression, self-destructive behavior, anxiety, feelings of isolation, poor self-esteem, difficulty in trusting others, tendency toward revictimization, substance abuse, and sexual maladjustment.

- Among victims of sexual assault, an inability to trust is common. This inability can prevent many victims, especially children, from disclosing the abuse.

- Many victims of childhood sexual abuse have repressed all memory of the abuse for years, it is often only under the guidance of professional counseling or therapy that the victim may come to realize that a crime against them took place.

Regardless of the reason it was not disclosed, the abuse remains illegal. SB 112 allows past victims of sexual abuse the same rights they would have under today's law, the right to file charges against their perpetrators no matter when the abuse occurred.

Senator Hollis French

Alaska State Legislature

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Sponsor Statement

SB 112 – Statute of Limitations for Sexual Offenses

SB 112 creates a one year period in which civil a action may be brought against felony sexual assault and sex abuse cases that are currently time barred by Alaska statute of limitations laws.

Alaska law was amended in 2001 to remove the statute of limitations for all felony sexual assault and sex abuse cases. Unfortunately, with this change, one class of victims remains left out: those who were assaulted while the old statute of limitations was in effect. SB 112 cures this injustice by allowing victims with legitimate claims the opportunity to have their day in court.

Experts have found there are several reasons that a victim, especially a child, will not report sexual abuse right away. Numerous studies have shown it can take years for a victim to fully realize that they were abused and to understand the effect the abuse has had on their life.

Sex abuse and sex assault is illegal, regardless of the reason it was not disclosed. SB 112 allows past victims the same rights they would have under today's law; the right to file suit against their perpetrators no matter when the abuse occurred.

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MEMORANDUM

March 30, 2007

SUBJECT: Application of the constitutional prohibition against ex post facto laws to SB 112 (Work Order No. 25-LS0577\C)

TO: Senator Hollis French
Attn: Allison Biastock

FROM: Dennis C. Bailey DCB
Legislative Counsel

You have asked how constitutional prohibitions against ex post facto laws apply, if at all, to SB 112. The U.S. Const. art. I, § 10, and Alaska Const. art. I, § 15 prohibit ex post facto laws.

SB 112 changes the statute of limitation for acts constituting sexual offenses set out in AS 09.10.065(a), which allows a person to "bring an action at any time for conduct that would have violated certain sexual offenses." Although the action is defined by the kind of conduct that would be a crime, AS 09.10.065(a) allows for civil, not criminal, action. This conclusion is supported by AS 09.10.010, which provides that the chapter applies to civil actions.

Most of the many Alaska cases addressing the ex post facto issue address criminal matters. Some hold the view that the constitutional prohibition against ex post facto laws only apply to criminal laws. One commentator noted, "It applies only to criminal matters, although retroactive civil statutes have sometimes been held unconstitutional on some other ground, usually as a taking of property rights without due process of law." LaFave, *Criminal Law*, Ex Post Facto Laws, Sec. 2.4 at pages 97-98. There is authority from other jurisdictions finding that the constitutional prohibition against ex post facto laws applies only to criminal laws. *In re Rabideaux*, 306 N.W. 2d 1 (Wis. 1981), app. dismissed, 454 U.S. 1025, 70 L.Ed.2d 469 (1981) (ex post facto prohibition did not apply to attorney disciplinary proceedings because the law is neither criminal nor punitive; no ex post facto prohibition except in criminal proceedings or matters where penalty or punishment is imposed); *See also Guaylupo-Moya v. Gonzales*, 423 F.3d 121 (2d Cir. 2005) (ex post facto prohibition did not apply to deportation proceedings). However, my research, though not exhaustive, failed to find an Alaska case that definitively states that the constitutional ex post facto prohibition only applies in the criminal setting. Even the Alaska Attorney General's office opinion, expressing the opinion that ex post facto laws only apply in criminal matters, did not use an Alaska case as authority for its opinion.

> "Ex post facto laws and retrospective or retroactive laws are easily distinguished. Every ex post facto law must necessarily be retrospective, but not every retrospective law is an ex post facto law. ***Ex post facto laws relate to crimes and criminal statutes only.***" 16 B Am. Jur. 2d Constitutional Law § 645 (2004) (emphasis added).

2005 Alas. AG LEXIS 5 (Alas. AG 2005)

The Alaska Supreme Court has expressed doubt whether the ex post facto restriction is limited to criminal laws. In *Danks v. State*, 619 P.2d 720 (Alaska 1980), the Alaska Supreme Court cited with approval the Black's Law Dictionary definition of an ex post facto law as a law "passed after the occurrence of a fact or commission of an act that retrospectively changes the legal consequences or relation of such fact or deed."[1] In a 2006 case, the Alaska Supreme Court expressly acknowledged that it is not clear whether the ex-post facto clause applies to civil statutes.

> An ex post facto law is a law "passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." n62 *It is unclear whether the ex post facto clause applies to purely civil statutes.* n63 However, because the slayer statute is arguably punitive, there is at least a plausible argument that it could apply in this scenario.
>
> [Footnotes:]
> n62 *Danks v. State*, 619 P.2d 720, 722 n.3 (Alaska 1980) (citing BLACK'S LAW DICTIONARY 520 (5th ed. 1979)).
> n63 Compare *Allen v. State*, 945 P.2d 1233, 1237 (Alaska App. 1997) ("[T]he ex post facto clause prohibits the retrospective application of laws that 'alter the definition of crimes or increase the punishment for criminal acts.' ") (citing *Collins v. Youngblood*, 497 U.S. 37, 43, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990)) with *Underwood v. State*, 881 P.2d 322, 327-28 (Alaska 1994) (analysis by court implies that ex post facto clause could apply to civil statute). Retroactive civil legislation must include an express statement of retroactivity within the statute. AS 01.10.090.

Blodgett v. Blodgett (In re Blodgett), 147 P.3d 702, 711 (Alaska 2006) (emphasis added).

The Alaska Supreme court has also applied a vested-rights analysis in a non-criminal context to determine whether a retroactive statute violates the prohibition against ex post facto laws:

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[1] In *Danks*, the court held that the license of a defendant convicted of DWI for the third time could be revoked for three years under former AS 28.15.210(c), even though that statute was enacted after Danks' first two DWI convictions. The court found that such a law did not violate the ex post facto prohibitions.

> In determining whether a statute affecting pre-enactment conduct is unconstitutionally retrospective, one inquiry is into whether the statute affects vested rights. *See Norton* [*v. Alcoholic Beverage Control Bd.*], 695 P.2d [1090 (Alaska 1985),] at 1092; see also *Black's Law Dictionary* 1317-18 (6th ed. 1990) (A "retrospective" or "retroactive" law is generally defined as a law which "takes away or impairs vested rights acquired under existing laws, or creates new obligations, imposes a new duty or attaches a new disability in respect to transactions or considerations already past.") (citation omitted). . . . *See Property Owners Ass'n v. City of Ketchikan*, 781 P.2d 567, 574 n.12 (Alaska 1989) (a statutory change which merely disappoints economic expectations and does not affect vested rights is not an ex post facto law).

Underwood v. State, 881 P.2d 322, 327 (Alaska 1994) (no vested right in a permanent fund dividend to prohibit change in qualification date).[2]

In other Alaska cases, the Alaska Supreme Court held that in criminal cases an extension of the statute of limitations was a procedural change which did not violate the ex post facto prohibition. *State v. Creekpaum*, 753 P.2d 1139 (Alaska 1988) (extension of a criminal statute of limitations before the original period of limitation has run is not an unconstitutional ex post facto law under the constitutions of either Alaska or the United States). In *State v. Hawkins*, 39 P.3d 1126 (Alaska 2002), the Alaska Supreme Court upheld a retroactively applied criminal law requiring the registration of sex offenders. In that case, the Court held that where the legislative intent was to impose a continuing requirement on sex offenders to register in the state the criminal statute was not an ex post facto law.

The Alaska Supreme Court also upheld the current provision making certain felons ineligible for dividends against an ex post facto challenge. *State v. Anthony*, 816 P.2d 1377 (Alaska 1991). The court found it important to distinguish between "a statute enacted for valid regulatory purposes rather than simply to punish individuals for their past conduct." *Anthony*, 816 P.2d 1377, at 1378. Moreover, it was significant to the court that the statute's stated purpose was other than punitive. When the statute in question is, as the court characterized the dividend denial provision, "compensatory rather than punitive," the court determined there would be no ex post facto violation. *Id.*

In conclusion, I am unable to predict how the Alaska courts will apply the constitutional prohibition against ex post facto laws to SB 112. It is possible that the Alaska courts will

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[2] The court may also apply a due process analysis to a retrospective law, including the concept of vested rights, to determine whether a retrospective law is unconstitutional. See *Bidwell v. Scheele*, 355 P.2d 584, 586 (Alaska 1960) (vested property rights are protected against state action by the provisions of the Fourteenth Amendment of the Constitution of the United States and by sec. 7 of art. I of our state constitution); *Norton v. Alcoholic Beverage Control Bd.*, 695 P.2d 1090, 1092-1093 (Alaska 1985)

conclude that ex post facto prohibitions only apply to criminal laws, or the courts may closely scrutinize retrospective laws affecting civil claims to determine whether the civil provisions in SB 112 violate the prohibition against ex post facto laws.

If I may be of further assistance, please advise.

DMB:ljw
07-181.ljw

STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

March 29, 2007

Senator Hollis French
Alaska State Legislature
State Capitol
Capitol Room 417
Juneau, Alaska 99801-1182

RE: Letter of support of Senate Bill 112

Dear Senator French:

The Office of Victims' Rights (OVR) fully supports SB 112 introduced this legislative session.

There is a great need to permit sexual assault and sexual abuse victims, who would otherwise be barred by the pre-2001 statute of limitations, an opportunity for redress through civil legal action.

SB 112 acknowledges the unique nature of sexual assault and sexual abuse crimes. It is often difficult for these crime victims to receive appropriate acknowledgement and redress for the harms perpetrated on them.

The OVR agrees there should be a one-year period for these victims, who would otherwise be time-barred, to file a civil action against their felony sexual assault and sexual abuse perpetrators. This is an appropriate measure to ensure these victims have an opportunity to be made financially whole, and to ensure that the perpetrators are held financially accountable.

Thank you for allowing OVR the opportunity to provide input on this important bill. Please contact me if OVR can provide any further assistance.

Respectfully,

Katherine J. Hansen
Interim Victims' Advocate

1007 WEST 3RD AVENUE, SUITE 205 • ANCHORAGE, ALASKA 99501-1936
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LEXSEE 141 P3D 719

Positive
As of: Mar 27, 2007

CATHOLIC BISHOP OF NORTHERN ALASKA, Petitioner, v. JOHN DOES 1-6, Respondents.

Supreme Court No. S-11295, No. 6035

SUPREME COURT OF ALASKA

141 P.3d 719; 2006 Alas. LEXIS 122

August 18, 2006, Decided

PRIOR HISTORY: [**1] Petition for Review from the Superior Court of the State of Alaska, Fourth Judicial District, Bethel, Dale O. Curda, Judge. Superior Court No. 4BE-03-177 CI.

COUNSEL: Robert B. Groseclose and Mila A. Neubert, Cook Schuhmann & Groseclose, Inc., Fairbanks, for Petitioner Catholic Bishop of Northern Alaska.

James M. Gorski, Hughes Thorsness Powell Huddleston & Brundin, PC, Anchorage, for Petitioner Society of Jesus, Oregon Province.

Kenneth S. Roosa, Cooke, Roosa & Valcarce, LLC, Anchorage, and John S. Hedland, Hedland Brennan Heideman & Cooke, Anchorage, for Respondents.

JUDGES: Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

OPINION BY: CARPENETI

OPINION:

[*720] CARPENETI, Justice.

I. INTRODUCTION

Six unnamed plaintiffs allege that they were subjected to childhood sexual abuse by a Catholic priest in the 1950s, 1960s, and 1970s. They filed suit against the priest's former employers in 2003. The defendants filed a motion to dismiss based on the statute of limitations. The superior [**2] court held the motion in abeyance pending further discovery. The defendants petitioned for review and we granted their petition in order to clarify the law that applies to this case.

We conclude that *AS 09.10.065* does not revive civil claims that were time-barred before the effective date of the statute, October 1, 2001. We return the case to the superior court for further proceedings.

II. FACTS AND PROCEEDINGS

In June 2003 the six plaintiffs, as John Does, filed suit against the Catholic Bishop of Northern Alaska (CBNA) and the Society of Jesus, Oregon Province (Jesuits) alleging that they suffered sexual abuse at the hands of a Jesuit priest, Father Jules Convert. CBNA has owned various Catholic Church facilities throughout northern and western Alaska, including those where the plaintiffs claim to have been abused, since its incorporation in 1952. The Society of Jesus is a Catholic order that oversees priests throughout the world; its Oregon Province includes Alaska. The CBNA coordinated staffing decisions, including those involving Father Convert, with the Jesuits.

The plaintiffs allege that Father Convert sexually molested them at church [**3] facilities. The specific allegations vary, but generally involve Father Convert selecting plaintiffs as altar boys, inviting them to be alone with him, and then sexually fondling them. The plaintiffs also allege that defendants knew of Father Convert's abuse, that they actively concealed it by moving him from parish to parish, and that they knowingly failed to report it to parishioners or law enforcement. CBNA and the Jesuits admit that Father Convert worked

throughout Alaska and the Yukon Delta from 1942 to 1978.

In the current version of their complaint, n1 the plaintiffs argue that the defendants are liable under various theories. First, they maintain that the defendants are vicariously liable for the actions of Father Convert under *respondeat superior* and agency theories. Second, they allege that the defendants are directly liable because they negligently hired and supervised Father Convert. Finally, they argue that the defendants entered into a fiduciary relationship with the plaintiffs by undertaking to care for them as minors and by "holding themselves out as shepherds and leaders of the Roman Catholic Church." Therefore, according to the plaintiffs, the defendants' failure [**4] to disclose Father Convert's alleged sexual misconduct amounted to fiduciary fraud and a breach of fiduciary duty. The plaintiffs also argue that the defendants' failure to inform the public of Father Convert's abuse tolls the statute of limitations and estops them from invoking it as a defense.

n1 The plaintiffs amended their complaint four times to add additional plaintiffs and claims.

The CBNA moved to dismiss the complaint under Alaska Civil Rule 12(b)(6); the Jesuits later joined the motion. The CBNA argued that the plaintiffs' claims were barred by the two-year statute of limitations for tort actions; n2 although the statute of limitations [*721] was tolled until the plaintiffs reached the age of majority, n3 the youngest plaintiff turned eighteen over twenty years before the suit was filed. The CBNA also discussed *AS 09.10.065*, which eliminates the statute of limitations for sexual abuse claims. First, CBNA noted that *AS 09.10.065* was enacted after the [**5] plaintiffs' claims were already time-barred and asserted that the statute did not apply retroactively to revive claims which had lapsed before its enactment. Second, it argued that this provision was irrelevant to the plaintiffs' claims because it only applied to actual perpetrators of sexual abuse, and not to employers or other vicariously liable parties. In addition, the CBNA argued that the discovery rule, which tolls the statute of limitations until a person discovers or reasonably should have discovered the essential elements of his cause of action, was inapplicable to the plaintiffs because they knew facts that should have prompted them to start investigating their claims against the defendants within the statutory period. The CBNA also argued that the doctrine of laches bars the plaintiffs' actions, since they could have brought suit when key witnesses, including Father Convert, were still alive and before the loss or destruction of relevant records. In support of this argument, the CBNA submitted the affidavit of Richard Case, a Jesuit priest and Chancellor for the CBNA, which states that the priests and bishops who were Father Convert's contemporaries are deceased (excepting [**6] one Jesuit superior now in failing health in Washington) and that existing CBNA records do not mention any sexual abuse or misconduct.

n2 *AS 09.10.070* provides in relevant part:

> (a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment; (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

n3 *AS 09.10.040* tolls the statute of limitations while the plaintiff is either incompetent due to mental disability or is a minor.

In opposing the motion [**7] to dismiss, the plaintiffs first raised a procedural issue. Citing the lack of discovery and the fact that the CBNA's motion to dismiss included external materials -- namely the Case affidavit -- they argued that the court should dismiss the motion and then allow the defendants leave to refile it as a summary judgment motion after discovery, or that the court allow the plaintiffs to delay filing their opposition to the motion until a month after discovery was completed. In addition, before the superior court heard oral arguments on the motions, the plaintiffs submitted the affidavit of their own expert, Patrick Wall, a former Catholic priest and expert on canonical requirements for record keeping. This affidavit maintained that the CBNA's search of its records had not been sufficiently diligent and that there likely was relevant information in church archives.

The plaintiffs also responded to the CBNA's statute of limitations arguments, maintaining that: (1) *AS*

09.10.065 applied to any civil action based on a claim of sexual abuse, including those against employers through operation of *respondeat superior* and aided-in-agency principles; and (2) their [**8] claims were saved by the discovery rule. The plaintiffs essentially argued that they lacked information about the defendants' supervision of Father Convert and what church officials knew or should have known about his behavior, and therefore requested discovery so that they could determine whether there was sufficient evidence to allow their claims under an exception to the statute of limitations.

Superior Court Judge Dale O. Curda held a hearing on the motion to dismiss and issued an order holding the motion to dismiss in abeyance until completion of discovery. In the order Judge Curda stated that because both sides had submitted significant outside materials, namely the Case and Wall affidavits, he was required to convert the motion to dismiss [*722] into a motion for summary judgment according to Civil Rule 12(b) and our decision in *Martin v. Mears*. n4 Concluding that conversion of a motion to dismiss into a motion for summary judgment entitles the parties to a reasonable opportunity to clarify the facts of the case, Judge Curda declined to rule on the motion until the parties completed discovery.

n4 *602 P.2d 421 (Alaska 1979)*. In *Martin* we held that Civil Rule 12(b) required the conversion of motions to dismiss to motions for summary judgment where affidavits or items beyond the pleadings are "presented to and not excluded by the court." *Id. at 426*.

[**9]

The CBNA and the Jesuits petitioned this court for review, arguing that the external affidavits were not relevant to their statute of limitations argument. They posited that since the statute of limitations issue involved pure questions of law which were not fact dependent it was amenable to immediate appellate review. We granted the petition for review.

III. STANDARD OF REVIEW

We review trial court decisions regarding motions to dismiss *de novo*, n5 deeming all facts in the complaint true and provable. n6 As complaints must be liberally construed, grant of a motion to dismiss is disfavored. n7 To survive a motion to dismiss, a complaint need only allege "a set of facts consistent with and appropriate to some cause of action." n8 A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him or her to relief. n9

n5 *See Nunez v. Am. Seafoods, Inc., 52 P.3d 720, 721(Alaska 2002)* (grant or denial of motion to dismiss reviewed *de novo*).

n6 *Guerrero v. Alaska Hous. Fin. Corp., 6 P.3d 250, 253 (Alaska 2000)*.

[**10]

n7 *Id.*

n8 *Id. at 253-54* (internal quotations omitted).

n9 *Id. at 254*.

We review questions of law, including the interpretation of statutes and regulations, according to our independent judgment. n10 "When construing the meaning of a statute under this standard, we look to the meaning of the language, the legislative history, and the purpose of the statute and adopt the rule of law that is most persuasive in light of precedent, reason, and policy." n11

n10 *Therchik v. Grant Aviation, 74 P.3d 191, 193 (Alaska 2003)*.

n11 *Marshall v. First Nat'l Bank of Alaska, 97 P.3d 830, 834 (Alaska 2004)* (internal citations and quotations omitted).

IV. DISCUSSION

The CBNA n12 makes three general arguments. First, it maintains that *AS 09.10.065*, which eliminates the statute of limitations for sexual abuse claims, [**11] does not apply to the plaintiffs because the effective date of that statute is October 1, 2001, long after the statute of limitations had run in this case. The CBNA argues that neither *AS 09.10.065* nor any of its predecessor statutes revived time-barred claims. n13 As detailed in Part IV.A.3, we agree.

n12 The Jesuits settled with the plaintiffs after submitting an opening brief in this appeal. In its reply brief, the CBNA adopted at least some of the arguments made by the Jesuits. Thus, for the purposes of this appeal we impute to the

CBNA arguments made by the Jesuits in their opening brief.

n13 As explained below, *AS 09.10.065*, former *AS 09.10.060(c)*, was amended in 2001 and 2003.

Second, the CBNA argues that *AS 09.10.065* does not apply to vicarious liability claims against non-perpetrators. It argues the legislature intended to lift the statute of limitations only for claims against actual [**12] abusers, and that accordingly, the plaintiffs cannot use this statute as a basis for their suit. Because we conclude that *AS 09.10.065* does not apply retrospectively, we need not reach this issue.

Third, the CBNA maintains that the discovery rule does not apply to save the plaintiffs' claims. Because this argument involves factual issues the resolution of which requires further development in the superior court, we decline to reach this argument.

A. *Alaska Statute 09.10.065* Does Not Revive Time-Barred Civil Claims.

1. The legislative history of *AS 09.10.065*

Before 2001, *AS 09.10.060(c)* -- the predecessor to *AS 09.10.065* -- provided for a three-year statute of limitations for actions for damages against perpetrators of sexual abuse:

> [*723] A person who was the victim of sexual abuse may not maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse unless an action is commenced [**13] within three years. In this subsection, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining a cause of action if the defendant's conduct would have violated a provision of *AS 11.41.410-11.41.440* or *11.41.450-*11.41.458 at the time it was committed. n14

n14 Former *AS 09.10.060(c)*. This provision was enacted in 1990. Ch. 4, § 1, SLA 1990.

In 2001 the legislature repealed and reenacted *AS 09.10.060(c)*. n15 For ease of reference, we refer to the repeal and reenactment as an amendment. The amendment eliminated the three-year statute of limitations and allowed a plaintiff to bring an action for sexual abuse "at any time":

> (c) Notwithstanding other provisions in this chapter, a person may bring an action at any time for the following acts:
>
> (1) felony sexual abuse of a minor;
>
> (2) felony sexual [**14] assault . . . .

This amendment took effect on October 1, 2001. n16

n15 Ch. 86, § 1, SLA 2001. This chapter also repealed and reenacted *AS 12.10.010*, covering time limitations on criminal prosecutions for offenses including felony sexual abuse of a minor.

n16 Ch. 86, § 1, SLA 2001.

When it was introduced as House Bill (H.B.) 210, the 2001 amendment initially dealt only with statutes of limitations applicable to criminal prosecutions. Representative Meyer, the bill sponsor, explained that the bill was motivated by developments in forensic technology, including DNA testing, which made it possible to prove beyond a reasonable doubt that a sexual assault had occurred even twenty years after the crime. n17 The first mention of lifting the statute of limitations for civil claims of sexual abuse came from Representative Berkowitz, who observed that while H.B. 210 would allow the state an unlimited window of opportunity to prosecute sex offenders, victims of such crimes [**15] would remain bound by existing statutes of limitation. n18 At his suggestion, the house adopted language lifting the civil statute of limitations, but at no point did the house consider whether the language revived time-barred civil claims or had any retroactive effect. n19 Moreover, when Representative Meyer presented the bill to the Senate Judiciary Committee, he again focused on the criminal provisions, and the senate did not engage in any significant discussion about the effect of the amendment lifting the civil statute of limitations for sexual abuse. n20

n17 4/9/01 House Judiciary Comm. Minutes.

n18 *Id.*

n19 *See id.*

n20 5/2/01 Senate Judiciary Comm. Minutes.

In 2003 the legislature again amended this provision. The amendment differentiated between felony and misdemeanor sexual abuse, adding a three-year statute of limitations for misdemeanor abuse, and recodified *AS 09.10.060(c)* as a separate provision, *AS 09.10.065*. This [**16] statute provides that:

> (a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:
>
> (1) felony sexual abuse of a minor;
>
> (2) felony sexual assault; or
>
> (3) unlawful exploitation of a minor.
>
> (b) Unless the action is commenced within three years of the accrual of the claim for relief, a person may not bring an action for conduct that would have, at the time the conduct occurred, violated the provisions of any of the following offenses:
>
> (1) misdemeanor sexual abuse of a minor;
>
> (2) misdemeanor sexual assault;
>
> (3) incest; or
>
> (4) felony indecent exposure.

Although this amendment was enacted on June 6, 2003, it was made retroactive to October 1, 2001 "to the extent permitted by the state and federal constitutions." n21

n21 Ch. 40, § 4, SLA 2003.

[*724] 2. The presumption against retrospective legislation

Alaska Statute 01.10.090 provides [**17] that "[n]o statute is retrospective unless expressly declared therein." This statute creates a presumption against retrospective legislation, n22 and we have noted that "[s]tatutes are not to be applied retroactively unless the language used by the legislature indicates the contrary." n23 The CBNA maintains that this principle prevents retroactive application of *AS 09.10.065*. It asserts that the legislature intended for the 2001 amendment to take effect on October 1, 2001, and that the plaintiffs' claims are time-barred because they lapsed well before that date.

n22 *Eastwind, Inc. v. State, 951 P.2d 844, 846 (Alaska 1997).*

n23 *Matanuska Maid, Inc. v. State, 620 P.2d 182, 187 n.8 (Alaska 1980)* (citing *City & Borough of Juneau v. Commercial Union Ins. Co., 598 P.2d 957, 958-59 (Alaska 1979)*; *Davenport v. McGinnis, 522 P.2d 1140, 1142 (Alaska 1974)*; *Stephens v. Rogers Constr. Co., 411 P.2d 205, 208 (Alaska 1966)). See also Hood v. State, Workmen's Comp. Bd., 574 P.2d 811, 813-814 (Alaska 1978)* ("[S]tatutes are presumed to operate prospectively and will not be given a retroactive effect, unless by express terms or necessary implication, it clearly appears that was the legislative intent.").

[**18]

The plaintiffs respond that the broad language of the 2001 and 2003 amendments demonstrates that the legislature intended to revive lapsed claims. First, they argue that language introduced in the 2001 amendment (which continues through to the current *AS 09.10.065*) suggests that the legislature intended for this provision to revive lapsed claims. Specifically, they note that while the former provision referred to "perpetrators" and set a three-year statute of limitations, the new language allows individuals to "bring an action at any time for the following acts," and then lists various criminal offenses. They maintain that this distinction reflects a legislative choice to significantly broaden the reach of this statute to revive lapsed claims.

In addition, the plaintiffs argue that it is significant that the 2001 amendment explicitly indicated that it did not revive certain time-barred *criminal* claims:

> Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:
>
> APPLICABILITY. The extension of the statute of limitations for felony sexual assault provided in sec. 2 of this Act [which

17

waives the statute [**19] of limitations for specified criminal actions] applies

(1) to all offenses occurring on or after the effective date of this Act; and

(2) to all offenses occurring before the effective date of this Act if the statute of limitations applicable to that offense on the day before the effective date of this Act has not expired, including any specific time periods for that offense under *AS 12.10.020*, as that section read the day before the effective date of this Act, and any period when the limitations period did not run under *AS 12.10.040*. n24

n24 Ch. 86, § 4, SLA 2001.

The plaintiffs argue that the lack of comparable language regarding the lifting of the statute of limitations for civil claims suggests that the legislature intended for *AS 09.10.065* to apply retroactively.

3. *Alaska Statute 09.10.065* does not revive time-barred civil claims.

The legislature inserted section four [**20] -- that is, it did not attempt to revive time-barred criminal claims -- because the prosecution of a lapsed criminal claim would constitute an *ex post facto* law. The Senate Judiciary Committee heard from the bill's drafter, Gerald Luckhaupt, who testified that reviving time-barred criminal provisions would violate the constitutional prohibition against *ex post facto* laws. n25 While the legislature clearly displayed [*725] its intention that the criminal sections of the 2001 amendments not be given retroactive effect, it does not follow that the legislature assumed that the civil sections of the statute would have such effect. The legislature never discussed whether the amendment would revive lapsed civil claims; retroactivity was raised only in regard to criminal prosecutions. When the legislature amended *AS 09.10.065* in 2003, it specifically limited retroactive effect on time-barred civil claims to October 1, 2001, which was the effective date of the 2001 amendment. n26 Had the legislature intended to revive time-barred civil claims, it would have explicitly stated so. Indeed, the legislature knows how to indicate when a statute is to be fully retrospective [**21] and has shown its ability to do so. For example, *AS 09.55.650*, enacted at the same time as *AS 09.10.060(c)* (the predecessor of *AS 09.10.065*), was promulgated with a section specifically noting its applicability to "all actions commenced on or after February 2, 1990 *regardless of when the cause of action may have arisen*." n27 This provision clearly shows legislative intent to apply *AS 09.55.560* retrospectively. Had the legislature intended *AS 09.10.065* to apply retrospectively, it would have used similar language. That the legislature chose not to add such language, when considered along with the legislative history and the statutory presumption against retroactive statutes, leads us to conclude that *AS 09.10.065* does not act retrospectively to revive time-barred claims. Thus, we conclude that the plaintiffs cannot rely on this statute as a basis for their claims.

n25 5/2/01 Senate Judiciary Comm. Minutes. Mr. Luckhaupt appears to have advised the legislature correctly. *See Stogner v. California, 539 U.S. 607, 123 S. Ct. 2446, 156 L. Ed. 2d 544 (2003)*. Although *Stogner* was not decided until after the 2001 amendments, it validated Mr. Luckhaupt's testimony; the Court held that the *ex post facto* clause of the United States Constitution forbids resurrection of a time-barred prosecution and observed that "numerous legislators, courts, and commentators have long believed it well settled that the *Ex Post Facto* Clause forbids resurrection of a time-barred prosecution." *Id. at 616*. *Cf State v. Creekpaum, 753 P.2d 1139 (Alaska 1988)* (extension of statute of limitations for crime whose original period of limitation had not yet expired was not unconstitutional *ex post facto* law).

[**22]

n26 Ch. 40, § 4, SLA 2003.

n27 Ch. 4, § 11, SLA 1990. (Emphasis added.) *See also* ch. 70, § 3, SLA 1996 ("This Act applies to civil actions commenced on or after the effective date of this Act regardless of when the cause of action may have arisen."). Section 2 of chapter 70 deleted a subsection of the former *AS 09.10.060* which had provided a three-year statute of limitations for malicious prosecution actions.

This conclusion makes it unnecessary for us to consider the CBNA's argument that retroactive application of this statute would violate any rights of repose that vested once the original statute of limitations had expired or the plaintiffs' argument that *AS 09.10.065* applies to claims against vicariously liable non-perpetrators.

B. Application of the Discovery Rule Is a Question of Fact.

In its present posture, this case is on review from the superior court's refusal to grant a motion to dismiss. A motion to dismiss should not be granted if "evidence may be introduced that will sustain a grant of relief to the plaintiff. [**23] " n28 Under the discovery rule, the date on which the statute of limitations begins to run is a question of fact. n29 We cannot rule out the possibility that evidence may be introduced that will show that the statute of limitations has not run. Therefore this case must be remanded for further proceedings. We observe that once sufficient discovery is conducted, the statute of limitations affirmative defense should be resolved in advance of trial. If a genuine issue of material fact is presented it should be resolved in advance of trial by the superior court as "a preliminary question of fact" following an appropriate evidentiary hearing. n30

n28 *Odom v. Fairbanks Mem'l Hosp., 999 P.2d 123, 128 (Alaska 2000).*

n29 *John's Heating Serv. v. Lamb, 46 P.3d 1024, 1031 (Alaska 2002).*

n30 *Id. at 1033* & n.28.

V. CONCLUSION

For the reasons noted above, we AFFIRM the decision of the superior court to hold the CBNA's motion to dismiss in abeyance pending [**24] further discovery. On remand, the superior court should conduct further proceedings in accordance with this opinion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MELANIE H., individually,

Plaintiff,

v.

DEFENDANT DOE 1; DOES 2 through 1000, inclusive.

SISTERS OF THE PRECIOUS BLOOD,
Counterclaimant,

v.

MELANIE H., individually; et al.,
Counterclaim Defendant.

STATE OF CALIFORNIA,
Intervenor-Plaintiff,

ROMAN CATHOLIC BISHOP OF SAN DIEGO,
Third Party Counterclaimant,

v.

MELANIE H., STATE OF CALIFORNIA, et al.,
Plaintiffs-Counterclaim Defendants;
Fourth Party Defendants.

Civil No. 04 -1596-WQH- (WMc)

ORDER

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Pending before the Court are Plaintiff's Motion to Dismiss the Counterclaim and Defendants' Motion for Summary Judgment. On September 8, 2005, the parties appeared before the Honorable William Q. Hayes for oral argument on both Motions. After considering the arguments raised by the parties in their briefing and during oral argument, the Court now issues the following rulings.

BACKGROUND

On December 30, 2004, Plaintiff Melanie H., a female adult proceeding under a pseudonym, filed a complaint in California State Court alleging that she was sexually molested by a priest and parish/school worker at St. Mary's parish school between 1974 through 1977. The Complaint alleges that the Defendant Sisters of the Precious Blood, the order of nuns that ran the school, negligently failed to supervise the perpetrator and negligently failed to protect Plaintiff.

Plaintiff's Complaint alleges sexual abuse by Father Victor Uboldi. Father Uboldi was a Catholic Priest incardinated at the Diocese of San Diego and assigned to St. Mary's Parish at the time the alleged abuse occurred. Father Uboldi retired to Italy in the early 1980's and is now deceased.

Defendant Sisters removed the action to Federal Court and filed an Answer asserting fifteen affirmative defenses, including a defense based on the statute of limitations. Additionally, Defendants filed a Counterclaim seeking declaratory relief.

Defendant Sisters allege they provided services at the School and Parish at the request of the Bishop of San Diego. The Bishop intervened as a Defendant under the theory that if the Sisters are liable to Melanie, then the Bishop is liable to the Sisters. The State of California intervened as a matter of right to defend the constitutionality of Senate Bill 1779 (codified as California Code of Civil Procedure section 340.1) (hereinafter "SB 1779").

Effective January 1, 2003, the California Legislature enacted SB 1779 in order to create retroactive employer liability in certain types of child abuse actions. The Bill created a one year window for filing certain sexual abuse cases that would have otherwise been barred by the statute of limitations. Prior to 2003, Plaintiff's claim against the Defendants would have become

barred by the statute of limitations on her 26th birthday. However, with the enactment of SB 1779, Plaintiff's claim would not be otherwise barred by the statute of limitations. In their Counterclaim, Defendants request that the Court grant summary judgment and declare those portions of California Civil Code of Procedure Section 340.1 which were amended by SB 1779 unconstitutional.

SB 1779 provides in pertinent part:

> § 340.1. Childhood sexual abuse; certificates of merit executed by attorney; violations; failure to file; name designation of defendant; periods of limitation; legislative intent
>
> (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:
>
> (1) An action against any person for committing an act of childhood sexual abuse.
>
> (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.
>
> (3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.
>
> (b) (1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.
>
> (2) This subdivision does not apply if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact

with children is an inherent part of that function or environment. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

(c) Notwithstanding any other provision of law, any claim for damages described in paragraph (2) or (3) of subdivision (a) that is permitted to be filed pursuant to paragraph (2) of subdivision (b) that would otherwise be barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2003. Nothing in this subdivision shall be construed to alter the applicable statute of limitations period of an action that is not time barred as of January 1, 2003.

Cal.C.C.P. § 340.1.

I. MOTION FOR SUMMARY JUDGMENT

On May 11, 2005, Defendant Roman Catholic Bishop of San Diego and the Sisters of the Precious Blood filed a Joint Motion for Summary Judgment. The Motion raises several constitutional issues. Among them, the Defendants contend that: (1) SB 1779 violates the First Amendment Free Exercise Clause; (2) SB 1779 violates the First Amendment Establishment Clause; (3) SB 1779 violates the Due Process Clause; (4) SB 1779 violates the Ex Post Facto Clause; and (5) SB 1779 is an unconstitutional Bill of Attainder.

STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure where the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute over a material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

A party seeking summary judgment always bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving party may meet this burden in two ways: (1) by presenting evidence that negates an essential element of the

nonmoving party's case or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *Id.* at 322-23. If the moving party fails to discharge this initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60 (1970).

If the moving party satisfies its initial burden, the nonmoving party cannot defeat summary judgment merely by demonstrating "that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the nonmoving party's position is not sufficient."). Rather, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(c)) (internal quotations omitted).

In ruling on a motion for summary judgment, "[t]he district court may limit its review to the documents submitted for purposes of summary judgment and those parts of the record specifically referenced therein." *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1030 (9th Cir. 2001). Therefore, the Court is not obligated to "scour the record in search of a genuine issue of triable fact." *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995)). The Court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587. "Credibility determinations [and] the weighing of evidence ... are jury functions, not those of a judge, [when] he [or she] is ruling on a motion for summary judgment." *Anderson*, 477 U.S. at 255.

DISCUSSION

I. *The First Amendment Free Exercise Clause*

The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303(1940),

provides "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*···." U.S. Const. Amend. I. (emphasis added).

In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court held that the right of free exercise of religion does not relieve persons of the obligation to comply with valid or neutral laws of general applicability. In *Employment Division v. Smith*, the Supreme Court held that the State was not prevented by the Free Exercise Clause from outlawing the use of sacramental peyote and denying unemployment benefits to employees discharged for using peyote. The Supreme Court explained that a State would prohibit the free exercise of religion if it was to ban acts solely because of their religious motivation. However, the Supreme Court found that the Free Exercise Clause was not violated when a State required compliance with an otherwise neutral law that incidentally impacted religious practice. The Supreme Court explained:

> The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." *Sherbert v. Verner* at 402. The government may not compel affirmation of religious belief, *see Torcaso v. Watkins*, 367 U.S. 488 (1961), punish the expression of religious doctrines it believes to be false, *United States v. Ballard*, 322 U.S. 78, 86-88 (1944), impose special disabilities on the basis of religious views or religious status, *see McDaniel v. Paty*, 435 U.S. 618 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953); cf. *Larson v. Valente*, 456 U.S. 228, 245 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, *see Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-452 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 95-119 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-725 (1976).

Employment Div. v. Smith, 494 U.S. at 886 (emphasis added).

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993), the legislature passed a law forbidding animal slaughtering for sacrificial purposes while still allowing animal slaughtering for other purposes, such as within the meat packing industry. The Supreme Court held that the ordinance in question was unconstitutional because its clear *object* was to prevent animal sacrifice for religious purposes, despite its facially neutral appearance. The Supreme Court stated, "[t]he principle that government, in pursuit of legitimate interests,

cannot in a selective r... impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause." *Id.* at 542-543. The Supreme Court explained the circumstances under which the protections of the Free Exercise Clause pertain. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Id.* at 532.

The Supreme Court in *Lukumi* cited to *McDaniel v. Paty*, 435 U.S. 618 (1978) and *Fowler v. Rhode Island*, 345 U.S. 67 (1953) for examples of the type of cause of action that would implicate the Free Exercise Clause. Both *Fowler* and *McDaniel* involved clear intrusion by the State upon the practice of religion. In *Fowler*, the Supreme Court held that a public ordinance which prohibited public preaching by a Jehovah's Witness, but not by a priest or minister, was unconstitutional. In *McDaniel*, the Supreme Court invalidated a law prohibiting clergymen from holding public offices. The Supreme Court found that the challenged provision violated the First Amendment right to the free exercise of religion because it conditioned that right on the surrender of the right to seek office.

The Court's decision in this case is guided by the rulings in both *Lukumi* and *Employment Division*. However, the facts of this case differ significantly in that the legislation at issue is not aimed at promoting or prohibiting religious beliefs, opinions or practices. Both *Lukumi* and *Employment Division* involved regulation of religious practices, sacramental peyote use and animal sacrifice respectively. In comparison, SB 1779 allows tort claims against a third party for failure to supervise or negligent hiring to be filed retroactively.

Plaintiff contends that SB 1779 is "neutral, generally applicable legislation that retroactively extended the statute of limitation for certain claims wholly without regard to the religious or non-religious character of the defendant." Melanie H. Response at 1:22-2:1. Plaintiff contends "...SB 1779 does not attempt to regulate any conduct because of its specifically religious content. On this point, the contrast with *Church of Lukumi Babalu Aye* could not be more striking. The ordinance invalidated in that case effectively forbade the church from

engaging in a religious ritual. In this case, no one suggests that child abuse is a religiously approved, much less religiously mandated, practice." *Id.* at 12:11-15. Plaintiff asserts that "SB 1779 is general, religiously-neutral legislation that extends the statute of limitations for certain childhood sexual abuse claims against all private institutions that knew or should have known about childhood sexual abuse committed by their employees, volunteers, representatives, or agents and that failed to take reasonable steps to avoid future repetitions of such conduct." *Id.* at 6:9-13. Plaintiff further asserts "SB 1779 in no way targets inherently religious or religiously motivated conduct...." *Id.* at 12:16-17.

Defendants concede that the inquiry ends if the law does not burden religious practices[1], but provide several theories for asserting that SB 1779 violates the First Amendment. However, a review of these arguments and the statute itself reveals that SB 1779 does not impermissibly regulate the free exercise of religion because the legislation does not interfere with religious beliefs, opinions, or practices.

Defendants contend that the legislation is unconstitutional because it took away the "counseling defense" and, "as far as we are aware, only the Catholic Church provided and required counseling as one of its responses to inappropriate sexual conduct." Joint Motion at 3:24-26. Defendants further argue that "[c]ourts and juries will second guess the ecclesiastical decisions of Bishops and other Catholic leaders (who are now mostly dead) as to whether they acted 'reasonable' when–years ago–they counseled, disciplined, and assigned priests and other Catholic clergy." Reply Re: First Amendment at 7. Defendants contend, "[t]he Legislature then cut off any argument that the Church had acted reasonably when it sent priests to counseling...." Joint Motion at 6:24-26. Defendants further contend, "[t]he reason that counseling was excluded

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[1] The Court: ...what if the law targets a Church, but the result of the law is that it doesn't burden the religious practices of the Church, what happens then?

Mr. Hennigan [Counsel for Defendants]: If it doesn't burden religious practices, I think we are pretty much at the end of the inquiry.

Oral Argument Transcript at 28:4-9.

as a reasonable response that would allow Catholic institutions to assert the statute of repose defense was that it was the response of the Catholic Church...." *Id.* at 16:16-19. Defendants assert "[i]t is also a core belief of the Catholic Church that each priest represents the 'presence of Christ' among the faithful, and that one of the highest duties of the Bishop is to exercise greatest care in the progressive formation of priests. One context in which a Bishop does that is assuring adherence to vows of celibacy. In that context, the Bishop engages in pastoral counseling, and where, based on prayer and spiritual reflection, he determines that it is necessary and appropriate, he may also refer a priest to lay counseling. Whatever approach he takes, the Bishop must decide, based on the beliefs and teachings of the Church, whether a priest should continue in ministry, with or without restrictions, or be excluded from public ministry." *Id.* at 14:14-21.

The Court concludes that the provision of SB 1779 relating to counseling does not regulate a religious practice. Counseling often occurs apart from any religious belief. Defendants concede that counseling is utilized by the State and required in the Penal Code. Defendants argue that "[m]andating that counseling was never a reasonable response to possible sexual misconduct is also unreasonable because providing counseling for childhood sex offenders has long been public policy in California....Counseling is expressly required as a condition of probation for conviction of child molestation." *Id.* at 22:3-9 (citations omitted). Furthermore, the fact that counseling is not a "religious practice" is especially clear in light of the fact that the Church no longer uses counseling when faced with abuse allegations. Accordingly, counseling can not serve as the "religious practice" giving rise to First Amendment protection.

Defendants raise several arguments regarding the effects of SB 1779 upon the Church's practices of choosing, supervising, and retaining priests. Defendants argue "[a]t the heart of SB 1779 is the implicit command that a priest of the Church must be permanently removed from his position, and from all future contact with children, whenever there is suspicion of misconduct. This standard could never apply to the public schools, and it directly offends basic religious principles of the Catholic Church. Like the public schools, the Church requires real proof and due process before a Bishop can effectively destroy a priests vocation." *Id.* at 18:8-12. Defen-

dants also assert, "[f]reedom to choose clergy is protected by the Free Exercise Clause." *Id.* at 18:13-14. Additionally, Defendants contend, "[t]he legislative history of SB 1779 is marked by intent to reform Catholic practices regarding choice of its clergy and to hold Catholic institutions accountable for those practices." *Id.* at 18:17-19.

The Court concludes that SB 1779 does not burden the choice, supervision, or retention of priests. While the gate keeping function of the statute does not allow an institution to avoid litigation by showing that it counseled its members, the statute does not proscribe any procedure for choosing, supervising, or retaining priests. SB 1779 also does not automatically impose liability on the Church. Rather, it allows certain types of claims to be filed. While Defendants argue that basic religious principles of the Catholic Church have been offended, and that SB 1779 intends to reform Catholic practices regarding choice of clergy, the Court finds that Defendants have failed to show that the practices implicated involve religious beliefs, opinions or conduct.

Furthermore, Defendants argue that the statute burdens the religious practices of the Church by imposing financial burden. Counsel for Defendants described the economic impact as an "economic holocaust" and stated:

> "...to date, in the few cases that have been settled out of a thousand cases pending in the State–180 or so have been settled at the tune of hundreds of millions of dollars. There's 700 cases left, one could do the math–that this is the biggest, if it's survived, will be one of the largest transfers of wealth from an institution to its former parishioners at the urging of the legislature that has ever occurred."

Oral Argument Transcript at 26:10-17. The Court concludes that financial burden in defending lawsuits is not a burden on religious belief or practice. Financial burden incurred as a result of having to defend a lawsuit does not implicate any religious belief, opinion, or practice. Any defendant will incur financial burden in defending a lawsuit against it. Moreover, allowing First Amendment protection under the circumstances presented would create a preference for the Church over other institutions.

A review of the statute itself does not reveal any reference to or attempt to regulate a religious practice or belief. Third party liability for sexual assault does not implicate or effect any religious belief, opinion, or practice. The failure to supervise or negligent hiring of a person that commits sexual assault does not implicate or effect any religious belief, opinion, or practice. SB 1779 regulates only conduct that the State is free to regulate. The Court concludes that SB 1779 is a general law, not aimed at the promotion or restriction of religious beliefs. The law does not "discriminate against some or all religious *beliefs* or regulate or prohibit conduct *because it is undertaken for religious reasons.*" *Lukumi* 508 U.S. at 532 (emphasis added). SB 1779 does not regulate religious beliefs or punish the expression of religious doctrine.

While the Bishop of San Diego and the Sisters of the Precious Blood are the Defendants in this matter, the Court concludes that SB 1779 does not implicate any Catholic beliefs or practices. Religious organizations are not entitled to First Amendment protection based simply on their religious status. The Supreme Court has held that the First Amendment does not provide automatic tort immunity for religious institutions or their clergy. *See United States v. Ballard*, 322 U.S. 78, (1944); *see also Employment Division v. Smith* (explaining that the Court has never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law.) In *Employment Division Smith*, the Supreme Court discussed the historical conflict between otherwise neutral laws that incidentally effect religious practice and explained:

> We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. As described succinctly by Justice Frankfurter in *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 594-595 (1940): "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities (footnote omitted)." We first had occasion to assert that principle in *Reynolds v. United States*, 98 U.S. 145 (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said, "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of

religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.*, at 166-167.

Employment Div. v. Smith, 494 U.S. at 879.

Defendants contend that "all briefs discussing free exercise agree that if SB 1779 targeted Catholic institutions for disfavored treatment, then it would be unconstitutional." Reply Re: First Amendment at page 1, line 14. However, the Court finds that the dispositive question is whether the statute infringes on a religious *exercise*, meaning a belief or practice. Starting with the very basic principle that "Congress shall make no law...prohibiting the free exercise [of religion]"- it is clear that the legislation must impact some type of "exercise of religion." Accordingly, the Court finds that SB 1779 does not impermissibly regulate the free exercise of religion because the legislation does not interfere with religious beliefs, opinions, or practices. Based on this finding, the Court need not address the arguments of the parties regarding the neutrality and general applicability of SB 1779.

II. The First Amendment Establishment Clause

The Establishment Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law *respecting an establishment of religion*, or prohibiting the free exercise thereof····." U.S. Const. Amend. I.

Defendants contend that SB 1779 violates the Establishment Clause by disfavoring Catholic institutions. Citing to *Lukumi*, 598 U.S. at 532, the Defendants contend "[t]he establishment Clause forbids official disfavor of a particular religion." Joint Motion at 13.

Defendants further contend that SB 1779 violates the Establishment Clause because it impermissibly entangles the State in the church minister relationship. Defendants argue "[c]ourts and juries will second guess the ecclesiastical decisions of Bishops and other Catholic leaders (who are now mostly dead) as to whether they acted 'reasonable' when–years ago–they counseled, disciplined, and assigned priests and other Catholic clergy." Reply Re: First Amendment at 7. Defendants raise several arguments regarding the Church's practices in

choosing, supervising, and retaining priests, and the effects of SB 1779 upon those practices: "[a]t the heart of SB 1779 is the implicit command that a priest of the Church must be permanently removed from his position, and from all future contact with children, whenever there is suspicion of misconduct. This standard could never apply to the public schools, and it directly offends basic religious principles of the Catholic Church. Like the public schools, the Church requires real proof and due process before a Bishop can effectively destroy a priests vocation." Joint Motion at 18:8-12; "[f]reedom to choose clergy is protected by the Free Exercise Clause." Joint Motion at 18:13-14; and "[t]he legislative history of SB 1779 is marked by intent to reform Catholic practices regarding choice of its clergy and to hold Catholic institutions accountable for those practices." Joint Motion at 18:17-19.

Citing to *McCreary County v. ACLU*, 125 S. Ct. 2722, 2733 (2005), Plaintiff contends "[a]n Establishment Clause violation occurs only when a legislature acts with the predominant purpose of advancing [or inhibiting] religion." Melanie H. Response at 13:25-26. Plaintiff further contends "[t]he pertinent question is, therefore, whether section 340.1, as amended by SB 1779, has a 'principle or primary' effect of advancing or inhibiting religion." *Id.* at 13:27-28, and that "[t]here is no need to interpret Church doctrine, since Church doctrine has no bearing on the secular reasonableness of conduct that poses a threat of harm to innocent third parties." *Id.* at 15:17-19. Citing to *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002), Plaintiff contends "[d]isputes between a church and its own ministers 'must be distinguished from disputes between churches and third parties.' " Melanie H. Response at 18: 3-5.

The Establishment Clause prevents a State from enacting laws that have the "purpose" or "effect" of advancing or inhibiting religion. *Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002); *see also Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993). The Establishment Clause prohibits excessive State entanglement with religion. *See Lemon v. Kurtzman*, 403 U.S. 602, 614-15 (1971). However, entanglement must be "excessive" before it runs afoul of the Establishment Clause. *Agostini v. Felton*, 521 U.S. 203, 233 (U.S. 1997).

In *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 793 (9th Cir. 2005), the Ninth

Circuit held "...suits seeking damages for sexual harassment do not pose a threat to First Amendment rights, and are therefore permitted." *Id.* at 793. The Court further explained that "[t]he effect of sexual abuse suits brought by parishioners on the employment practices of the church is thus almost certain to be far greater than the effect of sexual harassment suits by ministers. Yet it is clearly established law that such suits are not constitutionally barred, *see, e.g., Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 430-31 (2d Cir. 1999); *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 72-74 (D. Conn. 1995); *Moses v. Diocese of Colorado*, 863 P.2d 310, 319-21 (Colo. 1993)." 397 F.3d at 792.

The First Amendment Establishment Clause does not prevent courts from deciding secular disputes involving religious institutions even where they require reference to religious matters. *See, e.g., Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976) (resolution of the dispute would have to involve "extensive inquiry" into religious law and polity before the First Amendment would bar a secular court from adjudicating a civil dispute); *General Council on Fin & Admin. v. Cal. Superior Court*, 439 U.S. 1369, 1373 (1978)(finding that perceived dangers that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged); *Watson v. Jones*, 80 U.S. 679, 714 (1872)([r]eligious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints); *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 793 (9th Cir. 2005) (holding "[t]he First Amendment protects a church's right to hire, fire, promote, and assign duties to its ministers as it sees fit not because churches are exempt from all employment regulations (for they are not), but rather because judicial review of those particular employment actions would interfere with rights guaranteed by the First Amendment. As we explained in *Bollard*, suits seeking damages for sexual harassment do not pose a threat to First Amendment

rights, and are therefore permitted."); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 431 (2d Cir. 1999) ([t]he First Amendment does not prevent courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters."); *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 338 (5th Cir. 1998) (citing *Smith*, 494 U.S. at 881; *Yoder*, 406 U.S. at 215; and *Destefano*, 763 P.2d at 283-84 and finding that "to invoke the protection of the First Amendment ...[a party] must assert that the specific conduct allegedly constituting a breach of his professional and fiduciary duties was rooted in religious belief."); *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 74 (D. Conn. 1995) (holding the common law doctrine of negligence does not intrude upon the free exercise of religion, as it does not discriminate against [a] religious belief or regulate or prohibit conduct because it is undertaken for religious reasons); *Mrozka v. Archdiocese of St. Paul & Minneapolis*, 482 N.W.2d 806, 811 (Minn. Ct. App. 1992) (conduct by the Church that results in external and secular harm is not protected by the First Amendment.)

The Court finds the *Malicki v. Doe* 814 So.2d. 347 (Fla. 2002) case instructive:

> We recognize that the Free Exercise Clause and the Establishment Clause require constant vigilance to prevent the government from either stifling the free exercise of religion or excessively and impermissibly entangling itself with interpreting religious doctrine on matters solely within the purview of religious institutions. However, with regard to a third party tort claim against a religious institution, we conclude that the First Amendment does not provide a shield behind which a church may avoid liability for harm arising from an alleged sexual assault and battery by one of its clergy members.
>
> By holding that the First Amendment does not bar the court's consideration of the parishioners' allegations, we expressly do not pass on the merits of the underlying case. Our holding today is only that the First Amendment cannot be used at the initial pleading stage to shut the courthouse door on a plaintiff's claims, which are founded on a religious institution's alleged negligence arising from the institution's failure to prevent harm resulting from one of its clergy who sexually assaults and batters a minor or adult parishioner. To hold otherwise and immunize the Church Defendants from suit could risk placing religious institutions in a preferred position over secular institutions, a concept both foreign and hostile to the First Amendment.

Id. at 365. Furthermore, the "court inquiring into the reasonableness of the steps a church has taken to prevent or correct sexual harassment need intrude no further in church autonomy . . .

than [a court does], for example, in allowing parishioners' civil suits against a church for the negligent supervision of ministers who have subjected them to inappropriate sexual behavior. " *Elvig v. Calvin Presbyterian Church,* 397 F.3d 790, 792 (9th Cir. 2005) (internal citations omitted).

The Court concludes that Defendants have not shown that SB 1779 favors one religion over another, or disfavors religion. Defendants have not shown that resolution of cases brought under SB 1779 will involve excessive entanglement of Church and State. The First Amendment does not protect every decision made by a religious leader. Furthermore, SB 1779 does not impose liability, but rather, allows cases which were otherwise barred by the statute of limitations to move forward. A determination of third party liability under SB 1779 whether the Defendants negligently supervised a priest would not "prejudice or impose upon any of the religious tenets or practices of Catholicism." *Malicki v. Doe*, 814 So. 2d 347, 363 (Fla. 2002). "[The First] Amendment embraces two concepts, -- freedom to believe and freedom to act. *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940). Neither is implicated here, and thus, the Court finds that Defendants have failed to show that SB 1779 is unconstitutional under the First Amendment Establishment Clause and will deny summary judgment on the First Amendment Establishment Clause claims.

III. The Due Process Clause

Defendants contend that SB 1779 violates the Due Process Clause because the statute deprives the Catholic Church of fair warning, unconstitutionally revives time barred claims, and unconstitutionally vitiates vested property rights. The Defendants argue that their cases are not defendable, that the witnesses are gone and the evidence lost. In their Counterclaim, Defendants allege: "[t]here were four to five members of the Sisters present at St. Mary's parish between the years of 1975 and 1980. At least three of the members are recently deceased, and one is suffering from Alzheimer's disease. All Pastors of St. Mary's Parish and all Bishops of San Diego at the time of the alleged events are now deceased." Counterclaim at 2. Defendants further contend that "one-hundred-five Complaints, by 140 individuals, have been filed against

the Bishop of San Diego since enactment. The claims involved date back as far as 1939; the most recent is based on events more than a decade old. All but one allege acts prior to 1991 when the current Bishop was installed and amendment of CCPO §340.1 created the statutory tort of childhood sexual abuse. At least one of the cases asserts claims that already resulted in a judgment of dismissal based on the preexisting [s]tatute of [l]imitations." *Id.* at 11.

Defendants allege that, "[o]f the 43 priests with parish assignments in the Diocese of San Diego who are subjects of complaints, 24 are dead. There are also claims based on alleged misconduct by seven Nuns, ten Brothers, four other priests and seven lay persons. To the extent that any information is available to the Bishop, it is that five of the seven Nuns are deceased; the other is no longer affiliated with her Order and her last-known residence was outside of the United States. At least three of the lay persons are deceased and two may be deceased." Joint Motion at 11.

Plaintiff contends that SB 1779 does not violate Defendants Due Process rights because it is a facially neutral, procedural statute. Plaintiff further contends that SB 1779 is permissible legislation extending a civil statute of limitations. Plaintiff also contends that SB 1779 does not deprive Defendants of fair warning, destroy property, or take vested rights.

In *International Union of Electrical v. Robbins & Myers, Inc.*, 429 U.S. 229, 243-244 (1976), the Supreme Court made clear that the lifting of a statute of limitation, so as to restore a remedy lost through mere lapse of time, is not per se unconstitutional. The Supreme Court explained:

> Respondent contends, finally, that Congress was without constitutional power to revive, by enactment, an action which, when filed, is already barred by the running of a limitations period. This contention rests on an unwarrantedly broad reading of our opinion in *William Danzer Co. v.. Gulf & Ship Island R. Co.*, 268 U.S. 633 (1925). *Danzer* was given a narrow reading in the later case of *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 312 n. 8 (1945). The latter case states the applicable constitutional test in this language:
>
> > "The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation. What it does forbid is taking of life, liberty or property without due process of law... Assuming that statutes of limitation, like other types of legislation, could be so manipulated that their retroactive effects

> would offend the Constitution, certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment." *Id.*, at 315-316.I
>
> Applying that test to this litigation, we think that Congress might constitutionally provide for retroactive application of the extended limitations period which it enacted.

Id. at 243-244 (1976).

The Ninth Circuit Court of Appeals and the California State Courts have concluded that the legislature can revive civil claims by enacting legislation that retroactively extends the statute of limitations period. *See Underwood Cotton Co. v. Hyundai Merch. Marine*, 288 F.3d 405, 409 (9th Cir. 2002) (holding that there are circumstances in which a legislature can remove a statute of limitations impediment retroactively and that the same can be true of a statute of repose[2] in proper circumstances); *Osmundsen v. Todd Pacific Shipyard*, 755 F.2d 730, 733 (9th Cir. 1985) citing *Davis v. Valley Distributing Co.*, 522 F.2d 827, 830 n.7 (9th Cir. 1975) (holding that extending a statute of limitations does not violate due process, even if the right of action has been time barred); *Starks v. S. E. Rykoff & Co.*, 673 F.2d 1106, 1109 (9th Cir. 1982) (holding that retroactive application of a statute which serves to extend a lapsed statute of limitations is not unconstitutional under the Fourteenth Amendment); *Tietge v. Western Province of the Servites, Inc.*, 55 Cal. App. 4th 382, 386 (Cal. Ct. App. 1997)(relying on *Lent v. Doe* 40 Cal. App. 4th 1177 (1995) finding that the legislature had the power to retroactively revive a cause of action for childhood sexual abuse previously time-barred under prior statute of limitations); *Liebig v. Superior Court*, 209 Cal. App. 3d 828, 830 (Cal. Ct. App. 1989) (holding the Legisla-

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[2]Defendants contend that the legislation in question is a statute of repose, and that "[a] completed statute of repose provides vested rights that cannot be impaired by subsequent legislative act." Joint Motion at 25:12-13. However, the courts have held that even in cases involving a statute of repose, the legislature can act to revive a previously barred claim without offending the constitution. *See Underwood Cotton Co. v. Hyundai Merch. Marine*, 288 F.3d 405, 409 (9th Cir. 2002) (holding that there are circumstances in which a legislature can remove a statute of limitations impediment retroactively and that the same can be true of a statute of repose in proper circumstances). Regardless of whether the statute is one of limitations or repose, the Defendants have not shown that SB 1779 is unconstitutional.

ture has the power to retroactively extend a civil statute of limitations to revive a cause of action time-barred under the former limitations period).

In *Roman Catholic Bishop of Oakland v. Superior Court*, 128 Cal. App. 4th 1155, 1162 (Cal. Ct. App. 2005), the California Court of Appeal discussed at length the past challenges to previously revised sections of the same statute at issue here, and set forth a detailed analysis of the cases as they relate to due process challenges. The court summarized:

> It is equally well settled that legislation reviving the statute of limitations on civil law claims does not violate constitutional principles. In *Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314 [89 L. Ed. 1628, 65 S. Ct. 1137], the court held that due process notions were not affected by the revival of a civil law claim because civil limitations periods "find their justification in necessity and convenience rather than in logic. ... They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. ... Their shelter has never been regarded as ... a 'fundamental' right ... the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control." (Fns. omitted.) In *Liebig v. Superior Court* (1989) 209 Cal. App. 3d 828, 831-834 [257 Cal. Rptr. 574], the court held that the Legislature had the power to revive lapsed common law claims based on childhood sexual abuse under an earlier version of section 340.1.

Roman Catholic Bishop of Oakland v. Superior Court, 128 Cal. App. 4th 1155, 1162 (Cal. Ct. App. 2005).

The Court finds that the mere passage of SB 1779 does not offend the Due Process Clause of the Constitution. The Court concludes that the legislation is not per se unconstitutional. While the facial challenge to the legislature's right to pass SB 1779 fails, the Court finds that a determination of whether the statute "so manipulated that [its] retroactive effects []offend the Constitution." *See Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 315 (1945) is premature.

Defendants rely on *United States v. Marion* for the proposition that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." Reply Re: Due Process at 2 citing *United States v. Marion*, 404 U.S. 307, 325 (U.S. 1971). However, in *Marion*, the Court explained that even in the criminal context, the Court must evaluate the potential prejudice on a case-by-case basis. "To accommodate the sound administration of justice to the

rights of the defendant to a fair trial will necessarily involve a delicate judgment based on the circumstances of each case. It would be unwise at this juncture to attempt to forecast our decision in such cases." *United States v. Marion*, 404 U.S. 307, 325 (U.S. 1971).

The Court concludes that it would be "unwise at this juncture" to "forecast a decision" on the potential prejudice to Defendants as the necessary facts regarding time passed and potential prejudice are not before the Court at this time. *See Id.* First, while many of the cases may involve old claims, faded memories, and missing witnesses, it is not clear that these factors will be involved in all of the cases impacted by the legislation. For example, there may be an instance where a Plaintiff is attempting to recover from the Church and there are witnesses available and evidence that has been preserved. Defendants contend that "[k]ey witnesses are deceased. Memories of victim [sic] and witnesses are faded. Details are lost to time." Reply Re: Due Process at 1:11. In order to determine whether Defendants' due process rights have been violated, the Court would need to examine the circumstances of each case. The Court cannot conclude that due process is per se violated simply because the legislation was enacted, or that due process was violated because time passed. While there has been a significant passage of time indicating potential prejudice to Defendants, such prejudice has not been established. While the unavailability of witnesses and the absence of evidence may, in fact, impact a court's decision on whether due process has been violated, that question is not currently before the Court.

While the parties raise some arguments that relate to an "as applied" challenge, the Court does not decide whether SB 1779 is unconstitutional as applied to the facts of this case or any other case. The record on these issues stands undeveloped at this time. Accordingly, the Court finds that the question of whether the due process rights of the Defendants have been violated is premature. As previously noted, this is a facial challenge and a challenge to the statute as applied may be raised after discovery has been conducted. Accordingly, the Court finds that the enactment of SB 1779 is not per se unconstitutional and denies the Defendants' Motion for Summary Judgment on this issue, without prejudice.

IV. The Ex Post Facto Clause

Defendants contend that SB 1779 violates the Ex Post Facto Clause of the U.S. Constitution because the legislative purpose and motive for the law was to punish the Catholic Church. Defendants further argue that Ex Post Facto applies to both criminal and civil law and that the Ex Post Facto clause prohibits retroactive penal legislation.

Defendants contend that the civil remedies of SB 1779 are simply the civil supplement to a criminal statute, and that therefore, the statute falls within the ban on Ex Post Facto laws. Melanie H. Opposition at 36:27-28. Defendants rely on *Handle v. Artukovic*, 601 F. Supp. 1421(D. Cal. 1985), a Central District Court case involving an extension of the statute of limitations to file civil suits stemming from war crimes. In that case, Judge Rymer (then a District Court Judge) held that the cause of action was for a violation of criminal law, and that the civil statute was simply the civil supplement to a criminal issue. The Court therefore found the statute unconstitutional. In *Handle*, the court explained "[s]tatutes of limitation are enacted as matters of public policy designed to promote justice and prevent the assertion of stale claims after the lapse of long periods of time. Statutes of limitation are not disfavored in the law. To the contrary they are favored in the law because they promote desirable social ends and give security and stability to human affairs." *Id.* at 1434 (internal citations omitted).

Plaintiff argues that Defendant's Ex Post Facto arguments fail because SB 1779 is not penal for Ex Post Facto purposes. Plaintiff argues that "SB 1779's extension of the statute of limitations imposes 'no affirmative disability or restraint' beyond an obligation to pay damages, and that civil damages have historically been regarded as a civil remedy, not a criminal penalty." Melanie H. Response at 30:20-22 *citing Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963).

The Ex Post Facto Clauses of the U.S. Constitution prohibit the Federal Government and the States from enacting laws with certain retroactive effects. *See* Art. I, § 9, cl. 3; *Stogner v. California*, 539 U.S. 607, 610 (2003). *Stogner* involved a law that created a new criminal limitations period extending the time within which prosecution was allowed. The Supreme

Court explained:

> Long ago the Court pointed out that the Clause protects liberty by preventing governments from enacting statutes with "manifestly unjust and oppressive" retroactive effects. *Calder v. Bull*, 3 U.S. 386, 3 Dallas 386, 1 L. Ed. 648 (1798). Judge Learned Hand later wrote that extending a limitations period after the State has assured "a man that he has become safe from its pursuit . . . seems to most of us unfair and dishonest." *Falter v. United States*, 23 F.2d 420, 426 (CA2), cert denied, 277 U.S. 590, 72 L. Ed. 1003, 48 S. Ct. 528 (1928). In such a case, the government has refused "to play by its own rules," *Carmell v. Texas*, 529 U.S. 513, 533, 146 L. Ed. 2d 577, 120 S. Ct. 1620 (2000). It has deprived the defendant of the "fair warning," *Weaver v. Graham*, 450 U.S. 24, 28, 67 L. Ed. 2d 17, 101 S. Ct. 960 (1981), that might have led him to preserve exculpatory evidence. F. Wharton, Criminal Pleading and Practice § 316, p 210 (8th ed. 1880) ("The statute [of limitations] is . . . an amnesty, declaring that after a certain time . . . the offender shall be at liberty to return to his country . . . and . . . may cease to preserve the proofs of his innocence"). And a Constitution that permits such an extension, by allowing legislatures to pick and choose when to act retroactively, risks both "arbitrary and potentially vindictive legislation." and erosion of the separation of powers, *Weaver*, supra, at 29, and n 10, 450 U.S. 24, 67 L Ed 2d 17, 101 S Ct 960. *See Fletcher v. Peck*, 10 U.S. 87, 6 Cranch 87, 137-138, 3 L. Ed. 162 (1810) (viewing the Ex Post Facto Clause as a protection against "violent acts which might grow out of the feelings of the moment").

Id. at 611. In *Calder v. Bull*, 3 U.S. 386, (1798), the Supreme Court set forth four categorical descriptions of *ex post facto* laws:

> 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive.

Id. at 391 (U.S. 1798). The Court concludes that SB 1779 is not unconstitutional under the Ex Post Facto Clause. The Court concludes that SB 1779 does not impose a criminal penalty and SB 1779 is not an extension of criminal punishment. Rather, SB 1779 extends the statute of limitations for the filing of a civil tort cause of action. Accordingly, the Court finds that Defendants' Motion for Summary Judgment based on the Ex Post Facto Clause should be denied.

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V. Bill of Attainder

Defendants contend that SB 1779 is an unconstitutional Bill of Attainder because of its "retributive focus on legislatively-condemned past conduct by Catholic Institutions that cannot possibly be undone." Joint Motion at 32:2-3. Defendants argue that the Bill of Attainder Clause prohibits the legislature from "singling out disfavored persons" and "meting out summary punishment for past conduct." *Id.*

Plaintiff contends that SB 1779 "does not impose punishment, let alone punishment without trial. Section 340.1 enables trial; it does not bypass one." Melanie H. Opposition at 30:3-4.

The Constitution instructs Congress that "No Bill of Attainder ··· shall be passed." U.S. Const. art. I, § 9, cl. 3. A bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1977).

> Statutes are presumed constitutional. *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993). Only the clearest proof suffices to establish the unconstitutionality of a statute as a bill of attainder. *Communist Party of United States v. Subversive Activities Control Bd.*, 367 U.S. 1, 83, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961). In judging the constitutionality of [a statute, the Court will] look to its terms, to the intent expressed by Members of Congress who voted its passage, and to the existence or nonexistence of legitimate explanations for its apparent effect.

SeaRiver Maritime Financial Holdings, Inc. v. Mineta 309 F.3d 662, 668 -669 (9th Cir. 2002). A statute that (1) specifics the affected persons, and (2) inflicts punishment (3) without a judicial trial, is a bill of attainder. *See Selective Serv. Sys. v. Minnesota Pub. Interest Research Group*, 468 U.S. 841, 847 (1984).

The Court finds that the third factor of the test is clearly dispositive, and therefore, the Court need not discuss the first and second factors. Defendants have failed to show that the statute inflicts punishment without a judicial trial. *See Selective Serv. Sys.* 468 U.S. at 847. SB 1779 extends the statute of limitations for the filing of a civil tort cause of action. SB 1779 does

not automatically impose liability on the Church. Rather, it allows certain types of claims to be filed. Defendants have failed to show that the statute inflicts punishment without a judicial trial, and the Court will deny Defendants' Motion for Summary Judgment based on the Bill of Attainder Clause.

II. MOTION TO DISMISS

Plaintiff moves for dismissal on abstention grounds. Plaintiff contends that dismissal, or in the alternative, a stay is required under three abstention doctrines. Plaintiff's Motion is only filed against Defendant Roman Catholic Bishop. Therefore, Plaintiff does not contend that the Court should abstain from hearing the claims by and against the Sisters. Additionally, the State, who intervened to defend the constitutionality of the legislation, has not moved for abstention.

On August 6, 2004, Defendants removed the case to Federal Court on the basis of diversity jurisdiction. Defendant Sisters of the Precious Blood is a non-profit Ohio Corporation; Plaintiff is a citizen of California. Accompanying the Notice of Removal, Defendant filed an Answer and Counterclaim. Defendant's Answer asserts fifteen affirmative defenses, including a defense based on the statute of limitations.[3] Additionally, Defendants filed five Counterclaims seeking declaratory relief requesting that the Court declare California Civil Code of Procedure Section 340.1 subdivisions (b)(2), (c) and (d) unconstitutional. The Bishop joined in the Counterclaims and Melanie H. now asks the Court to refrain from deciding the constitutionality issue as the Bishop is a party to many similar actions currently pending in State Court.

Plaintiff's arguments are moot. Plaintiff asks the Court to refrain from deciding the constitutionality of the issue so that the decision cannot have a res judicata effect in the coordinated proceedings pending in State court. However, as clear from this Order, the Court finds that based on the current record, SB 1779 is constitutional. Thus, to the extent that the

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[3]Defendant's eighth affirmative defense reads: Plaintiff's claims are barred by the applicable statute of limitations, including, without limitation, Cal.Code of Civ. Proc. Sections 335.1, 338, 340(c), 340.1, and 343.

Plaintiff attempts to prohibit a finding of unconstitutionality from "interrupting" the coordinated proceedings pending in State court, the Court finds that the issue is moot. Accordingly, the Court will deny Plaintiff's Motion to Dismiss as moot.

CONCLUSION & ORDER

The Court finds that SB 1779 does not violate the Free Exercise Clause or the Establishment Clause of the First Amendment because SB 1779 does not target a religious practice, a religious belief, or religious conduct of the Church.

The Court finds that SB 1779 is not per se unconstitutional under the Due Process Clause. The Court further finds that many of the Due Process arguments are premature, and will deny the portion of the Motion relying on Due Process without prejudice.

The Court finds that SB 1779 does not violate the Ex Post Facto Clause. The Defendants have failed to show that the law is penal in nature. The Court further finds that SB 1779 is not an unconstitutional bill of attainder. The Defendants have failed to show that the legislation inflicts punishment without a judicial trial.

The Court finds that the Motion to Dismiss is moot. For these reasons, and for all of the reasons discussed above, the Court will deny Defendants' Motion for Summary Judgment, and deny Plaintiff's Motion to Dismiss or Stay this action as moot.

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Accordingly,

IT IS ORDERED Plaintiff's Motion to Dismiss is **DENIED** as moot.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment with respect to the Due Process Clause claim is **DENIED** without prejudice.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment with respect to the First Amendment, Ex Post Facto, and Bill of Attainder claims is **DENIED** with prejudice.

IT IS SO ORDERED.

Dated: 12/20/05

WILLIAM Q. HAYES
United States District Judge

CC: Magistrate Judge McCurine;
All parties

Mr. Chair & members of the committee. Thank you for letting me speak today on behalf of SB 112. I am representing myself...

My Yupik name is Apugen, after my maternal grandmother. My English name is Elsie Boudreau. I am the youngest daughter of the late Edgar and Theresa Francis of St. Marys, the granddaughter of the late Alfred and Florence Francis of Pilot Station and the late George and Martha Apugen Peterson of Old Andreafski. I am married and have a son and a daughter.

First of all, I want to thank you, Mr. Chair, for introducing this extremely important bill to be considered. I thank you not only as a survivor of childhood sexual abuse, but also as an advocate for those who have yet to come forward... who are unable to speak their truth about a crime committed against them as children

The crime of child sexual abuse. It is with them in mind and in heart that I speak today. A meager attempt to make a difference in the life of even just one child.

and our children : grandchildren

I was 10 years old. With long brown hair that my Mom so tightly braided and a iilaatuk (scarf), all 85 lbs. of me boarded a plane to Nome for the summer where my oldest sister lived at the time. All I knew before that day was life in the village. I thought Nome was a big city then and I wasn't disappointed when I got there as I didn't know any differently. We had just gotten television not long before that, so I had little to no knowledge of the outside world. My world was my friends and family I had known all my life.

He was a priest. He was not just any priest, but a family friend and a father-figure. He knew my parents as he spent a significant amount of time in St. Mary's in years prior. I had every reason to trust him. His name was Fr. Poole, or Jim, as my sister and brother-in-law called him.

I remember the very first incident of child sexual abuse, though I didn't know there was such a term at the time or that it was sexual abuse. I had been playing outside with a couple friends when we were called into ~~a birthday~~ the lap room by Fr. Poole. He lined us up against the wall and asked us questions. I guess when we were done, he told us we could leave, but told me to stay. I did. He then told me that I was more mature than the other girls. And that is when it started. He would have me sit on his lap facing him and he

would kiss me for hours on end. French kiss; my 1st sexual experience. He would tell me that he was my brother, my father, my friend and my lover. I have since had memories of more detailed incidents where I know it was too painful for me to remain in my body. I was raped by this priest, this man of God.

This plagued my life every summer until I was 19 years old when I wrote him a letter stating I don't ever want to be alone with him again. After that, I never was. That is when my healing began and I put this part of my life behind me not knowing I had a right to file a claim against him or the Church and not Knowing that the Statute of limitations clock was ticking. In fact, it was only when my daughter turned 10, the same age I was when the abuse began, that I could no longer shield it from my consciousness this truth.

Senate Bill 112, if passed, would ~~allow for~~ take into account the nature of sexual abuse and allow for victims to have their day in court. It would recognize the power imbalance between child victims and the adult perpetrators and those institutions that enable such crimes to continue.

I was 10. He was in his mid 40's.

Many of the victims don't come forward until well into their 30's, 40's, 50's.

After filing a civil suite, I have since discovered, to my shock and disbelief, that the Church hierarchy knew long before I was even born, that Fr Forte had "problems" with young girls but did nothing. Instead, they moved him around to further abuse others.

It was only after I filed a claim that he was removed from ministry. Unfortunately too late for the 5 girls, now women, who have since come forward with their truth after years of silence

PICTURE

Who knows how many other women suffer in silence, a trademark of sexual abuse. But with the passage of this bill, those women (60% men : women) countless others could have an opportunity to seek their day in court and to speak the truth.

Alaska has the highest rate of child sexual abuse in the nation. That has been a reality far too long. How many of our children are marked with stolen childhoods at the hands of an adult predator? How many more will endure this needless, unnecessary crime before the protections are put in place?

SB 172 is about deterring future wrong doing. It is about protection of our children & our grandchildren.

If only such a law was in place when I was 10. Maybe, just maybe, one of Mr. Poole's earlier victims would have come forward before I had the words to explain what happened to me.

Maybe, just maybe, I would not have endured the abuse I went through. Maybe I would not have suffered from depression like so many victims do. Maybe I would not have had relationship issues... or had to deal with feelings of shame, guilt, fear, terror, inferiority.

I now work as a victim advocate and have spoken to close to a hundreds victims of child sexual abuse.

Many say, "I wonder what my life would be like if this didn't happen? What would I be doing instead of drinking my life away to escape the pain. Maybe I'd have gone to college."

Many wish the pain of the abuse would just go away, like they have a death wish but would never take action. Many, unfortunately, have taken action and are no longer with us... are no longer able to speak the truth.

Most of the victims I talk to say they have come forward so that no one else will have to go through what they did.

SB 112 is about deterring future wrong-doing. It is about protection of our children and our grandchildren. This is a public safety issue.

No one or no institution is in jeopardy unless it is proven they put kids in harms way. Those with nothing to hide would only support the passage of this bill.

I commend you, Mr. Chair & the Committee, for creating an incentive that enables victims to publicly expose the predators, to expose institutions that enable those predators, enforces accountability and lastly an incentive that enforces and encourages abuse prevention.

Thank you. Guyana agrees very much.

Mary Gail Frawley-O'Dea, Ph.D.

Remarks to Alaskan Legislators

Mr. Chairman, members of the Senate Judiciary Committee, thank you for ~~having me here to~~ letting me speak on behalf of Senate Bill 112. My name is Dr. Mary Gail Frawley-O'Dea. I am a psychologist who has worked clinically with sexual abuse survivors for over 25 years and have taught and written widely on the topic. I was the only psychologist invited to address the United States Conference of Catholic Bishops at their seminal 2002 meeting on sexual abuse in Dallas. Today, I will speak about why sexual abuse victims do not disclose their victimizations earlier in life, what factors encourage them to disclose at some point, and how the window bill ~~can~~ will facilitate disclosure.

First, some facts and figure. Almost one third of all women and up to one fifth of all men were sexually abused before the age of 18. ~~Please look around this room and imagine every third woman and every fifth man standing together as a group and you can sense the magnitude of this social problem.~~ Almost half of sexual abuse is committed by family members; about another half is perpetrated by people known to and trusted by the victim: neighbors, teachers, clergy, family friends. Only about 6% of abuse is perpetrated by strangers. Most victims experience serious sexual abuse: unclothed genital contact like fondling or masturbation by, or of, the perpetrator. Almost a quarter of victims experience anal or vaginal penetration, or oral sex.

The long-term and unique impact of sexual abuse has been delineated in over 25 years of empirical research. Increasingly sophisticated brain imaging

studies also demonstrate that trauma not only engenders psychological deficits, but also disrupts brain functioning in ways that can be life lasting. As you have heard or will hear from survivors today, cognition, emotional regulation, self-esteem, the capacity to form healthy relationships, parenting capabilities; all often are significantly harmed by sexual abuse. Over 80% of female prostitutes and male hustlers have histories of sexual abuse. Sexual abuse survivors are 2-3 times more likely than non-abused individuals to make at least one serious suicide attempt. Sometimes they die. In 2002, in fact, William Cardinal Keeler, cardinal archbishop of Baltimore, equated sexual abuse with murder and called it evil above all else. Surely, it is soul murder.

So why don't victims disclose?

Secrecy is the cornerstone of sexual abuse and is imposed or elicited by perpetrators in many ways.

First, abusers may directly threaten victims: ~~if you tell you will be blamed taken from your home, it will kill your mother, I will kill you, I will kill your family, I will kill your dog.~~ Danny, for example, was sexually abused by his foster mother who said, "If you tell even one person that you have sex with me, I will tell your younger brother that you raped me, I will get rid of you, and he will become my lover." Danny felt that he was his brother's protector and would never put the younger boy in jeopardy. Furtner, the foster mother's threat that Danny would be sent away threatened separation from his little brother, the person he loved most in the world. Danny's secrecy was assured.

Second, sexual abuse victims may be afraid, often accurately, that no one will believe them if they tell about the abuse. Denial is the most common first reaction to disclosure of sexual abuse. It can be in some ways adaptive, therefore, for victims and survivors to preserve the fantasy that if they *did* tell someone, they would be believed and helped, instead of rather than risking rejection by disclosing to someone who may disbelieve or even scorn them.

Third, victims often care for their abusers. Knowing or sensing that harm could come to the perpetrator if the abuse is disclosed, the victim remains silent hoping that eventually the abuser will heal and stop the sexual victimizations.

Fourth, the abuser may also provide for the sexually abused child or adolescent in meaningful ways that make disclosure seem disloyal. An abusive teacher, for example, may also be the only adult from whom the child receives time, interest, and affection. Perpetrators are adept at choosing victims who are needy and therefore likely to respond to the caretaking the abuser provides, albeit it at a terrible cost.

Fifth, some perpetrators provide concrete emotional bribes like money, vacations, or activities that cause the young person to feel dirty, complicit in the abuse, and too ashamed to tell. One survivor was abused by a Catholic priest who took him to hockey games and brought him on beach vacations where the days were filled with fishing, swimming, and surfing. At night, the boy gritted his teeth while the priest anally penetrated him. This man told no one about the abuse until he read in the paper that the priest denied allegations made against

him by several men who had been altar boys in another parish. ~~Then he came~~ forward to support the other victims.

Sixth, survivors do not disclose because they feel responsible for their abuse + are filled with guilt + shame.

~~Sixth,~~ ~~sexual abuse victims also do not disclose their violations until later~~ Seventh, disclosure is delayed ~~in life~~ because ~~they~~ survivors successfully compartmentalize their experiences. They literally turn their minds eye away from the abuse so that some aspect of self continues to grow and develop, with the abuse split off from everyday consciousness. Only later in life do they realize that something is wrong ~ perhaps when their lives seem less functional than those of others.

Finally, when the sexual abuser *is* affiliated with an organization, like a religious denomination, government agency, or school, the victim may fear the power of the institution to retaliate against the victim or his family. The abuser in fact may tell the victim that if s/he tells, the church, police, or school authorities will make sure the young person's parents lose jobs or standing in the community.

So, if sexual abuse survivors do not disclose their victimizations for years and years, what finally gets them to tell their secrets?

First, their lives may be sufficiently unworkable that survivors seek therapy or some other kind of counseling, ~~and only then begin to understand the impact of the abuse on their functioning~~. It may be longer still before survivors ~~can~~ link their symptoms and problems with the sexual abuse, and often even longer before they can contemplate telling family or friends what happened to them.

It is a difficult decision to risk attachment relationships by identifying someone in the family or community as a sexual abuser. People often respond

by supporting the perpetrator rather than the victim. When Elizabeth Evarts and the Hanson family of Phoenix went to court over Fr. Mark Lehman's molestations of their daughters, both families had their tires slashed and received death threats. Survivors understandably hesitate to disclose their abuse widely when they face such scorn and ridicule *and* when there is no hope of bringing accountability to the perpetrator. The window bill gives a survivor motivation to take this risk.

Second, the yearning survivors have to protect others or to provide support for other victims of their perpetrator cannot be underestimated. One survivor, for example, confronted her father and mother about the incest her father perpetrated on her between ages 5 and 13 only when a baby girl was born to her brother and his wife, and the survivor's father was designated as a child care resource. The victim of priest abuse mentioned above came forward only to support other victims who already had done so. The window bill, by allowing survivors to hold their perpetrators accountable, is crucial in empowering survivors to use their voice and expend their energies to help others by publicly identifying a sexual predator.

Representatives from various organizations will speak in opposition to this bill. It is important to remember, however, that not even half of all abusers perpetrate through their association with a school, church, daycare, or social organization. This bill is for EVERY survivor of sexual abuse. In fact, I hope that if the bill passes, the legislature will remind the media and the public that the victims of parents, grandparents, siblings, neighbors, friends of the family now have an opportunity to protect and to validate others by identifying individuals

who sexually abused them. Organizations who have adequately responded to sexual abusers in their midst have no reason to speak against this bill and, in fact, should support it given its potential to help heal sexual abuse survivors while protecting potential future victims.

I ask that you pass this legislation and would like now to answer any questions you may have for me.

Thank you.

MARY GAIL FRAWLEY-O'DEA, Ph.D.
Clinical Psychologist & Psychoanalyst
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Matthews, NC 28105
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www.mgfod.com

EDUCATION

5/96: Certificate in Psychoanalysis and Psychoanalytic Psychotherapy, Derner Institute, Adelphi University, Garden City, NY.

5/88: Doctor of Philosophy, Clinical Psychology, Derner Institute, Adelphi University, Garden City, NY.

5/86: Master of Arts, Clinical Psychology, Derner Institute, Adelphi University, Garden City, NY.

2/75: Master of Business Administration, Marketing, Cox School of Business, Southern Methodist University, Dallas, TX.

Member, Beta Gamma Sigma, National Honor Society for Business Students.

6/72: Bachelor of Arts, Saint Mary's College, Notre Dame, IN.

PROFESSIONAL POSITIONS

1/06 – present: Psychoanalyst and Clinical Psychologist, Private Practice, Matthews, North Carolina. Psychoanalysis, individual and group psychotherapy, professional supervision. Specialty in treating adult survivors of childhood sexual abuse, including clergy abuse survivors.

6/01 – 6/05: Co-Director, Manhattan Institute of Psychoanalysis, New York, New York.

9/01 – 6/05: Executive Director, Trauma Treatment Center, Manhattan Institute of Psychoanalysis, New York, New York.

9/90 – 6/05:	Psychoanalyst and Clinical Psychologist, Private Practice, Rockland County, New York. Psychoanalysis, individual and group psychotherapy, professional supervision. Specialty in treating adult survivors of childhood sexual abuse.
10/90 - 9/93:	Clinical Psychologist, Incest and Sexual Abuse Recovery Affiliates, Rockland County, NY, a group of practitioners who met monthly for peer supervision and to keep current with the literature on psychological trauma, especially sexual abuse.
7/88 - 9/91:	Psychologist II, Pomona Clinic, Rockland County Community Mental Health Center, Pomona, NY. Member, Rockland County Community Mental Health Center Sexual Abuse Team. Conducted individual and group therapy with adult survivors of childhood sexual abuse; attended and presented at weekly case conferences. Member, Rockland County Community Mental Health Center Eating Disorder Team. Conducted individual and group psychotherapy with outpatient eating disordered patients. Contributed to multi-disciplinary team of psychologists, psychiatrists, internists, nutritionists, social workers. Member, Committee on Continuing Education and Training which planned and executed center wide professional education and training programs for psychiatry, social work, nursing, psychology, and the nonprofessional staff. Member, Clinical Practice Committee. All attempted suicides and other cases with which clinicians were experiencing difficulty or on which there were interdepartmental or interdisciplinary disagreements were referred to this committee for review and recommendations.
7/88 - 8/90:	Assistant Psychologist, Private Practice, Spring Valley, NY. Conducted individual psychotherapy within the practice of a licensed clinical psychologist.
7/87 - 6/88:	Clinical Psychology Intern, Rockland County Community Mental Health Center, Pomona, NY.

TEACHING

5/02- 6/05:	Faculty, Supervisory Training Program, National Institute for the Psychotherapies, New York. Teaching a course in contemporary approaches to psychodynamic supervision.
6/01- 6/05:	Faculty and supervisor, Manhattan Institute of Psychoanalysis, New York, New York. Teaching a class in Gender & Sexuality.
5/00 – present:	Faculty and Supervisor, National Training Program in Contemporary Psychoanalysis, New York, New York. (Division of NIP). Teach a course in Contemporary Issues in Transference and Countertransference.
5/98 – present:	Continuing Education Faculty, National Psychological Association for Psychoanalysis, Inc., (NPAP), New York City. Conduct bi-weekly group supervision for five NPAP graduates.
9/97 - present:	Faculty and Supervisor, Minnesota Institute for Contemporary Psychoanalytic Studies (MICPS). Teach a course in the Theory and Treatment of Psychological and Sexual Trauma.
9/95 – 12/01:	Assistant Clinical Professor and Supervisor, Derner Institute for Advanced Psychological Studies, Adelphi University, Garden City, NY.
3/00 – 5/01:	Taught an elective in psychological trauma in the post-doctoral program in psychoanalysis and psychoanalytic psychotherapy; supervised a case conference for fourth year post-doctoral students.
9/00 – 5/01:	Supervised a junior doctoral faculty member teaching a two-semester course on psychological testing and supervising eight testing teaching assistants.
9/89 - 5/90:	Taught a two semester course on psychodiagnosis, a one-semester course on the theory and treatment of trauma, supervised student psychodiagnosticians and therapists, served on doctoral dissertation committees, and supervised weekly clinical case conferences at which student therapists presented their work. Also served on Institute faculty committees.
4/97-4/99:	Chair: Future of the Institute Committee. Chaired a six member committee whose mission was to gather data from faculty,

students, interns, alumni, externship and internship directors, and outside clinical supervisors in order to develop an Institute mission statement and specific recommendations for the next century.

9/85 - 5/87: Teaching Assistant, Psychological Testing, Derner Institute, Adelphi University, Garden City, NY. Taught psychological test administration and scoring to first year doctoral students.

APPOINTMENTS

08/06: Advisory Board, Leadership Council on Child Abuse and Interpersonal Violence, www.leadershipcouncil.org

08/06: Practice Committee, Division of Trauma Psychology (56), American Psychological Association, www.apatraumadivision.org

09/05 – 7/06 Pastoral Response Committee, Episcopal Diocese of North Carolina

05/04: Editorial Board, *Studies in Gender & Sexuality*, The Analytic Press, Hillsdale, NJ, www.analyticpress.com

04/04: Editorial Board, *Trauma and Dissociation*, Haworth Press., www.issd.org/indexpage/htm

01/04: Advisory Board, *Psychoanalytic Perspectives*, Journal of the National Institute for the Psychotherapies, www.psychperspectives.com

10/02 – 12/04 Advisory Board, National Organization of Male Sexual Victims

09/00: Publications Committee, Division of Psychoanalysis (39), American Psychological Association

PUBLICATIONS

(2007). *Perversion of Power and Sexual Betrayal in the Catholic Church: A Psychological Analysis of the Crisis*. Vanderbilt University Press.

_____ and Goldner, V., Eds. (2006). *The Catholic Sexual Abuse Scandal*. Edited collection of papers on the sexual abuse scandal to be published by The Analytic Press.

(2005). "Homosexual Priests Scapegoated in Sexual Abuse Scandal." *National Catholic Reporter*, December 7, 2005.

(2005). "The Experience of Sexual Abuse." *Trefoil: The South African Catholic Quarterly*, Number 268, 45-48.

(2005). 9/11: What do we call it? How do we work with it? Response to Elizabeth Goren and Michael Clifford. *Psychoanalytic Perspectives, 2.*

(2004). Guest Co-Editor, two special issues of *Studies in Gender & Sexuality* devoted to the scandal in the Catholic Church, Volume 5, Nos. 1 and 2.

(2004). Psychosocial anatomy of the Catholic sexual abuse scandal, *Studies in Gender & Sexuality. 5*, 121-138.

(2004). The history and consequences of the sexual abuse crisis in the Catholic Church. *Studies in Gender & Sexuality, 5*, 11-30.

(2003). When the trauma is terrorism and the therapist is traumatized too: working as an analyst since 9/11. *Psychoanalytic Perspectives, 1*, 67-90.

(2003). The impact of sexual abuse on the survivor. *Touchstone* (Newsletter of the National Federation of Priests' Councils), *18*, 11-14.

(2003). Through the mind of abuse victms. *CMSM Forum* (Newsletter of the Conference of Major Superiors of Men), *86*, 17-25.

(2003). Supervision is a Relationship Too: A Contemporary Model of Psychoanalytic Supervision. *Psychoanalytic Dialogues, 13*.

(2002). Puer Aeternus: adolescent psychosexual development and ephebophilia in some Catholic priests. *Psychologist-Psychoanalyst, 23*.

(2002). Psychoanalysis informs Catholic Bishops on the long-term effects of sexual abuse. *Psychologist-Psychoanalyst, 22,* 19 and 70.

_____ and Samat, J. (2001). *The Supervisory Relationship: A Contemporary Psychodynamic Approach*. New York: Guilford Press.

(1999). Society, politics, psychotherapy and the search for "truth" in the memory debate. In M. Rivera, Ed. *Fragment by Fragment: Feminist Perspectives on Memory and Child Sexual Abuse*. PEI, Canada: Gynergy Press.

(1999). Revisiting the "teach/treat" boundary in psychoanalytic supervision: when the supervisee is or is not in concurrent treatment." *The Journal of the American Academy of Psychoanalysis, 26*, 513-528.

(1998). What's an analyst to do? Shibboleths and "actual acts" in the treatment setting. *Contemporary Psychoanalysis, 34*, 615-634.

(1997). Free to fantasize: the liberation of fantasy in adult survivors of childhood sexual abuse. *Journal of Child Sexual Abuse, 6*, 93-106.

(1997). Transference paradigms at play in psychoanalytically oriented group therapy with female adult survivors of childhood sexual abuse. *International Journal of Group Psychotherapy, 47*, 427-441.

(1997). Who's doing what to whom?: supervision and sexual abuse. *Contemporary Psychoanalysis, 33*, 5-17.

(1997). P^3: patients, politics, and psychotherapy in the true/false memory debate. In R. Gartner, Ed., *Memories of Sexual Betrayal*. Northvale, NJ: Jason Aronson.

(1996). Supervision amidst abuse: the supervisee's perspective. In M. Rock, Ed., *Psychodynamic Supervision*. Northvale, NJ: Jason Aronson.

(1996). Book review. "From the Trenches of Trauma: Trauma and the Therapist." *Psychologist Psychoanalyst, 16*, 30-32.

(1994). Fact or fiction: the validity of "recovered" memories of childhood sexual abuse. In the *Newsletter of the Rockland County Clinical Social Work Society*, June.

Davies, J.M. and _____. (1994). *Treating the Adult Survivor of Childhood Sexual Abuse*. New York: Basic Books, Inc.

(1992). Transference and countertransference in the treatment of adult survivors of childhood sexual abuse: one relational matrix. In *ASPP Newsletter, 7*, 16-18.

Davies, J.M. and _____. (1992). Dissociative processes and transference-countertransference paradigms in the psychoanalytically oriented treatment of adult survivors of childhood sexual abuse. *Psychoanalytic Dialogues, 2*, 3-36.

Davies, J.M. and _____. (1992). Response to Gabbard, Grotstein, and Shengold. *Psychoanalytic Dialogues, 2*, 77-96.

(1989). From secrecy to self-disclosure: healing the scars of incest. In G. Stricker and M. Fisher, Eds., *Self-Disclosure in the Therapeutic Relationship*. New York: Plenum Press.

(1986). Father-daughter incest: the secret is out. *High School Psychology Teacher, 17*, 2-3.

PROFESSIONAL PRESENTATIONS

(2006). *Litigation and Spiritual Sorrow: Special Issues in the Catholic Sexual Abuse Crisis.* Paper presented at the Annual Meeting of the American Psychological Association, New Orleans, August.

(2005). *Anatomy of a Scandal: Factors Contributing the Sexual Abuse Crisis in the Catholic Church.* Paper presented at the Twenty-fifth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April

(2002). Moderator, *Dreams in Supervision.* Panel presentation at the Twenty-second Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(2001). Participated in an interview about and discussion of *The Supervisory Relationship* (Frawley-O'Dea and Sarnat as above). Twenty-first Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Fe, April.

(1998). *The Silent "Fourth" in Supervision: The Supervisee's Analyst.* Paper presented at the Eighteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Boston, April.

(1997). *Supervision in the Second Century: A Relational Model of Supervision.* Paper presented at the Seventeenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Denver, February.

(1997). *Repression versus Dissociation: "Take Two."* Paper presented at the Seventeenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Denver, March.

(1996). *Who's Doing What To Whom? Supervision and Sexual Abuse.* Paper presented at the Sixteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(1995). *Tapestries of Transference in Group Treatment of Adult Survivors of Childhood Sexual Abuse.* Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1995). *What's an Analyst to Do?: Action as Psychoanalytic Subversion.* Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1995). *Supervision Amidst Abuse: The Supervisee's Perspective.* Paper presented at the Fifteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Santa Monica, April.

(1994). *Object Relational Sequelae of Childhood Physical and Sexual Abuse.* Discussion presented at the Fourteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Washington, D.C., April.

(1993). *Free to Fantasize: the Liberation of Fantasy in Adult Survivors of Childhood Sexual Abuse.* Paper presented at the 101st Annual Meeting of the American Psychological Association, Toronto, August.

(1993). *The Analyst's Transference to Tradition as Countertransference in the Treatment of Adult Survivors of Childhood Sexual Abuse.* Paper presented at the Thirteenth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, New York, April.

(1992). *Transference and countertransference in the psychoanalytic treatment of father-daughter incest survivors.* Paper read at the 100th Annual Meeting of the American Psychological Association, Washington, D.C., August.

(1992). *The Discovery of Childhood Sexual Abuse Through the Emergence of Traumatic Memories.* Paper read at the Twelfth Annual Spring Meeting of the Division of Psychoanalysis (39) of the American Psychological Association, Philadelphia, April.

(1991). *Eliciting Disclosure of Childhood Sexual Abuse.* Paper read at the 99th Annual Meeting of the American Psychological Association, San Francisco, August.

LECTURES, CONFERENCES, AND TRAINING PROGRAMS (SINCE 1996)

5/06: Surviving Soul Murder: Long Term Impact of Sexual Abuse by Priests. *Reflecting on the Past, Healing Towards the Future*, Conference co-sponsored by Survivor Network for Those Abused by Priests and Voice of the Faithful, St. Peter's Eppiscopal Church, Charlotte, NC.

4/06: *The Theory and Treatment of Childhood Sexual Abuse.* One-day conference, Hamms Clinic, St. Paul, MN.

6/05: Patients, Politics, and Psychotherapy: The Vicissitudes of Traumatic Memory. Paper presented at a one-day conference on *Traumatic Memories: Where Are We Now?*, Long Island College Hospital, Queens, New York.

11/04: "Shepherds or Wolves: Why the Too Many Bishops Failed as Pastors." Paper presented at *Sexual Betrayal and Scandal in the Catholic Church: Psychoanalytic, Religious, and Social Perspectives*, a one-day conference cosponsored by the Trauma Treatment Center of Manhattan Institute for Psychoanalysis and the Sexual Abuse Service William Alanson White Institute, New York.

10/04: *Clericalism and Its Contribution to the Sexual Abuse Scandal in the Catholic Church*, keynote address to the Annual Meeting of the Psychoanalytic Society of the National Institute for the Psychotherapies, New York.

9/04: *The Valorization of Suffering Within Catholicism: One Factor in the Church's Sexual Abuse Crisis.* Paper presented at the Washington D.C. Chapter of the New York Freudian Society, Bethesda, MD.

04/03: *Anatomy of a Scandal: Psycho-Social Roots of the Sexual Abuse Crisis: Abusing Priests.* Presentation to and discussion with Voice of the Faithful, Winchester, MA.

04/03: *Anatomy of a Scandal: Psycho-Social Roots of the Sexual Abuse Crisis: The Hierarchy.* Boston College, Church in the 21st Century Program, Newton, MA.

03/03: *The Long-Term Impact of Childhood Sexual Abuse.* One-day conference with the Bronx Region of Jesuits, Bronx, NY.

02/03: *The Long-Term Impact of Childhood Sexual Abuse.* One-day conference with the Manhattan Region of Jesuits, including the staff of *America* magazine.

12/03: *The Sexual Abuse Crisis in the Catholic Church*, three Advent Lectures given at St. Anthony's Catholic Church, Nanuet, NY.

11/02: Rockland County Assembly of Priests. One-day consultation to discuss implications of Church sexual abuse crisis on local parishes.

11/02: *How Did We Get Here?* One-day consultation with Middle Atlantic Region of Capuchin Friars.

10/02: Region I Conference of Major Superiors of Men. Consultation on designing programs to reach out to victims of priest sexual abuse. Waltham, Ma.

10/02: *Supervision is a Relationship Too.* Grand Rounds, North Hospital, Long Island, NY.

8/02: *Where In God's Name – Are the Victims?* Address to the Conference of Major Superiors Annual Assembly, Philadelphia, Pa.

6/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented to the Trauma Treatment Center, Manhattan Institute for Psychoanalysis, New York, NY.

6/02: *The Long-Term Effects of Sexual Abuse.* Televised address to the National Conference of Catholic Bishops, Dallas, TX.

5/02: *A Contemporary Model of Supervision.* Half-day workshop to the Vermont Psychoanalytic Society, Burlington, VT.

5/02: *Supervision is a Relationship Too.* Grand Rounds, Vermont Medical Center, Burlington, VT.

4/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented at a Scientific Meeting of the Westchester Center for the Study of Psychoanalysis, White Plains, NY.

4/02: *When the Trauma is Terrorism and the Therapist is Traumatized Too.* Paper presented at the Annual Meeting of the Rockland County Mental Health Association, Pearl River, NY.

03/02: *Supervision is a Relationship Too.* Colloquia presented at Manhattan Institute of Psychoanalysis, New York, NY.

11/01: *The Supervisory Relationship: A Relational Approach.* Workshop with Joan Sarnat, Ph.D. at Massachusetts Institute for Psychoanalysis, Cambridge, MA.

06/01: *The Supervisory Relationship: A Relational Approach.* Continuing Education Program, Rockland County Clinical Social Workers Society, Nyack, NY.

10/00: *The Supervisory Relationship: A Relational Approach.* Continuing Education Program, Tufts University Masters Program in Clinical Psychology, Medford, MA.

9/99: *Intersubjectivity in Psychoanalytic Supervision*: A Relational Model. Paper presented at the Institute for Contemporary Psychoanalysis' continuing education conference on intersubjectivity in the supervisory relationship, New York.

12/98: *Thanks for the Memories.* Panel member. Inns at Court, Uniondale Court House, Uniondale, NY. Panel presentation for judges, attorneys, law professors, and law students on the vicissitudes of memory.

5/98: *What's an Analyst to Do? Shibboleths and "Actual Acts" in the Treatment Setting.* New York University Post-Doctoral Program in Psychoanalysis and Psychotherapy, Annual Conference on Sexuality, New York, New York.

4/98: *What's an Analyst to Do? Shibboleths and "Actual Acts" in the Treatment Setting.* Colloquium, Long Island University Clinical Psychology Doctoral Program, Brooklyn, NY.

2/98: *What's an Analyst To Do? Shibboleths and "Actual Acts" in the Treatment Setting.* Continuing Education Program, Tufts University Clinical Psychology Masters Degree Program, Medford, MA.

6/97: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds, Four Winds Hospital, Katonah, NY.

2/97: *Supervision in the Second Century: A Relational Model of Supervision,* Continuing Education Program, Tufts University Clinical Psychology Masters Degree Program, Medford, MA.

12/96: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds, Jamaica Hospital, Jamaica, NY.

5/96: *Ah, Yes, I Remember It Well. Or Do I?* Annual Spring Meeting, International Society for the Study of Trauma, New York City.

3/96: *P^3: Patients, Politics, and Psychotherapy in the True/False Memory Debate.* Keynote speaker, Annual Spring Meeting, Institute for Psychoanalysis and Psychotherapy of New Jersey, Edison, NJ.

2/96: *Ah, Yes, I Remember It Well. Or Do I?* Grand Rounds New York University Medical Center, New York.

MEDIA APPEARANCES

06/06: Appearing in the documentary film, *Deliver Us From Evil*, opening at the Los Angeles Film Festival, Disarming Films, Amy Berg, Director.

05/06: *Charlotte Talks with Mike Collins.* Interview on the sexual abuse crisis in the Catholic Church.

06/02: C-SPAN II. *The Long Term Impact of Sexual Abuse by a Priest.* United States Conference of Catholic Bishops Semi-Annual Meeting, Dallas.

DISSERTATION

Frawley, M.G. (1988). The sexual lives of adult survivors of father-daughter incest. *Dissertation Abstracts International, 49.* (University Microfilms No. 88-06, 457).

PROFESSIONAL AFFILIATIONS

American Psychological Association
- Division of Psychoanalysis
  - Section III: Women's Section
- Clinical Division
- Women's Division
- Independent Practice Division
- Trauma Division
  - Member, Practice Committee
- Psychology of Religion Division

Manhattan Institute for Psychoanalysis Society

International Society for the Study of Dissociation

Leadership Council on Child Abuse and Interpersonal Violence

LICENSE

8/90: New York State License, Psychologist, 10292

6/06: North Carolina License, Psychologist 3247

My name is Joelle Casteix. I am 35 years old and I currently live in Newport Beach, California. I am the Southwest Regional Director of SNAP, the Survivors' Network of those Abused by Priests. I am also the owner of a successful public relations and marketing business.

Why Am I Here? I am here because I am an accidental pioneer.

I am here today because I am an example of why Senate Bill 112 and its civil window are essential to the safety of children in Alaska.

I am here to show you how the California civil window has saved thousands of children from abuse, exposed predators across the state (many who were still abusing), helped law enforcement put predators behind bars, and helped hundreds of children, who like myself, were abused and discarded by giving us our day in court to prove our cases.

This law has also protected thousands of vulnerable children who would still be at risk if these predators had not been exposed.

And it was all because of a law like SB 112.

I am also here because I can answer specific questions you might have about how a law like SB 112 is really working to protect children and how a civil window is the ONLY way that many serial molesters in Alaska can be exposed and Alaska's children can be safer RIGHT NOW.

Because I was able to sue the Diocese of Orange through our one-year window, I was not only able to expose Dr. Thomas Hodgman, the man who abused me, but I was able to get a hold of the documents that proved that he was a child molester – documents that the diocese kept hidden from me for 17 years, while they told me that the abuse never took place.

And I was able to alert the community that they were harboring a molester and a criminal – a criminal who was given a free pass by the Catholic church.

Without the tried and true legal system, I never would have been able to expose him and keep other girls from experiencing what I went through.

Let me just tell you about two of many, many cases in California that are examples of the utter importance of SB 112– the Michaels

Former priests Michael Baker and Michael Wempe are two of the worst pedophiles in California. In fact, their names might be familiar because Cardinal Roger Mahony fought all the way to the U.S. Supreme Court (and lost, mind you) to keep their personnel files secret – even after Mahony acknowledged that he knew Baker was abusing kids.

Both men escaped criminal prosecution because their victims were abused too long ago – and as other people today will tell you, it takes many, many years for victims to come forward and report their abuse.

But because of the civil window, victims of both of these men were able to pursue their cases in civil court.

And something interesting happened – younger victims – victims who never would have had the bravery to come forward before – reported their abuse to law enforcement. They also had evidence that has led to the arrest of both of these men.

Solid evidence. And now, these men are behind bars. That never would have happened without the window.

Without the civil suits, these men never would have been exposed. If their victims named them publicly – without the backing of the courts - the abusers could have sued them for slander. The media would have ignored their claims, and more kids would have been hurt and forced to suffer in silence.

The Michaels are only two of many perpetrators exposed in our civil window who are now being pursued by law enforcement

And again, survivors became accidental pioneers. For the first time, we were able to use the legal system to make sure that what happened to us never happens to another child.

Let me tell you a little about my story:

Like many of the survivors you have heard and will hear today, I was a vulnerable child. I came from an alcoholic home and suffered from severe emotional disturbances because of the home life I had to endure.

My high school and the church were my sanctuaries.

I attended Mater Dei High School, a diocesan high school in Santa Ana, California.

What my parents and I didn't know at the time was that the school was a den of sexual abuse. Eleven men at my high school, including the principal, a vice principal, two choir directors and cross country coach were credibly accused and/or sued for abuse. Documents were released for all of them as a result of the civil window.

When the documents were released, we learned that the abuse was a hundred times worse than anyone had known. And the victims were vindicated. And we were able to warn children and parents and communities about the dangers that these men posed.

Without the documents, these men would be free to molest over and over again. Because of a bill like SB 112, we can warn parents and protect children. Because of a law like SB 112, we were finally given the truth.

My Perpetrator

I was molested by choir director Thomas Hodgman. The prior director had informed Hodgman of my home life, and told him that I was vulnerable. Hodgman seized the opportunity. He had complete control and power over me.

"If you tell anyone, I'll kill you," he told me. "No one will believe you, anyway."

I was repeatedly raped during a two-year period – from when I was 15 until I was 17 years old.

Like many survivors, I couldn't go to my parents, even when my panties were bloody and my body bruised. I couldn't go to my friends, who, after learning of the abuse said that I wanted it.

So I went to school officials. And they did nothing.

I had no idea that Hodgman was also molesting my friend, Kristin. I have always blamed myself for what he did to her. Maybe if I had done something different, she wouldn't have been hurt.

Right before graduation, I found out I was pregnant.

If you are Catholic, you understand my pain. I had nowhere to go, and nowhere to turn. So, using a fake name, I walked to an abortion clinic, alone, and ended my pregnancy.

It was the single hardest decision of my life and it affects me every single day.

After the procedure, a nurse told me that I had a sexually transmitted disease, vaginal warts, that could lead to cervical cancer and sterility. I spent the next three months having growths burned off of my genitalia.

I suffered endlessly for the next ten years. I watched my mother kill herself with alcohol over the pain and shame of what had happened to me. I lost all of my friends from high school. I trust no one. I suffered from bad relationships, intimacy issues, suicidal thoughts, and an overwhelming shame. I hated who I was, and it seemed that there was no solution and no way out.

I finally decided that I had no choice but to heal or to die. I decided to heal to spite the ~~church~~ and the people who abandoned me. I am one of the lucky ones.

But my story does not end here.

Working With The Church

In 2001, a boy who had been abused by Principal Fr. Michael Harris sued the Diocese of Orange and won a $5.2 million settlement. I was enraged when I heard the news.

Had the church learned nothing?

So I wrote a letter to my high school and offered to help. The school did not respond, but the diocese did. I was invited to lunch by Maria Schinderle, the HR director and now lead counsel for the diocese.

During our hour together, she told me that she had no records of my allegations, and that school officials had no idea that I had been abused. She even doubted my claims.

But, there was an opportunity for me, she said. I could serve on the diocese lay review board. I could help the bishop and show the county that there is no other abuse in the Diocese of Orange.

I seized the opportunity. I honestly thought that I could make a difference.

During the six months I was on the committee, we did not review a single case. We were told to ignore press reports. There were no notes taken during meetings. We had no administrative support. Instead, we sat around a table and discussed how horrible the clergy abuse scandal was for priests.

We were a puppet, with no power, no credibility and no means to protect children. And that is how the Diocese wanted it. I was disgusted. This was not a place that embraced truth and the teachings of Jesus Christ.

Lay review boards are "consultative" bodies – that is the word used in the charter that calls for their formation. That means that the bishop does not have to, and in most instances, does not, have to take the advice of the board. In fact, we have found that like in Orange, important information about offending priests was kept from the boards, so that any decision they made was uninformed, confused, and clouded with lies supplied by the church. Survivors and board members across the country have quit for these reasons that I cite.

I was tired of people lying to me. I had no other choice if I wanted to learn the truth.

After six months of frustration, I stepped down from the committee and filed a lawsuit. I knew that the truth would not come out unless the diocese was forced to tell the truth – forced by the law.

Someone needed to be responsible for the children, because the church was not.

After two years of mediation, revictimization, stalling, and mudslinging, 87 cases against the Diocese of Orange were settled for $100 million. But the money was simply a slap on the wrist. The diocese was debt free, less than a year after the settlements. The true punishment and the true justice lay in the files.

In May 2005, most of the documents pertaining to the civil cases in Orange were released to the public. The furor was overwhelming. Not only did documents show that the church knew about abuse, but the documents showed that church officials didn't care. Priests, clergy and employees were transferred, asked to resign, and quietly hidden.

An entire generation of children was destroyed to protect a few men from scandal.

Suddenly, no one cared about the money. People learned why I sued – I sued for truth. No one can call me a liar anymore. No one can tell me it was my fault.

And most importantly, California's children will be safer because we exposed the predators who were allowed to go free to abuse and rape and destroy.

The most important part: girls will now be safer from Hodgman. The church didn't care enough to protect them, but I did. And I did it through a law like SB 112.

The Documents

But let's get back to the immediate danger here in Alaska.

In the files for my case there were quite a few interesting documents. Documents that never would have been exposed unless we had the one-year window.

There was the signed confession – the document I have right here – where Hodgman admits to raping me and my friend Kristin. It's also signed by the principal, who never called the police.

There is the back-dated document, signed by the vice principal and Hodgman, that says that she knew about the abuse a year earlier, and did nothing.

There is the letter, written by the principal, Fr. John Weling, to the superintendent of schools. I have attached it to my statement and will read a portion now.

Where is the compassion? Where is the law? Where is God in these documents?

Only the truth will protect children. The Diocese of Orange didn't care enough to protect me, my friend Kristin or the children of ~~Alaska and Michigan~~ from a child molester. The church in Alaska, with its opposition to this bill doesn't care enough, either.

But SB 112 and its one-year window does.

We were able to expose 150 perpetrators that the church had tried to hide from public disclosure. We exposed "rings" of priest shuffling between California, Idaho, Arizona, Alaska and Oregon. And because we have the files, there are numerous perpetrators who are now under criminal investigation, because many of them, including my perpetrator, still fall within the criminal statute of limitations for rape and molestation. I may finally see Thomas Hodgman behind bars for what he did to me and what he did to my friend.

So let me conclude by restating why SB 112 is VITAL and NECESSARY to the state of Alaska:

1) It allows survivors of sexual abuse – all survivors of sexual abuse – in families, communities, religious organizations and other groups – to use the tried and true legal

system to expose their predator – who may have escaped the criminal statute of limitations - and keep children TODAY safe from abuse.

2) It aids law enforcement to prosecute molesters by unearthing hidden victims, evidence and testimony – at no cost to taxpayers
3) It forces all organizations to beef up their child protection policies.

You may hear testimony from other groups who say that this bill unfairly targets them. Let me reply now and tell you that this bill only targets predators and the organizations that harbored and protected them. Victims still have to meet the a burden of proof to file cases – a burden that is even more difficult many years after the abuse occurred and evidence is missing and witnesses are dead.

Why deny Alaska's victims their day in court?

No one wants to be where I am. No one wants to file a lawsuit. We didn't want to be molested. But now, we want to protect other kids from what happened to us.

But the courts – and even the federal courts who ruled that the California civil window was constitutional – are giving us a chance to save kids right now from predators who are on your streets right now.

I now have a husband and a ten-month-old son. My little boy - Nicholas - loves me unconditionally – he depends on me every day for everything he needs and rewards me with the most fulfillment I have even enjoyed. I am not longer the discarded child that church officials threw out with the garbage. I now have a voice, and will use it to protect kids.

I have met Alaska's victims of sexual abuse. I can be for them what they cannot be right now. They needed me to help give them a voice. And now, they need you to make sure that what happened to them and what happened to me never happens to another child in Alaska.

The power is in your hands.

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

REVEREND JOHN B. WELING

November 8, 1989

Official documentation - November 7, 1989 meeting with Mr. Tom Hodgman

This is to document my meeting with Mr. Tom Hodgman on Tuesday, November 7, 1989.

I met with Mr. Hodgman to discuss allegations made by four Mater Dei graduates (Class of 1988) [redacted]
These former students met with me on Saturday, November 4, 1989, to share their concern about past relationships Mr. Hodgman allegedly had had with two of their classmates. The first situation involved Joelle Casteix during the semester before she graduated. [redacted] the summer after graduation. They brought a copy of an article written by Joelle Casteix published in the UCSB student newspaper, Daily Nexus, on Wednesday, October 18, 1989. This article states that Joelle not only entered into a close relationship with one of her high school teachers, but became pregnant by that relationship and subsequently decided to have an abortion.

The students stated that they knew about the sexual relationships Mr. Hodgman had with these two former students because of direct information they were given by Joelle and [redacted]

In my meeting with Mr. Hodgman, he admitted to not only dating these two students [redacted] but having sexual intercourse with them. He had not been aware of the possibility of the abortion until he read the article.

Mr. Hodgman reassured me that he had undergone extensive counseling and had taken many steps in his personal and professional life to ensure that he would never make this terrible mistake again. He swore that this sort of problem has not occurred again with any students.

Rev. John B. Weling — 11/9/89
Date

Thomas Hodgman — 11/9/89
Date

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - June 1988 meeting with Mr. Thomas Hodgman.

This statement is to document a meeting initiated by Mr. Tom Hodgman with me in June, 1988.

At this meeting Mr. Hodgman stated that since he decided not to resign that he would like me to know of a situation in which he was involved during the last semester of the 1987-88 school year.

Foolishly he dated a senior girl, Joelle Casteix. Her parents called him and asked him to stop dating their daughter. They also requested that he keep the matter quiet because they did not want the school to be aware of the situation. They would prefer that their daughter not be dragged into any kind of a situation at school.

Mr. Hodgman stated that he kept his promise to the Casteix family by not calling, seeing, dating or discussing the matter with anyone.

He stated he was in counseling to help him with this and other problems he was experiencing at the time. He recognized what a big mistake it was and vowed that it would never happen again.

No record of this meeting was placed in his personnel file, and it is only at the request of the Principal that it is now being documented.

Luretia L. Dominguez — 11-7-89
Luretia L. Dominguez — Date

Thomas Hodgman — 11/7/89
Thomas Hodgman — Date

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

OFFICE OF THE PRINCIPAL

CONFIDENTIAL

REVEREND JOHN B. WELING

December 12, 1989

Sr. Celine Leydon, S.S.L.
Superintendent of Catholic Schools
Diocese of Orange
2811 East Villa Real Drive
Orange, CA 92667

Dear Sister Celine:

This is to inform you about two personnel matters we have been dealing with recently. In case you are ever contacted about these situations the enclosed information might be of assistance.

1. [redacted]

2. A past situation involving our choir director, Tom Hodgman, and one of our senior girls at the time was brought to my attention by four of our graduates. They gave me the enclosed copy of an article this student wrote in her UCSB school paper. At this time we have no evidence that she was pregnant and had an abortion. We are aware of her past history of serious emotional problems. When confronted with this alleged situation, Mr. Hodgman admitted to me that he did have a relationship with this student, prior to her graduation, which included sexual intercourse. The student was under eighteen at the time which necessitated my report to the Child Abuse Registry. Mr. Hodgman subsequently resigned and has no further association with our choir program or students.

Both cases have been handled with the advise from [redacted] office.

As you can see, there is never a dull moment at the corn of Bristol and Edinger! If you wish to discuss either of these matters further, please let me know.

Sincerely yours in Christ,

Rev. John B. Weling

JBW/r
Enclosures

cc: Most Reverend Norman McFarland
Rev. John Urell

Mater Dei High School
1202 West Edinger Avenue
Santa Ana, California 92707-2191
714/754-7711

November 7, 1989

Official documentation - November 3, 1989 meeting.

Attending: [redacted] (1988 graduate), [redacted] (1988 graduate) and Mrs. Lucretia Dominguez

Chaired by Mrs. Lucretia Dominguez, Assistant Principal

A meeting was arranged on Friday afternoon, November 3, 1989 in my office.

Mr. Hodgman showed me an article written by Joelie Casteix in the October 18, 1989 issue of the Daily Nexus about an abortion she had in July of 1988. This was the first time Mr. Hodgman had any knowledge of her pregnancy and abortion. Concern was warranted because the father of the child was not stated but certainly reference was made to Mr. Hodgman.

[redacted] stated that this was the first time she ever discussed this matter openly and directly with Mr. Hodgman. She was aware of the dating because her friend, Joelie, had kept her informed. When asked why she waited so long to discuss this matter she said she did not know what to do. She was angry and confused.

She wanted to meet with me to find out what action the school had taken. My reply was that I did not know that there was a serious issue yet to be dealt with. The only information I had ever received was from Mr. Hodgman in June of 1988 regarding dating a student. I have never received any complaint or charge filed against Mr. Hodgman by any student, staff or parent. We simply discussed his behavior, and I was assured that it would never happen again. This article and additional information, not factual, have not come to our attention before this date.

I was aware that [redacted] were going to meet with Fr. Weling on Saturday and no attempts on Mr. Hodgman's or my part were made to prevent them from doing so.

I also told Mr. Hodgman that I was quite sure that Fr. Weling would want to meet with him to discuss this matter. Mr. Hodgman stated that he feels it would be important for Fr. Weling to hear his side of the story.

Lucretia L. Dominguez — 11-7-89
Lucretia L. Dominguez — Date

Thomas Hodgman — 11/7/89
Thomas Hodgman — Date

adn.com
Anchorage Daily News

Child molester, 71, is headed to prison -
SENTENCE: A judge gives Billy Joe Perkins 25 years for his abuse.
Anchorage Daily News (AK)
March 17, 2007
Author: JULIA O'MALLEY
Anchorage Daily News
Staff

Billy Joe Perkins, 71, who admitted molesting little girls since the 1970s, will likely die in a prison cell.
Superior Court Judge Philip Volland sentenced him to 25 years Friday for sexual abuse of a minor in the first degree. Perkins, who plead no contest to abusing a 9-year-old girl in 2006, won't be eligible for parole for 20 years. Volland called the abuse "inherently destructive in a way that couldn't be remedied."

"In my mind, Mr. Perkins raises a significant threat to the community, to children in the community," Volland said.

Perkins was originally charged with 34 counts of sexual abuse for molesting two young girls in 2005 and 2006. Without negotiating a deal, he pleaded no contest to one count, but the other 33 are still pending. Prosecutor Alan Goodwin said the district attorney's office is still considering whether to take him to trial on the other charges.

Perkins was pushed into the courtroom in a wheelchair with an oxygen tube around his face. He listened to the proceedings through special earphones.

Goodwin argued that Perkins should receive a stiff sentence -- well over the minimum of eight years -- because he admitted to investigators that he abused other girls, beginning with a 6-year-old in the 1970s.

Goodwin played a recording of Perkins' police interview, where the old man said he molested the 9-year-old almost daily. He said the girl pursued him and asked to be molested.

"I made a mistake, but once you do it, you can't turn it around because she's got you over a barrel," he said.

"I'm not attracted to little girls, some girls just hit you wrong."

On the recording, Perkins described sex with another girl, who was 6 years old. He began molesting her in the early 1970s, and continued for 10 or 11 years. She's an adult now.

"Given his history, the only way the court can be sure Billy Joe Perkins isn't going to

offend against other girls is to incarcerate him," Goodwin said.

Defense attorney David Weber argued that Perkins was old, had suffered a stroke and had expressed remorse for his crimes. He shouldn't be given a life sentence, Weber said.

"No matter what you do," he told the judge, "this man is going to die in jail."

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Anchorage Daily News

Judge says sex suit filed too late -
DISMISSED: Victim claimed priest got her pregnant in 1977.
Anchorage Daily News (AK)
February 22, 2006
Author: SHEILA TOOMEY
Anchorage Daily News

A Nome judge on Tuesday dismissed a sex abuse lawsuit against the Jesuits and the Fairbanks Catholic diocese, ruling that a woman who says former Nome priest James Poole got her pregnant when she was 14 waited too long to take legal action.

Superior Court Judge Ben Esch said the woman, known as Jane Doe 2, should have known when Poole told her to get an abortion that he and the church had done something wrong to her. In legal terms, that knowledge triggered her "duty to inquire" and set in motion the civil statute of limitations, which required her to file suit no more than two years after she turned 18.

"This will be seen as unjust by many people," Esch wrote in his dismissal, "but is, I believe, required by the laws of the State of Alaska." The decision came less than a week before trial was scheduled to begin.

Both sides reacted to the dismissal as might be expected. In a written statement, the Jesuits -- formally the Society of Jesus, Oregon Province -- said the ruling confirms "the justice of our position" but vowed to seek healing for "those who have suffered from abuse."

"(W)e still hope to find a path to reconciliation," the statement said.

"We do not celebrate today's decision."

Attorney Ken Roosa, who represents Jane Doe 2 and dozens of other litigants reporting childhood abuse by Alaska-based priests, said he will appeal the dismissal to the Alaska Supreme Court.

"I think Judge Each is a fine judge, but I think he called it wrong here," Roosa said. The decision is based on the facts of this case and does not imperil other pending cases, he said.

"This is just one skirmish in a long battle."

In her 2004 lawsuit, Jane Doe 2 said Poole abused her in the late 1970s and got her pregnant in 1977. She said she had an abortion in 1978 at Poole's urging.

Roosa said the woman reported the abuse to two different local priests within the

allowed time period and was told to do penance.

Both religious organizations have said they knew nothing of such accusations at the time.

In 2001, the Alaska Legislature eliminated the statute of limitation for child sex abuse cases. That means anyone abused after that date has no deadline for filing suit.

Roosa claims, and is arguing in another case before the state Supreme Court, that the law is retroactive and covers people like Jane Doe 2. Esch apparently did not agree.

In December, he removed Poole as a defendant in the case, saying Jane Doe 2 should have known something wrong was done to her and needed to take action within two years of her 18th birthday.

He left the Jesuits and the Fairbanks diocese as defendants, saying it was not clear she should have known she had a case against the two organizations, according to Roosa.

The case was scheduled to go to trial in Nome next week. In the meantime, the Alaska Supreme Court in an unrelated case ruled that judges, not juries, must decide statute-of-limitation questions, Roosa said.

Forced to decide, Esch concluded Jane Doe 2 should also have taken timely action against the two organizations.

On Tuesday, Roosa seemed bitter that the church even raised the timing question. "Would Christ assert the statute of limitations against a victim who had been sexually abused by a priest?" he said. " I just don't think so."

In their statement, the Jesuits spoke of a resolution better than a "legal dispensation."

"There remains, at this time, a woman whose suffering and story deserve our respect and our pastoral care. ... we continue to pray that we will find together a deeper justice, based not on adversarial strife but on our shared concern for the well-being and healing of all those involved."

In addition to the dismissed case, two other suits against Poole have been settled and two remain.

The Associated Press and the Fairbanks Daily News-Miner contributed to this story
Sheila Toomey can be reached at 907-257-5341 or stoomey@adn.com.

adn.com
Anchorage Daily News

28 men allege abuse by monk -
1965 TO 1975: Western Alaska men sue Fairbanks Catholic Diocese, Jesuits.
Anchorage Daily News (AK)
November 12, 2004
Author: RICHARD MAUER
Anchorage Daily News
Staff
Estimated printed pages: 4

Twenty-eight Alaska men say that when they were children, a religious brother who served several Western Alaska villages bought sexual favors from them with candy, better grades, sacramental wine and coins from collection plates.
The men, now mostly in their 40s, say in a lawsuit filed in Bethel that the former Trappist monk, Joseph Lundowski, abused their trust as deacon and religious instructor and engaged them in sexual misconduct, including oral sex. One man said he was also raped.

The men's identities are not disclosed in the lawsuit, which seeks monetary damages from the Fairbanks Catholic Diocese and the Jesuit province in Oregon, which has a historical affiliation with the Fairbanks diocese. At the time of the alleged abuse, from 1965 to 1975, the victims ranged in age from 6 to 24, with most of them in their adolescence.

The lawsuit says that Lundowski was forced from Alaska by church authorities in 1975. He is believed to have died. He was born in 1918.

A spokeswoman for the Fairbanks diocese said it had not received a copy of the suit and couldn't comment on the allegations.

"From the best I can figure, he left in the mid-'70s," said Ronnie Rosenberg, the director of human resources. "There are not many people here now who even remember him. As for the victims, all them are 'James Doe,' and we don't know who they are now. We do pray for healing for anyone who may have been injured."

In a prepared statement, the Jesuits denied any direct connection to Lundowski.

"The Society of Jesus learned this morning about the filing of litigation alleging multiple instances of sexual misconduct several years ago by Mr. Joseph Lundowski. As we have been committed to healing in the Church, we are saddened by these new allegations, and keep all who have suffered in our prayers. However, the Society wishes to clarify that Mr. Joseph Lundowski was at no time a member of the Society of Jesus nor in any way subject to the authority of any Jesuit superior or Provincial," it said.

According to the lawsuit, Lundowski was kicked out of his monastery "because of his

inability to withstand the rigors of monastic life." The lawsuit asserted that the language was code for "his improper and illegal sexual involvement with young boys."

Lundowski was recruited to Alaska by The Rev. George Endal for the Holy Rosary Mission School in Dillingham around 1949. Endal put Lundowski in charge of the boys' dormitory.

In 1963, when Endal went to the Western Alaska village of Nulato, Lundowski followed, the lawsuit said. It was there that Lundowski was "involved in a scandal with a person 'who is not a woman,' " the lawsuit said, quoting from a 1965 letter written to another priest in Western Alaska by his superior. The letter, discovered by the plaintiffs' attorney, Ken Roosa of Anchorage, in another abuse case, suggested that Lundowski's behavior was already established and known, though nothing was done about it other than complaining.

"Rather," the lawsuit continued, "he was transferred to Hooper Bay with Father Endal in 1965, where he continued to molest and sexually assault boys and young men."

Lundowski was deacon and religious instructor over the next 10 years at parishes in Hooper Bay, Stebbins and St. Michael. He also left a trail of abuse, according to the suit. Six of the victims were from Little Flower of Jesus parish at Hooper Bay; 11 attended St. Michael's parish at St. Michael; and 11 were from St. Bernard's parish in Stebbins.

His "sexual predation accelerated" when he was transferred to St. Michael and Stebbins in 1968, the lawsuit said. "He continued to serve as a deacon and catechist, often molesting boys after Mass or catechism."

The suit charged he engaged in oral copulation with each of the victims, "and forced many to submit to anal sodomy and required them to masturbate him." The boys were rewarded with candy, money stolen from collection plates, cooked and baked foods, beer, sacramental wine "and better grades on their catechism assignments."

He also warned them against telling. He said "no one would believe them because he worked for God," the suit said.

His abuse finally came to an end when a resident of St. Michael, Martha Abochook, caught him in the act with the 24-year-old, the suit said. Abochook, who is now dead, "raised a fuss" that resulted in the Fairbanks diocese removing Lundowski from Alaska

Each of the men still lives in Western Alaska. Until other lawsuits against priests in the area became known, the men didn't understand their depression, anxiety, self-blame, shame and guilt were caused by Lundowski, the suit said. "They didn't know they had the right to sue the diocese until they heard of the others."

Church officials should have stopped the abuse and reported Lundowski's felonies to authorities, but failed, the lawsuit said.

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Anchorage Daily News

Abuse victims plead for year to file suits

STATUTE OF LIMITATIONS: A bill would allow long-ago injuries to be addressed.

By STEVE QUINN
The Associated Press

(Published: March 27, 2007)

JUNEAU -- James Niksik sat with palms down on a table and eyes welling with tears as he talked to the Senate Judiciary Committee on Monday.

The 48-year-old man from St. Michael told lawmakers of a childhood he says was filled with sexual abuse at the hands of a deacon.

His hope, he told the legislators, is that they will approve a bill creating a one-year period for the now-adult victims of child sex crimes to file civil lawsuits against assailants currently protected by statutes of limitations.

"I couldn't do anything. I was a small boy; he was a big man," Niksik said, often interrupting his speech with long pauses to regroup.

"I couldn't defend myself," he said. "I started lashing out at people who are closest to me. I didn't understand why I had this rage."

Niksik said he hopes the bill passes "so that justice can be done, not only for me but for others. Some are still hurting today, like me."

The bill does not affect criminal cases.

This stark testimony came at a time when the Legislature is debating budget allocation, retirement funding and the Alaska Gasline Inducement Act in other parts of the Capitol.

But for nearly two hours, five committee members heard personal stories, punctuated with language rarely used in these rooms.

"It was gut-wrenching to sit that close to them and feel their very real pain," said Sen. Lesil McGuire, R-Anchorage.

Testimony came from psychologists, an attorney and victims; people arrived from North Carolina, Southern California and northwest Alaska to get 10 minutes in front of the committee.

The bill specifically changes what sponsor Sen. Hollis French, D-Anchorage, called a loophole in state law.

French, the committee chairman and a former prosecutor, said the Legislature in 2001 eliminated the statute of limitations on civil lawsuits alleging child sexual abuse, but only for conduct that occurred after that date.

French said the proposed law would create a one-year window for people who were victimized before 2001 to pursue lawsuits if they wished. After a designated year, not yet specified, the window would close, he said.

Numerous civil lawsuits have been filed in Alaska, even without changes in the law. For example, there have been more than 100 lawsuits filed against priests or religious volunteers who served in the Catholic Diocese of Fairbanks.

"I heard from lawyers who were having trouble with the statute of limitations," said French, who handled sexual abuse cases when he worked in the Anchorage district attorney's office.

Joelle Caseix of Newport Beach, Calif., told the committee a similar law in California helped her pursue a claim against her attacker.

Casiex now serves as the Southwest Regional Director for the Survivors Network of those Abused by Priests.

The 36-year-old talked about repeated rapes over a two-year period and ultimately becoming pregnant just before graduation.

She told lawmakers that French's bill gives Alaska victims a legal path to expose predators, helps additional victims come forward and forces organizations to strengthen child-protection policies.

"You may hear testimony from other groups who say this bill unfairly targets them," she said. "Let me reply now and tell you this bill only targets predators and the organizations and people that harbored and protected them.

"The victims still have to meet a burden of proof to file cases -- a burden that is even more difficult many years after the abuse occurred and after the evidence is missing and witnesses are dead."

No one spoke against the bill, SB 112, but opponents will get their chance during another hearing April 2.

Daily News staff contributed to this story.

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Sex abuse victims ask for justice

Bill would allow suits to be filed for past crimes

Victims of childhood sexual abuse testified before the Alaska Senate Judiciary Committee on Monday, urging lawmakers to create a one-year window for lawsuits against perpetrators of decades-old sex crimes.

The legislators were stunned by accounts of people such as James Niksik of Saint Michael, a village on the east coast of Norton Sound.

"I was sexually abused by a deacon," Niksik said. "I tried telling my father once, and he beat me."

Most of the victims blamed leaders of Catholic organizations in villages.

Two psychologists, one attorney and six abuse victims urged the senators to pass the legislation. Nobody spoke against the bill, but Sen. Hollis French, D-Anchorage, who sponsored it, said there would be another meeting Monday to hear from the Catholic Church.

"In fairness, I had to hear from both sides." French said.

The Most Rev. Michael Warfel, bishop of the Diocese of Juneau, was out of town Monday and could not be reached for comment. Chip Wagoner, executive director of the Alaska Conference of Catholic Bishops, said he was aware of the committee meeting but declined to comment.

"We have no position on this bill," Wagoner said.

The bill would allow past victims the rights they would have if the incidents had happened under current law, French said.

The statute of limitations on civil and criminal cases involving child sex crimes was eliminated in 2001. In other words, a lawsuit can be filed at any time over abuse committed after 2001.

Before then, lawsuits had to be filed within three years of the incident or the recollection of the incident. There was a 10-year limit on criminal charges.

French said he introduced the bill because of the horrors he witnessed as a

former prosecutor of child sex crimes.

"I think there was an injustice done when we changed the law in 2001," French said after the testimony. "We left a group of victims without an opportunity to go into court."

Much of the support for the bill came from the Survivors Network of those Abused by Priests, a nationwide group commonly known as SNAP. The organization's Southwest regional director, Joelle Casteix, shared a story about her litigation against the Diocese of Orange in California, made possible when California passed legislation similar to that under consideration in Alaska.

The California diocese ultimately settled 87 cases for $100 million, she said. The cases prompted other victims to come forward, leading to criminal charges.

Elsie Boudreau, who said she was abused in Nome about 30 years ago, described how many times she wished her pain would go away. She said a priest singled her out from her friends and started French-kissing her. For years, she did nothing.

"It was only when my daughter was 10, the same age I was when I was abused, that I could no longer shield it from my consciousness," Boudreau said.

"He was a priest," she said. "He was not just any priest, but a family friend and a father figure. ... It was only after I filed the claim that he was removed from the ministry."

She ultimately settled her case for about $1 million, she said before her testimony.

Niksik told the senators about his problems with alcohol abuse and crime, which he blamed on being abused by a church deacon. He said he could not forgive the church for bringing the man into his village.

"There were many others in my village who were abused by this deacon," Niksik said. "Some are still hurting today, like me. They're hurting too."

Mary Gail Frawley-O'Dea, a psychologist who addressed a national conference of bishops about sex abuse in 2002, described reasons that victims do not talk about their abuse. Some feel responsible and some split the event from their consciousness, she said.

Others fear the retaliation they could face if they take action against powerful figures or organizations.

"The window bill gives survivors a motivation to take this risk," Frawley-O'Dea said.

After the committee meeting, Sen. Lesil McGuire, R-Anchorage, described the victims' testimony as "heart-wrenching."

"It provided a very clean record for why you don't want a statute of limitations for these kind of sexual abuses," McGuire said.

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