

supplemental brief in support of his motion on June 1, 2009, which the Complainant opposed in a brief filed June 22, 2009. Briefing of the motion concluded with a reply brief filed by the Respondent on July 6, 2009.¹

B. The Offenses Adjudged And The Sentence

These Title IV proceedings are ecclesiastical in nature, and represent a process established by the Church to determine who shall serve as Members of the Clergy of this Church. Canon IV.14.1. The Respondent was found to have committed two Offenses of Conduct Unbecoming a Member of the Clergy. Conduct Unbecoming is defined, in Canon IV.15, as:

any disorder or neglect that prejudices the reputation, good order and discipline of the Church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church.

Under the first Offense, the Court found that the Respondent had failed to act as expected of a Member of the Clergy when he learned that a married employee of the Parish at which the Respondent was Rector, the Parish Youth Group Coordinator, John W. Bennison (“John”), brother of the Respondent, was engaged in a sexual relationship with a female member of the youth group (hereinafter “the Minor”).² The Court concluded that the sexual relationship between John and the Minor constituted sexual abuse. The Court found that the Respondent had failed to: investigate the sexual abuse; immediately separate John from the Minor; protect the Minor and other members of the youth group; report the conduct to the Minor’s parents, secular authorities, and the Church; extend pastoral care to the Minor, her family, the Parish, and others

¹ The Respondent requested that the Court hear argument from the parties in person on the Respondent’s Motion. That request is denied as the Court deems argument unnecessary to the full presentation and fair adjudication of the Respondent’s Motion.

² The abuse began when the Minor was fourteen (14) years old and ended when she was eighteen (18). (Trial Transcript (“Tr.”) 316:16-318:15; 332:6-11; 647:5-648:10.) The victim of John Bennison’s abuse was, therefore, a “minor” as that term is defined by the Canons (under age 21) throughout the abuse. Canon IV.15.

affected by this conduct; and intervene to stop or postpone the subsequent ordination of John to the Priesthood in June, 1975, and John's 1979 restoration to the Priesthood.

Under the second Offense, the Court concluded that the Respondent had engaged in a course of conduct over a period of more than twenty-five (25) years of failing to disclose and acknowledge either his knowledge of John's conduct or his own actions and failure to act after he discovered the abusive relationship, and of a continuing failure to minister to the people injured by such conduct.

On the basis of these findings, the Court concluded that the Respondent should no longer serve as a member of the clergy of the Church.

C. The Newly Discovered Evidence Underlying The Respondent's Motion

The Respondent moves to dismiss the Presentment or for a new trial on the basis of 256 letters written by the Minor between July 17, 1974 and February 18, 1994. With few exceptions, all of these letters were written to John Bennison.³ These letters were reportedly preserved by John Bennison and made available to the Respondent after judgment entered in this matter. The Respondent contends that these letters were written by the Minor during John Bennison's sexual relationship with her and that they impeach the Minor's testimony at trial. The content of the letters will be discussed below in the analysis of the Respondent's Motion.

³ The Respondent also submitted 21 letters written by Maggie Thompson between the fall of 1977 and November, 1993. These letters were directed or copied to John Bennison. In support of his motion, the Respondent also submitted two letters from John Bennison to the Minor in 1993 and 1994, one letter from Bishop William E. Swing to the Minor in 1993, a 1993 psychological assessment of John Bennison, a document associated with the 1993 intervention and several photographs of the Minor and John Bennison reportedly from approximately 1976. The Court has reviewed all of these documents and has considered them in adjudicating the Motion.

II. Standard of Review

The Canons do not provide for post-judgment motions for dismissal of a presentment or for a new trial based on newly discovered evidence. Nonetheless, the Court has determined, in the exercise of its discretion, to consider the Respondent's Motion in accordance with Canon IV.5.17 and Canon IV, Appendix A, Rule 1.

Because the Canons provide no guidance with respect to the proper standard by which to evaluate a post-judgment motion for dismissal or for new trial, the Court asked the parties to confer and agree upon an appropriate standard. The parties have agreed that the Court should use the standard set forth in Federal Rule of Civil Procedure 60(b)(2), and be guided by the decisions issued thereunder. The Court adopts that standard.

Under Rule 60(b)(2), a party is entitled to a new trial based on newly discovered evidence only if such evidence is (1) material, (2) not cumulative, (3) could not have been discovered prior to trial through the exercise of due diligence, and (4) would probably have changed the outcome of the trial. *Jones v. Lincoln Elec. Co.*, 188 F.3d 709, 732 (7th Cir. 1999). Motions under Rule 60(b)(2) are addressed to the discretion of the court. 11 Charles A. Wright, et al., *Federal Practice and Procedure*, § 2857 (2d ed. 1995). Relief under Rule 60(b)(2) "is an extraordinary remedy that is to be granted only in exceptional circumstances." *Jones*, 188 F.3d at 732. The parties disagree as to whether post-judgment motions for a new trial can be based on newly discovered evidence offered for the purpose of impeaching trial testimony. In light of the Court's conclusion below, the Court assumes without deciding that impeachment evidence can be grounds for the Respondent's Motion.

III. The New Evidence Proffered By The Respondent Fails to Warrant Either Dismissal of The Presentment or A New Trial

The Respondent contends that the Minor's letters contain statements that are inconsistent with her testimony at trial on issues material to the Court's conclusions. The Respondent argues that the inconsistencies are so substantial that the outcome of the trial would have been different had this evidence been presented during the trial. The Complainant argues to the contrary on each of these aspects.

The parties have presumed, without addressing, the authenticity and admissibility of all of these documents.⁴ The Court will, likewise, presume without deciding that the documents submitted in support of the Respondent's Motion are authentic and would be admissible.⁵

The first category of statements on which the Respondent relies can reasonably be described as expressions of affection by the Minor for John Bennison and a desire to continue and conceal his sexual relations with her. The Respondent claims that the Minor's letters from 1974 to 1976 reveal that she sought to hide John Bennison's sexual relationship with her. (Respondent's Supplemental Brief In Support of Respondent's Motion, June 1, 2009 (hereinafter "Suppl. Brief") at 8-9, 20-21, 29-30.) The Respondent argues that statements of affection for John Bennison in these letters demonstrate that the Minor "enjoyed" the relationship and that she sought to continue it. (*Id.* at 19-20, 23, 26-27, 30, 31, 36.) The Respondent contends that all of these statements are inconsistent with the Minor's testimony at trial that she hoped that the

⁴ Many of the letters bear hand written notations that were obviously written by someone other than the original author. Those notations often supply a date or estimated date for the letter, and sometimes comment on the content of the letter. The author of these notations has not been identified to the Court. Although there has been no objection made to these notations, the Court has not relied upon them in ruling on the present motion.

⁵ The documents submitted in support of the Respondent's Motion have been made a part of the Court's file in this matter in electronic format and, thereby, will be available for any future appellate review.

Respondent would tell her parents and, thereby, end John Bennison's sexual abuse, and that she found the relationship degrading and wanted it to end. (*Id.* at 8, 26.) The Respondent contends that this alleged inconsistency undermines material facts on which the Court based its judgment and sentence. The Respondent goes even further, arguing that these statements of affection and a desire to conceal and continue the relationship "challenge the conclusion" that the sexual relationship between John Bennison and the Minor constituted abuse. (*Id.* at 19.)

Other statements on which the Respondent relies relate to whether the Minor expected or hoped that the Respondent would participate in the 1993 intervention. (Suppl. Brief at 21-22, 38.) The Respondent also argues that the letters indicate that the Minor believed that the Respondent did not know in 1976 that his brother had engaged in sexual relations with her. (*Id.* at 32.)

The remaining statements on which the Respondent relies pertain to the timing of certain events, and characteristics and behavior of the Minor in the 1970's. For example, the Respondent argues that the letters provide evidence inconsistent with the Minor's trial testimony about when she terminated the relationship with John Bennison and when she started using the name "Johanna." (Suppl. Brief at 9-10, 24-25.) The Respondent also asserts that the letters contradict the Minor's testimony that she was a "nerd" when she was 14 years old, that she was isolated from others during college, and that she drank heavily and had an eating disorder while in college. (*Id.* at 33-35.) According to the Respondent, the letters undermine the Minor's testimony that she had wanted to be a virgin when she married and that John Bennison had "stolen" God from her. (*Id.* at 28-29, 33.)

The Court has reviewed each of the 287 documents submitted in support of the Respondent's Motion. After carefully considering those documents and the parties' written submissions about them, the Court finds that the evidence proffered by the Respondent in support of his motion is not material and would not have changed the outcome of the trial.⁶ As shown below, the objective and undisputed facts establish that John Bennison's conduct with respect to the Minor was both criminal and abusive. The Minor's statements during that abuse cannot and do not alter those facts. Further, the Minor's statements contained in the newly obtained letters are not material because they shed no light on the facts directly at issue or the facts probative of a matter in issue. For that reason, the Minor's statements would not have had any probability of changing the outcome.

A. No Contemporaneous Statements Can Change The Undisputed Facts That Establish That The Sexual Relationship Between John Bennison and The Minor Constituted Abuse

The Court found, based on the evidence, that John Bennison had sexually abused the Minor. (Decision Adjudging Sentence, at 2; Memorandum And Decision On Motion For Modification of Sentence, February 2, 2009, at 2.) In his motion, the Respondent challenges that finding, arguing that it was based on the testimony of the Minor at trial which is undermined by her contemporaneous statements.⁷ (Suppl. Brief at 41.) To the contrary, the Court's finding is

⁶ Having concluded that the Respondent cannot satisfy two of the four elements of the standard, the Court need not consider whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence.

⁷ The Respondent criticizes the Court's decisions in this matter, asserting that they do "no more than paraphrase the allegations of the Presentment . . . and re-cast them as findings." (Suppl. Brief at 39.) The Respondent overlooks the substantial differences between the allegations in the Presentment and those found proved by the Court and the evidentiary support in the record for each fact cited by the Court.

based on objective and undisputed facts which establish that John Bennison's conduct toward the Minor was both criminal and abusive.

First, the Minor was, at most, 15 years old when John Bennison first had sexual contact with her and may have been as young as 14 years old. (Trial Transcript ("Tr.") 316:16-318:15; 647:5-648:10.) The Minor terminated the relationship when she was 18 years old. The Minor was, therefore, a "minor" as that term is defined by the Canons (under age 21) throughout John Bennison's sexual relationship with her.

Second, at least as early as 1970, California law specifically and expressly prohibited sexual intercourse with a female under the age of 18. 1970 Cal. Stat. Ch 1301 § 2 (codified at Cal. Penal Code § 261.5 (Deering 2008)). John Bennison's conduct constituted statutory rape at least until the Minor turned 18 on March 26, 1977. (See Tr. 309:13-15.) Consent is irrelevant to the crime of statutory rape. *People v. Brown*, 110 Cal. Rptr. 854, 859, 35 Cal.App.3d 317, 326 (Cal. App. 1973).

Third, from the time that John Bennison started the sexual relationship in 1973 until September 1975, John held a position of authority over the Minor. She was a member of the parish in which John was employed. She was a member of the youth group that John led. John was a seminarian, Deacon and Priest during that period. John Bennison's authority over the Minor was magnified by his office in the Church and his specific role in the parish.

These facts are not and never have been disputed. They establish without question that the sexual relationship between John Bennison and the Minor was criminal. Whether the Minor

expressed affection for John Bennison during the abuse could not alter the criminal nature of the behavior because consent is irrelevant to statutory rape.

Similarly, the sexual relations between John Bennison and the Minor was sexual abuse because (1) the victim was a minor under secular law when the sexual relations began and up until 8 months before they ended, (2) the victim was a minor under the Canons throughout the relationship, (3) John Bennison held a position of authority over the Minor as youth group leader, Deacon and then Priest, and (4) sexual relations between a married member of the clergy (and seminarian before that) and a minor are always utterly inappropriate, and are even worse when the minor is a member of the parish in which the member of the clergy is employed, and a member of the youth group for which he is responsible. No statement of affection by the Minor could change her age when John Bennison engaged in sexual relations with her. No statement of a desire to conceal and continue the sexual relations could change the position of authority that John Bennison held with respect to the Minor throughout their sexual relationship. No statement by the Minor could excuse or justify sexual relations between a married member of the clergy and an underage member of the parish in which he is employed. Simply put, none of the Minor's contemporaneous statements "challenge the conclusion" that the sexual relationship between John Bennison and the Minor constituted abuse.⁸

⁸ The parties dispute whether the letters can fairly be characterized as "love letters," and have offered competing expert testimony related to the question. The Court's ruling on the Respondent's Motion is not premised on either expert opinion proffered in connection with this motion. Neither expert was subject to cross-examination or examination by the Court, and neither had reviewed the full record in this matter. The Court has relied on neither expert. Further, the Court deems it unnecessary to resolve the question of whether the Minor's letters expressed genuine feelings or the unconscious by-product of the abusive relationship. The facts that establish the abusive nature of the relationship are objective (i.e. the age of the Minor, John's status as a seminarian, Deacon, Priest and youth group leader), are undisputed, and are unaltered by affection of the Minor, whether genuine or artificially

**B. None of the Statements On Which Respondent Relies Alter
The Facts On Which The Court Based Its Decision**

The Court's judgment and its sentence were based on its conclusion that the Respondent failed to act as expected of a Member of the Clergy when he learned that John Bennison was engaged in a sexual relationship with the Minor. Specifically, the Respondent failed to investigate the sexual abuse, to separate John Bennison from the Minor, protect the Minor and others, to report the conduct to the Minor's parents, the Church and secular authorities, and to extend pastoral care to the Minor, her family, the parish, and others affected by this conduct, and to intervene to stop or postpone the ordination of John Bennison to the Priesthood and his 1979 restoration to the Priesthood. The Court also concluded that the Respondent had failed, for more than 25 years, to disclose and acknowledge his knowledge of John's conduct and his own inaction after he discovered the abusive relationship. (Decision Adjudging Sentence, Sept. 30, 2008, at 1-2.) As shown below, the statements contained in the Minor's letters have no bearing on the facts that led the Court to these conclusions. For that reason, the statements contained in the letters are not material and they have no likelihood of altering the outcome of the trial.

**1. The Minor's Statements Cannot Undermine The Fact
That The Respondent Knew Of John Bennison's Abuse**

The Respondent's own testimony and a letter that he wrote in 1978 established that he believed his brother was having sexual contact with a minor in his congregation no later than early June, 1975. (Tr. 795:18-24; Ex. 6.) The Respondent testified that he confronted his brother about his sexual activity with the Minor parishioner in "late May or early June 1975,"

induced. Therefore, the Court need not determine the psychological state of the Minor at the time she expressed affection for John Bennison.

(Tr. 795:18-24), and that he believed at that time that his brother was in fact engaged in the misconduct notwithstanding his brother's denials. (Tr. 801:3-803:20.) In his words, he put "two and two together" and concluded that what had appeared to be just a "close working relationship" was "something that was – that was illicit." (Tr. 803:4-20.) In his own words,

Q. Now, you said that you confronted John. And what did you say to him?

A. I said, I hear you're having whatever I said, affair, inappropriate relationship with Martha.

Q. And what did John say?

A. He said, It's not true.

Q. And what did you say?

A. I said, I think it is true. I kept pressing him on what happened. This went back and forth, I don't know, ten times, maybe.

(Tr. 801:3-801:20.)

By his own testimony, the Respondent told John Bennison up to ten times in late May or early June, 1975, that he believed John was having sexual relations with the Minor. The Respondent now claims that he knew only of a rumor that the Minor was "John's woman." (Suppl. Brief at 41.) But that claim is inconsistent with his own sworn testimony that he believed, no later than June, 1975, that his married brother, his employee and his fellow member of the clergy was having sexual contact with a minor as defined both by the Canons and secular law. Regardless of the source for his belief, he testified that he believed it to be true. And it was true.

Further, the Respondent's testimony at trial that he did not know the truth, as he had conflicting stories and no corroboration of an inappropriate relationship, (Respondent's Reply Brief In Support of Respondent's Motion, July 6, 2009, at 14 (citing Tr. 795:1-17, 803:21-804:2,

939:24-940:7; 977:9-13), is inconsistent with the letter that he wrote to the Minor's mother after she learned of the abuse in 1978. In that letter, the Respondent told the Minor's mother that "[b]y the time [the Respondent] found out about what John had done to [the Minor] they had been broken up – as far as I knew." (Ex. 6.) Thus, in March of 1978, the Respondent reported that he had found out what his brother had done to the Minor and that he believed that the relationship was over. The Respondent expressed no doubt, in 1978, that he had known the truth three years earlier. The Respondent's 1978 description of his knowledge undermines his trial testimony to the contrary and is consistent with his trial testimony that he believed that John Bennison had engaged in sexual relations with the Minor. After weighing all of the evidence, the Court found that the Respondent knew, no later than June, 1975, that John Bennison was sexually abusing the Minor. (Decision Adjudging Sentence at 1; Memorandum and Decision on Motion For Modification of Sentence, February 2, 2009, at 6.)

No contemporaneous statements by the Minor could alter or undermine the fact that the Respondent believed that his brother was having sex with her in June, 1975. The Court's conclusion is based on the Respondent's own testimony. No amount of impeachment of the Minor could alter that conclusion. The Minor's statements are, therefore, immaterial to the Court's determination that the Respondent knew of his brother's sexual abuse of the Minor no later than June, 1975.

2. The Minor's Statements Cannot Change The Fact That The Respondent Failed To Act On His Knowledge

The Court found that, notwithstanding his belief that his brother had sexually abused the Minor, the Respondent failed to take any steps to prevent John Bennison from contacting the

Minor in the months following the Respondent's confrontation with John in May or June, 1975. (Tr. 937:17-938:18.) As a result, John Bennison continued to lead the parish youth group, (Tr. 362:18-364:14), and continued to abuse the Minor, (Tr. 364:24-366:10). The Respondent claims that he tried "to protect" the Minor by separating John from her. (Suppl. Brief at 42.) The Court found that no credible evidence existed in the Record of any such effort. The Respondent's Motion cites no evidence that he tried to separate John from the Minor, other than his own testimony that he believed he had scared his brother, notwithstanding John's repeated false denials.

The Respondent argues that the Minor's contemporaneous statements demonstrate that she wanted to conceal and, thereby, continue the relationship. (Suppl. Brief at 8-9, 20-21, 23, 26-27, 29-31, 36.) Even taking those statements at face value, they have no bearing on the Respondent's failure to act. The Court found that the Respondent, having come to believe that his brother, a Deacon in his employ, was having sexual relations with the Minor, had an obligation to take affirmative steps to separate John from the Minor so as to end the sexual relationship. Whether or not the Minor thought at the time that she wanted the relationship to continue is irrelevant to the existence of the Respondent's duty to protect the Minor and his failure to fulfill that duty.

The Respondent posits that any action he may have taken to separate the Minor from John Bennison would have been fruitless given her affection for John, her desire to continue seeing him, and her efforts to conceal the abuse. He further speculates that his intervention in 1975 might have caused her pain. Such speculation cannot, however, undermine the existence of

his duty to at least try to protect her and his failure to take any such action. Further, the Respondent did not know of these alleged feelings of affection in 1975, when he breached his duties as a member of the clergy. Just as importantly, it cannot be presumed that any effort to separate John from the Minor would have been fruitless. It is undisputed that the Minor ended John's abuse of her in November, 1976. Thus, the Minor's views toward John and his abuse had changed by that date at least. Had the Respondent assisted the Minor 17 months earlier by taking steps to protect her from John, the revelation that permitted the Minor to break away from John might have occurred earlier and spared her another 17 months of abuse. At a minimum, these facts demonstrate the risk inherent in the speculation in which the Respondent engages.

The Respondent also failed to notify any Church authorities of his brother's abuse of the Minor at any time before, during or after his brother's ordination. (Tr. 807:21-808:1; 813:20-814:1; 978:3-21; 1006:12-1008:16.) The Respondent failed to reveal the "Impediment" and the "Crime" that should have prevented John from being ordained. The Book of Common Prayer, 1928, at 536. Indeed, even the Respondent acknowledged at trial that John should not have been ordained priest in 1975. (Tr. 1001:16-22.) Worse, the Respondent affirmatively represented that his brother was fit to be ordained, (Tr. 1005:22-23); The Book of Common Prayer, 1928, at 536, at a time when he had doubts that his brother's manner of life was suitable to the ministry of a priest. (Tr. 801:3-803:20; 1005:22-23; 1006:12-1008:18.) The Court based its judgment and sentence on these facts. None of these facts could be affected by any of the Minor's contemporaneous statements.

The Respondent also failed to offer pastoral care to the Minor, notwithstanding his belief that his brother had been in a sexual relationship with her. (Tr. 330:6-19; 334:23-335:10; 367:6-368:23; 385:18-386:14.) Similarly, the Respondent offered no pastoral care concerning this matter to the Minor's parents when he learned of the sexual relationship in June, 1975. Even when the Minor's parents learned of the abuse in 1978, the Respondent offered no pastoral care to the family. (Tr. 104:20-106:24.) In his own words at the time, the Respondent believed that he had "to be, not a pastor, but John's brother." (Ex. 6 at 2.) Years later, when the Respondent provided pre-marital counseling to the Minor, he still failed to raise the issue of his brother's abuse. (Tr. 367:6-368:23; 856:23-857:10.)

The Court concluded that, when the Respondent believed, in May or June, 1975, that his brother had been in a sexual relationship with the Minor, the Respondent had a duty to offer pastoral care to the Minor and to her family. (Decision Adjudging Sentence, September 30, 2008, at 2; Memorandum And Decision On Motion For Modification Of Sentence, February 2, 2009, at 9.) The Respondent's failure to respond pastorally to the Minor and her family was one of the facts on which the Court based its judgment and sentence. The Minor's statements – of affection for John Bennison, of a desire to conceal and continue the relationship, of her own behavior at college – can have no bearing on the existence of the Respondent's duty to extend pastoral care to the Minor and her family and his failure to fulfill that duty.

The Respondent accurately asserts that the Minor and her family chose not to press criminal charges against John Bennison in 1978, or otherwise to publicize his abusive conduct. (Suppl. Br. at 37.) But the Respondent erroneously suggests that by choosing not to pursue

criminal charges against John in 1978, the Minor and her family rejected pastoral care from the Respondent from and after June, 1975. The Minor and her family did not reject pastoral care in 1975 by virtue of their decision three years later to forego criminal prosecution. No evidence in the Record establishes that the Respondent offered any pastoral care to the Minor or her family with respect to John Bennison's abuse or that they rejected such an offer at any time from June, 1975 to the commencement of these Proceedings.

The Court also found that the Respondent failed to disclose and acknowledge that he had known of his brother's misconduct in 1975 but had failed to act throughout the following two and half decades. The only statements contained in the newly obtained letters that could relate to this element in the Court's decision were those contained in the letters written in the 1990's. The Respondent cites the Minor's statement that she had "complete closure" with regards to John Bennison, as grounds to conclude that the Minor did not wish to have the Respondent discuss John's abuse or his response thereto in public. (Suppl. Brief at 21.) But the Respondent reads too much into that statement. Having reached closure as to John Bennison, who had participated in the 1993 intervention does not necessarily equate to closure with respect to the Respondent and his conduct and inaction. Just as importantly, the Minor's statements in 1993 and 1994 cannot excuse the Respondent's failure to act in the 1970's and 1980's, and cannot justify his failure to make appropriate disclosures during the Bishop search process in Philadelphia in the 1990's. Quite simply, the Minor's closure as to John Bennison has no bearing on the Respondent's duty of candor and his duty to extend pastoral care.

None of the facts that unquestionably establish the Respondent's inaction after learning of his brother's abuse are affected by the impeachment evidence offered in support of the Respondent's Motion. The Respondent's claim that the Minor's letters reveal that she ended John Bennison's abuse in November, 1976, rather than before she started college in September of that year as she had testified at trial, ignores the fact that the Minor testified at trial that she finally succeeded in breaking off the relationship in November of 1976. (Tr. 331:10-332:5.) Even if the Minor had not articulated at trial that she ended the relationship finally in November, the difference of two months in this context is so minimal that it holds no impeachment value. Even more importantly, the date on which the Minor succeeded in ending John Bennison's abuse has nothing to do with the facts on which the Court based its determination.

Similarly, the Respondent asserts that the Minor's letters reveal that she signed her letters to John Bennison with the name "Johanna" even before she started college in contrast to her trial testimony that she only started using "Johanna" at college. (Suppl. Brief at 24-25.) To the extent that the letters are inconsistent with the Minor's testimony, the impeachment value is minimal and has no impact on the facts that are central to the Court's conclusion.

The Respondent asserts that the new evidence demonstrates that, instead of being the "nerd" described at trial, the Minor was actually someone "shockingly different." (Suppl. Brief at 25, 33.) A flaw in this argument is the fact that the word "nerd" was used to describe the Minor as a 14 year old, (Tr. 315:2-19), and the newly discovered letters were written 2 and 3 years later. The fact that the Minor may have changed between age 14 and age 16 is neither surprising nor necessarily inconsistent with her trial testimony. This alleged inconsistency has

no impeachment value whatsoever, given that the descriptions apply to different points in her life and given the lack of specificity in the descriptions. Moreover, the Court did not premise its decision in this case on whether the Minor was, in fact, a “nerd.” This alleged inconsistency is of no moment.

Similarly, the Respondent’s effort to impeach the Minor on her assertions that John Bennison stole God from her, that his abuse caused her to be isolated from others, and that she had wanted to be a virgin when she married has no import to the Court’s determination in this case. None of these statements by the Minor were the basis of the Court’s conclusion. Impeaching the Minor with respect to these facts would not alter that conclusion.

For all of these reasons, the Court finds that the proffered impeachment testimony consisting of contemporaneous statements by the Minor would not be material and would not have had any effect on the outcome of the trial.

C. None of the Statements On Which Respondent Relies Warrant Dismissal On Statute of Limitations or Laches Grounds

The Respondent argues that the newly discovered evidence supports dismissal of the Presentment on the grounds that the Court incorrectly applied the exception in Canon IV.14.4(a)(2) to the statute of limitations to this matter. (Suppl. Brief at 14-22.) The Respondent contends that the Minor’s letters – in tone, substance and number – “challenge the conclusion” that John Bennison’s sexual relationship with the Minor constituted abuse. (*Id.* at 19.) As demonstrated above, however, the Respondent’s argument is in error because the facts that establish that John Bennison engaged in sexual abuse of the Minor are both objective and undisputed. *See supra* Part III.A. Canon IV.14.4(a)(2) provides that “[t]he time limits of this

Section shall not apply to Offenses the specifications of which include physical violence, sexual abuse or sexual exploitation, if the acts occurred when the alleged Victim was a Minor.” The Court concluded that both counts in the Presentment against the Respondent charge an Offense the specifications of which include sexual abuse and sexual exploitation of a minor. *Accord DeLonga v. Diocese of Sioux Falls*, 329 F.Supp.2d 1092, 1103-04 (D.S.D. 2004); *Almonte v. New York Medical College*, 851 F. Supp. 34, 37-39 (D. Conn. 1994). The letters submitted by the Respondent in support of his motion in no way alter the Court’s conclusion.⁹

The Respondent also argues that the letters support dismissal of the Presentment under the doctrine of laches. (Suppl. Brief at 14-22.) Laches “requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *New Jersey v. New York*, 523 U.S. 767, 806 (1998). The Court denied the Respondent’s motion to dismiss and his subsequent motion for judgment as a matter of law because the Respondent neither pled nor proved the elements necessary for application of the affirmative defense of laches. *Cook v. Wikler*, 320 F.3d 431, 438 (3d Cir. 2003) (“Laches is . . . an affirmative defense to a claim, and the party asserting it bears the burden of proof.”). The newly discovered evidence is not material to the evidence on which the Court concluded that the Respondent failed to respond appropriately once he knew that his brother had sexually abused

⁹ The second count in the Presentment charges conduct that continued until 2006, the same year in which the Presentment was filed. As a result, the second count was filed within even the shortest limitation period established by the Canons. *See* Canon IV.14.4.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.



The Right Reverend Bruce E. Caldwell

Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell



Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick


¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell



Jane R. Freeman

Maria B. Campbell

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell

Maria B. Campbell

Jane R. Freeman



The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell

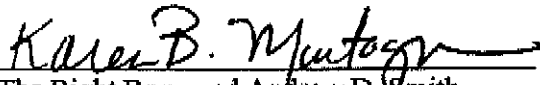
Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton



The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell

Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno


The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell


Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

+ 

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith

The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Rt. Reverend Bruce E. Caldwell

Maria B. Campbell

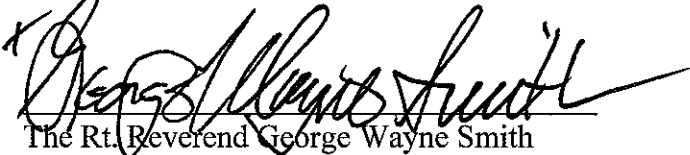
Jane R. Freeman

Rev. Marjorie A. Menaul

Rev. Karen B. Montagno

The Rt. Reverend Gordon P. Scruton

The Rt. Reverend Andrew D. Smith



The Rt. Reverend George Wayne Smith

The Rt. Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

the Minor. *See supra* Part III.A. Therefore, the Respondent suffered no prejudice from not having these letters available to him during trial.¹⁰

IV. CONCLUSION

Having carefully considered all of the newly discovered evidence submitted by the Respondent in support of his motion for dismissal or for a new trial, and all of the briefs submitted by the parties, the Respondent's Motion is denied.

The Right Reverend Bruce E. Caldwell

Maria B. Campbell

Jane R. Freeman

The Reverend Marjorie A. Menaul

The Reverend Karen B. Montagno

The Right Reverend Gordon P. Scruton

The Right Reverend Andrew D. Smith

The Right Reverend George Wayne Smith



The Right Reverend Catherine M. Waynick

¹⁰ As noted above, the Court need not and does not address whether the evidence could have been discovered prior to trial through the exercise of reasonable diligence. *See supra* part III at 7 n.6.

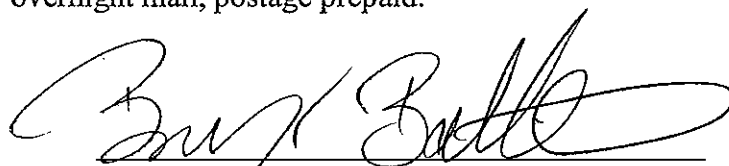
The undersigned hereby certifies that the foregoing Memorandum of Decision On Respondent's Motion For Dismiss Or For A New Trial, bearing the signature of each member of the Court, was entered by the Court in this matter on this 24th day of September, 2009.



Bradford S. Babbitt
Clerk of the Court for the Trial of a Bishop

CERTIFICATE OF SERVICE

I hereby certify and return that on September 24, 2009, I served the foregoing Memorandum of Decision On Respondent's Motion For Dismiss Or For A New Trial on James A. A. Pabarue, Esq. and Carolyn Bates Kelly, Esq., both of the law firm of Christie Pabarue Mortensen and Young PC, at 1880 John F. Kennedy Boulevard, 10th Floor, Philadelphia, Pennsylvania, 19103 and Lawrence White, Esq., One South Broad Street, Suite 1850, Philadelphia, Pennsylvania 19107-3418, and Ralph Jacobs, Esq., 1515 Market Street, Suite 705, Philadelphia, Pennsylvania, 19102 by overnight mail, postage prepaid.



Bradford S. Babbitt
Clerk of the Court