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9

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA - SAN DIEGO**  
12

13 MELANIE H., individually, ) Case No. 04 CB 1596 WGH (JFS)  
14 )  
Plaintiff, )  
15 v. ) **BRIEF OF AMICI CURIAE THE**  
NATIONAL CENTER FOR VICTIMS OF  
16 DEFENDANT DOE 1; DOES 2 through ) **CRIME AND THE SURVIVORS**  
1000, inclusive ) **NETWORK OF THOSE ABUSED BY**  
17 ) **PRIESTS IN OPPOSITION TO**  
Defendants. ) **COUNTERCLAIMANT'S MOTION FOR**  
18 ) **SUMMARY JUDGMENT**

19 SISTERS OF THE PRECIOUS BLOOD, )  
20 ) **Hearing Date: September 8, 2005, 2:00 p.m.**  
Counterclaimant, )  
21 v. )

22 MELANIE H., individually; ROBERT ROE )  
and COUNTERCLAIM DEFENDANTS )  
23 ROES 2 through 10, inclusive, )  
24 )  
Counterclaim Defendants. )

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1 **INTRODUCTION**

2 Amici curiae, The National Center for Victims of Crime (“National Center,” formerly National  
3 Victim Center), a non-profit organization founded in 1985, and The Survivors Network of Those  
4 Abused by Priests (“SNAP”), a non-profit organization based out of Chicago with numerous  
5 California chapters, pray this Honorable Court to deny Defendant/Counterclaimant Sisters of the  
6 Precious Blood and the Roman Catholic Bishop of San Diego’s (hereinafter “Defendants”) pending  
7 motion for summary judgment.<sup>1</sup>

8 C.C.P. 340.1, as recently amended by Senate Bill No. 1779, is a legitimate revival statute  
9 necessary to the protection of the public welfare. It is neutral in its intent and scope as is evidenced  
10 by the number of secular and non-secular institutions sued under the amended statute.<sup>2</sup> The statute  
11 is at its core curative and is solely about providing survivors of sexual abuse a judicial forum to seek  
12 redress for their injuries against those responsible. The statute provides a purposely restrictive  
13 procedural and substantive framework for victims of sexual crimes to come forward and file  
14 judicially supervised pleadings. The period for filing any revived claim began on January 1, 2003  
15 through December 31, 2003, and has subsequently expired.<sup>3</sup>

16 Catholic institutions were neither targeted nor should have been surprised by the amendments  
17 to C.C.P. 340.1. In fact, during the height of the media revelations of the church’s coverup and  
18 complicity in suppressing information concerning childhood sexual abuse, the National Review  
19

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20 <sup>1</sup>See Amici’s Motion and Statement of Interest at Appendix 1.

21 <sup>2</sup>See Declaration of Katherine K. Freberg, filed as an Appendix to the Opposition to the Motion for Summary  
22 Judgment.

23 <sup>3</sup>By Order of the Chief Justice of the California Supreme Court, Ronald M. George, who is also Chair of the Judicial  
24 Council, appointed the Hon. Haley Fromholz Coordination Judge of Judicial Council Coordination Proceeding No. 4286  
25 and 4297, known as “The Clergy Cases I and II.” Presently, the Court is managing approximately 710 individual claims  
26 brought against the Diocese of San Diego (Movant herein), the Diocese of San Bernardino, the Archdiocese of Los  
27 Angeles, and multiple priest and nun religious orders (the Diocese of Orange was until recently part of Clergy I, but all  
28 cases against that Diocese were settled in the gross amount of \$100 million dollars and dismissed). In Northern  
California, Judge Ronald M. Sabraw, has been appointed Coordination Judge of Judicial Council Coordination Proceeding  
No. 4359, known as “The Clergy Cases III.” Judge Sabraw is managing approximately 182 individual claims. Litigation,  
settlements, and verdicts are ongoing. To date, the Archdiocese of San Francisco has announced settlements in excess  
of \$37 million dollars. In the early spring and summer of 2005, the Diocese of Sacramento has announced settlements  
in excess of \$35 million dollars. Throughout that same period, the Diocese of Santa Rosa has announced settlements in  
the amount of \$10.6 million dollars. All of the above-noted cases settled to date were filed under C.C.P. 340.1 as  
amended.

1 Board<sup>4</sup>, formed in 2002 under the auspices of the USCCB, concluded the following:

2 Most fundamentally, some bishops in the United States did not appreciate the gravity of the  
3 problem of sexual abuse of minors by clergy. Until recently, these bishops all too often  
4 treated victims of clerical sexual abuse as adversaries and threats to the well-being of the  
5 Church, not as injured parishioners in need of healing. Far too frequently, they treated  
6 predator priests as misdirected individuals in need of psychological treatment or a simple  
7 change in environment, rather than as criminal offenders to be removed from ministry and  
8 reported to civil authorities for possible prosecution and appropriate punishment. These  
9 approaches did not solve any problems, but rather served to exacerbate them.

10 Certain bishops and other Church leaders in the United States were altogether too easy on  
11 their fellow clergy and too willing to take the easy way out themselves. All of the  
12 presumptions weighed in favor of the accused priest at the expense of the victim. This tilt  
13 is attributable in part to “clericalism” - an attitude that priests and bishops are apart from  
14 and superior to the laity - and in part to idiosyncracies in canon law.<sup>5</sup>

15 Amici hasten to add that many, if not all of these arguments raised by the movants herein, have  
16 been advanced by various religious entities in the coordinated proceedings previously identified as  
17 Clergy I, II, III. [See fn. 2]. Many, if not all of these issues have been ruled upon by the Honorable  
18 Ronald M. Sabraw, Coordination Judge assigned to the Clergy III actions.<sup>6</sup> Further, the California  
19 Court of Appeal in The Roman Catholic Bishop of Oakland v. The Superior Court and Bob Thatcher,  
20 Real Party in Interest, 128 Cal. App. 4<sup>th</sup> 1155, 28 Cal. Rptr. 3<sup>rd</sup> 355 (2005), dealt with at least one of  
21 the issues before this court. In Thatcher, supra, the court held that an amended pleading seeking  
22 punitive damages against the Bishop in a revived claim pursuant to 340.1 where it was alleged that  
23 the Bishop knew the priest perpetrator was a child molester, but “took no steps to protect young  
24 churchgoers from his advances” did not violate ex post facto principles. Further, on July 25, 2005,  
25 the 2<sup>nd</sup> District Court of Appeal in Roman Catholic Archbishop of Los Angeles v. The People (Real  
26 Party in Interest), \_\_ Cal. Rptr. 3d \_\_, 2005 WL 1714188, Cal. App. 2 Dist., July 25, 2005, the Court

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27 <sup>4</sup>In June 2002, the United States Conference of Catholic Bishops (hereinafter “USCCB”), in their General Meeting  
28 in Dallas approved the *Charter for the Protection of Children and Young People*. The *Charter* created a National Review  
Board, which was assigned the responsibility to commission a comprehensive study of the causes and context of the  
current crisis of sexual abuse of minors by clergy. Preparatory to commissioning such a study, the National Review Board  
undertook first hand research, primarily through interviews, and has presented its findings to the United States Conference  
of Catholic Bishops. These findings are authorized for publication by the General Secretary of the Conference, Msgr.  
William P. Fay, and are quoted at length herein.

<sup>5</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
of Children and Young People, Feb. 27, 2004, at pp. 92-93.

<sup>6</sup>To date, Judge Sabraw has issued 127 Orders and/or Judgments in these proceedings. See  
<http://hercules.casehomepage.com/docushare/dsweb/View/Collection-6510>.

1 rejected arguments by the Archdiocese that internal church records of former priests accused of  
2 sexually abusing children were Constitutionally protected. In a 49 page opinion, Presiding Justice  
3 Joan Dempsey Klein wrote that “while it is true the right to religious freedom holds a special place  
4 in our history and culture, there also must be an accommodation by religious believers and  
5 institutions to the rules of civil society, particularly when the state’s compelling interest in protecting  
6 children is in question.” At p. 1.

7 At a minimum, counterclaimants’ motion practice herein appears to be an example of fortuitous  
8 forum shopping.

9 **THE PRIOR CONDUCT OF THE CATHOLIC CHURCH IDENTIFIED FOR THE**  
10 **LEGISLATURE THE NEED TO PROTECT THE PUBLIC INTEREST**

11 Defendants erroneously contend that by amending Code of Civil Procedure Section 340.1, “the  
12 California legislature unfairly and unconstitutionally targeted the Catholic Church by retroactively  
13 stripping it of defenses to torts largely unknown before the end of the 1980’s in order to expose it to  
14 potentially ruinous liability.” (Defendants’ Joint Memorandum of Points and Authorities in Support  
15 of Motion for Summary Judgment, hereinafter “Joint Memorandum,” at p.1). The “target” of this  
16 remedial legislation was the public interest as embodied in the *victims* of childhood sexual abuse who  
17 were precluded from seeking legal redress. C.C.P. 340.1, which is both neutral in intent and effect,  
18 provides a time-limited period in which victims may institute civil suits. Ironically, Defendants now  
19 attempt to portray themselves as victims, and as discussed below are the same individuals who for  
20 decades failed to report sexual crimes against children, and in many cases, perpetuated the continued  
21 sexual exploitation of children by their actions and inaction.

22 While Defendants concede the “[s]exual exploitation of children has been criminalized in  
23 California for a century,” Defendants argue the 2002 amendments to C.C.P. 340.1 “...targeted the  
24 Catholic Church during a wave of public indignation spurred by massive reporting... It was enacted  
25 to condemn and punish Catholic institutions and to impose reform on their religious practices.”  
26 (“Joint Memorandum” at pp. 1-2). Specifically, Defendants wish to convince this Honorable Court  
27 that the timing of the amended statute - the *fourth* revision since 1990 - is a result of a



1 constitutionally impermissible, legislative attempt to “punish” the Roman Catholic church by *every*  
2 member in the California Legislature.<sup>7</sup> The simple truth is that the movants as well as other  
3 institutions had more than fair warning that their conduct was coming under legislative scrutiny.<sup>8</sup>  
4 The National Review Board concluded that 4,392 priests were accused of engaging in sexual abuse  
5 of over 10,000 children between 1950 and 2002.<sup>9</sup> The sheer weight of the above numbers suggests  
6 that the chronic sexual abuse of children could not have occurred in a vacuum.<sup>10</sup> How this could have  
7 happened to so many children? Research by The National Review Board points to at least two  
8 possible explanations.

9 **“Why did so many priests sexually abuse minors?** Although it is not possible to pinpoint  
10 any one “cause” of the problem of sexual abuse of minors by priests, there were two  
overarching contributing factors:

- 11 • Dioceses and orders did not screen candidates for the priesthood  
12 properly. As a result, many sexually dysfunctional and immature men  
were admitted into seminaries and later ordained into the priesthood.
- 13 • Seminaries did not form candidates for the priesthood adequately. As  
14 a result, seminarians were not prepared for the challenges of the  
priesthood, particularly the challenge of living a chaste, celibate life.”  
15 [emphasis theirs]<sup>11</sup>

16 The Catholic Church has long been the object of media scrutiny on the sexual abuse scandal

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18 <sup>7</sup>C.C.P. 340.1 as amended by S.B. 1779 passed unanimously by the California Legislature on June 24, 2002.

19 <sup>8</sup>C.C.P. 340.1 was signed into law by Governor Davis in July 2002. In reference to Defendants’ contention of  
20 statutory “boot-strapping” (“Joint Memorandum” at p. 19), it appears the media coverage of the scandal prompted the  
Roman Catholic Church itself to seek remedial measures.

21 <sup>9</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
22 of Children and Young People, Feb. 27, 2004, at p. 22. The 2005 audit conducted by the National Review Board under  
the auspices of the USCCB reports an additional 1,092 credible allegations of sexual abuse of minors involving 756  
23 diocesan or religious priests. The entire text of the 2004 report, “The Nature And Scope Of the Problem of Sexual Abuse  
Of Minors By Catholic Priests And Deacons in The United States,” “The Report on the Crisis in the Catholic Church in  
the United States,” can be found at <http://www.usccb.org/ocyp/webstudy.shtml>, and the “2004 Annual Report on the  
Implementation on the *Charter for the Protection of Children and Young People*,” published February 15, 2005, can be  
found at <http://www.usccb.org/ocyp/dioceses04/2004auditpreface.shtml>.

24 <sup>10</sup>It is logical to suggest that like all other forms of sexual abuse, the number is grossly under-reported. The National  
25 Review Board also commented on the validity of the USCCB self-reported data. “In addition, there are at least two  
inherent limitations to the data collected by the researchers at John Jay College. First, some dioceses and orders may not  
26 have recorded or retained all reports of allegations of abuse during this time period. **Second, the data was self-reported;  
no audit of the files was conducted to verify its accuracy.**” *Id.* at p. 20. [Emphasis supplied].

27 <sup>11</sup>A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
28 of Children and Young People, Feb. 27, 2004, at p. 7.

1 since 1984. Amici, “USCCB’s” own review board is illustrative of the point.

2 Indeed, the roots of public and episcopal attention to this current crisis can be traced to  
3 1984, when the case of Father Gilbert Gauthé, a former priest of the Diocese of Lafayette  
4 (Louisiana), received widespread attention. Reports that Gauthé had abused several  
5 children gained national prominence when - foreshadowing revelations in 2002 about the  
6 Boston Archdiocese - it was revealed that diocesan officials had failed to act on numerous  
7 prior reports of abuse by the same priest. As the disquieting details of the case became  
8 know, one bishop told the Board, it “awakened the whole Church in the United States;”  
9 many bishops began to realize, he added, “It could also happen in my diocese.”<sup>12</sup>

10 A time line<sup>13</sup> gathered from various media outlets since 1984 further illustrates the point that the  
11 root of increasing media scrutiny is the Church’s own deplorable behavior. The media scrutiny is  
12 certainly not a result of a Catholic bias or the targeting of the Catholic Church - the Church did it  
13 to itself.

14 **1984:** The Rev. Gilbert Gauthé of the Lafayette, La., diocese pleads guilty to molesting 11 boys  
15 and admits victimizing dozens more. In a widening scandal, 19 other priests are accused of abuse,  
16 and the diocese negotiates out-of-court settlements with victims.

17 **1985:** The Rev. Thomas Doyle, a canon lawyer for the Vatican embassy in Washington, along  
18 with Fr. Michael Peterson, M.D., and Ray Mouton, a lawyer, wrote a 98-page confidential memo for  
19 the nation’s Catholic bishops citing 30 cases with 100 victims and projecting a cost to the church of  
20 \$1 billion over 10 years. Also, journalist Jason Berry writes a nationwide survey of the problem for  
21 the National Catholic Reporter, drawing the secular media’s attention to it.

22 **1989:** Hawaii’s Joseph Ferrario becomes the first U.S. bishop accused of molestation. A court  
23 dismisses the charges because they were filed too late, but Ferrario, who denied the charges, retires  
24 early in 1993.

25 **1990:** The Rev. Bruce Ritter, the leader of Covenant House for teen runaways in New York,  
26 steps down amid a scandal. He denies an accusation of molestation from one youth, but others step  
27 forward to accuse him and the Covenant House board reports extensive misconduct. Ritter’s  
28 Franciscan superiors in Rome approve a transfer to India, but outrage following a news report about  
the move forces the plan to be scrapped.

**1992:** The U.S. bishops take their first major collective action, endorsing a set of principles for  
handling cases. At the same time, Jason Berry’s book of the scandals, “Lead Us Not Into  
Temptation,” estimates 400 priests have been accused, costing the church some \$400 million.

**1997:** A Dallas jury hears charges from 11 victims of ex-priest Rudy Kos and returns a \$120

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<sup>12</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
of Children and Young People, Feb. 27, 2004, at p. 32.

<sup>13</sup>All references contained in the below-noted time line come from the following sources:  
<http://www.boston.com/globe/spotlight/abuse>; <http://www.cbsnews.com/catholicchurchincrisis/timeline>;  
<http://news.bbc.co.uk/2/hi/americas/3872499.stm>; see Laurie Goodstein, *Decades of Damage; Trail of Pain in Church  
Crisis Leads to Nearly Every Diocese*, New York Times, January 12, 2003; *A Report on the Crisis in the Catholic Church  
in the United States*, The National Review Board for the Protection of Children and Young People, Feb. 27, 2004.

1 million verdict. The award was negotiated to about \$30 million, but the diocese needs to take out  
2 mortgages and sell property to cover the judgment.

3 **1999:** Bishop J. Keith Symons of Palm Beach, Fla., becomes the first U.S. bishop to resign after  
4 admitting molestation. That scandal was compounded in 2002 when Bishop Anthony O'Connell,  
5 the successor Rome appointed to clean house, resigns for the identical reason.

6 **2000:** The Rev. Andrew Greeley, an author and sociologist, writes an introduction for a new  
7 edition of Berry's book, "Lead Us Not Into Temptation." The sex abuse situation, he contends, "may  
8 be the greatest scandal in the history of religion in America and perhaps the most serious crisis  
9 Catholicism has faced since the Reformation."

10 **Jan. 18, 2002:** Defrocked Boston priest John Geoghan, 66, is convicted of indecent assault and  
11 battery as a priest sex scandal in the archdiocese widens. Geoghan, 66, has been accused of abusing  
12 130 children while he was actively serving as a priest in the Archdiocese of Boston over a 30-year  
13 period. He faces more criminal and civil suits.

14 **Feb. 21, 2002:** Geoghan is sentenced to 9-10 years in prison as the Archdiocese of Boston  
15 continues to reel from the scandal. The extent of the cover-up and the sheer number of priests  
16 involved has shocked Boston's large Catholic community, leading to calls for Cardinal Bernard Law  
17 to step down. Meanwhile, new cases are being reported in several other states.

18 **April 16, 2002:** Pope John Paul II summons American's cardinals to the Vatican to discuss the  
19 sex scandal and efforts to prevent future cases.

20 **May 24, 2002:** Archbishop Rembert Weakland resigns his position in the Archdiocese of  
21 Milwaukee due to "the revelation that he paid \$450,000 in hush money to buy the silence of an  
22 apparent former male lover."

23 **June 14, 2002:** America's Catholic bishops adopt a policy that will strip abusive clergymen of  
24 their authority but not automatically oust them from the priesthood. The policy falls short of the "zero  
25 tolerance" plan demanded by some abuse victims.

26 **July 28, 2002:** Pope John Paul II speaks publicly for the first time about the sex scandals during  
27 an outdoor Mass concluding World Youth Day in Toronto. He tells the crowd of over 800,000  
28 Catholic faithful that the harmful actions of some, "fills us all with a deep sense of sadness and  
shame."

**Oct. 18, 2002:** The U.S. Roman Catholic Church's new sexual abuse policy is rejected by the  
Vatican, which says the plan needs to be revised because elements conflict with universal church law.  
Most American dioceses have already started working with the policy, and may continue to  
implement it while the Vatican works through its issues. Victims groups see the rejection as the  
collapse of the church's reform effort.

**Nov. 7, 2002:** U.S. Roman Catholic bishops pick the FBI's top-ranking woman to head a new  
office charged with making sure American church leaders adhere to clerical sexual abuse policy.  
Kathleen McChesney is named director of the Office for Child and Youth Protection, a critical post  
as the bishops try to re-establish their credibility.

**Nov. 13, 2002:** U.S. Roman Catholic bishops adopt revisions to their sex abuse policy. The new  
plan says priests should be removed from public ministry after any act of sex abuse of a minor.  
Critics say the plan continues the church's history of sheltering sexual predators and abandoning the  
people they prey on. The bishops' vote follows 10 months in which at least 325 of the nation's

1 46,000 priests resigned or were removed from their posts because of accusations of sex abuse.

2 **Dec. 12, 2002:** The Boston Globe reports a grand jury examining possible criminal acts by  
3 Catholic bishops who failed to prevent acts of sexual abuse has subpoenaed Boston Cardinal Bernard  
4 Law and five subordinates. Law remained in Rome, where he had flown a few days before.

4 **Dec. 13, 2002:** After months of public outrage that he failed to protect children from molesters,  
5 Cardinal Bernard Law resigns as Archbishop of Boston. He is the highest-ranking church leader to  
6 fall as a result of the clerical sex abuse crisis. The archdiocese faces lawsuits from more than 400  
7 alleged victims, and Law had taken steps to allow it to file for bankruptcy.

7 **Dec. 16, 2002:** The Vatican approves the revised U.S. bishops' sex abuse policy, allowing  
8 bishops to conduct a confidential, preliminary inquiry when a molestation claim is made, then putting  
9 the priest on leave and before a tribunal if deemed necessary. The bishops' initial plan permitted  
10 pulling priests from their jobs as soon as an accusation is made.

9 **May 3, 2003:** In a five-page agreement with a county prosecutor, Phoenix Bishop Thomas J.  
10 O'Brien acknowledges he hid allegations of sex abuse by priests and surrenders some of his  
11 authority. The deal is extraordinary, both as a personal statement of wrongdoing and as an agreement  
12 between a church leader and civil authority that changes how a diocese does business.

11 **June 15, 2003:** Following controversial remarks in which he said some church officials were  
12 being as secretive as members of the mafia, former Oklahoma Gov. Charles Keating says he'll resign  
13 as head of the church's national panel on sex abuse. Los Angeles Cardinal Roger Mahony, whom  
14 Keating accused of listening "too much to this lawyer and not enough to his heart" in dealing with  
15 the panel's investigation, called Keating's comments "the last straw." Judge Anne Burke is appointed  
16 interim chair of the National Review Board.

15 **June 18, 2003:** One day after being charged in a fatal hit-and-run accident and still under fire  
16 over allegations he covered up for sexually abusive clergy, Phoenix Bishop Thomas O'Brien resigns  
17 from his post.

17 **July 20, 2003:** A spokesman for Massachusetts Attorney General Thomas Reilly confirms that  
18 criminal charges will not be sought against Boston church officials for allowing sexually abusive  
19 priests to remain in parish work. According to SBZ-TV, a report due to be released by Reilly's office  
20 suggests changes to prevent future abuse but stops short of charges. The report is based in part on  
21 an investigation by a state grand jury.

20 **July 23, 2003:** A report released by the Massachusetts attorney general's office finds that more  
21 than 1,000 people in the Boston Archdiocese were likely the victims of sexual abuse over a period  
22 going back to 1940. Attorney General Tom Reilly says the scandal is so massive it "borders on the  
23 unbelievable." He says former archbishop Cardinal Bernard Law "bears the ultimate responsibility  
24 for the tragic treatment of children that occurred during his tenure."

23 **Aug. 6, 2003:** CBS News obtains a confidential Vatican document, **written in 1962**, that lays  
24 out a church policy on sexual abuse by priests. The document calls for absolute secrecy when it  
25 comes to these cases, warning that anyone who speaks out could be thrown out of the church. The  
26 U.S. Conference of Bishops says the document is being taken out of context.

25 **Aug. 8, 2003:** Seeking a resolution to the sex abuse crisis, the Roman Catholic Archdiocese of  
26 Boston offers \$55 million to settle more than 500 clergy sex abuse lawsuits, according to a document  
27 obtained by The AP. Those who say they were abused as children by clergy would have 30 days to  
28 accept the offer, and 95 percent of the claimants would have to participate. Attorney Jeffrey

1 Newman, who represents more than 200 alleged victims, said, “We think it’s a very good start, but  
2 it’s only a start.”

3 **Aug. 23, 2003:** Defrocked priest and convicted child molester John Geoghan, 68, is strangled  
4 in prison by Joseph Druce, another inmate who is serving a life sentence for murder.

5 **Sept. 4, 2003:** Bishop Wilton Gregory, president of the U.S. Conference of Catholic Bishops  
6 rejects a plea from priests to allow married men to join the priesthood, questioning whether such a  
7 move would increase the number of priests. This was in answer to a request from about 160  
8 Milwaukee priests. The group, more than a quarter of the archdiocese’s clerics, called in August for  
9 opening the priesthood to married men.

10 **Sept. 9, 2003:** In the largest known payout by a U.S. diocese to settle molestation charges, the  
11 Boston Archdiocese agrees to pay \$85 million to settle more than 500 lawsuits from people who  
12 claim priests abused them. Victims will receive awards ranging from \$80,000 to \$300,000. David  
13 Clohessy, national director of the Survivors Network of Those Abused by Priests, says of the deal,  
14 “For many victims, some kind of official, public acknowledgment that ‘We were harmed’ can be a  
15 real step toward healing.”

16 **Feb. 27, 2004:** The National Review Board, a lay watchdog panel formed by Catholic bishops,  
17 issues two highly anticipated studies documenting the molestation problem. One is the first church-  
18 sanctioned tally of abuse cases, finding 10,667 abuse claims against about 4 percent of all American  
19 clerics from 1950 to 2002. The second report puts much of the blame on American bishops for not  
20 cracking down on errant priests.

21 **March 29, 2004:** USCCB Interim Chair Anne Burke charges the bishops want “to return to  
22 business as usual” when she learns of a plan to delay or possibly scuttle the 2004 audit. In public  
23 correspondence Judge Burke concluded the following: “It is hard to reach any other conclusion than  
24 that the failure to tell the NRB of these matters in a timely fashion was to make sure they did not  
25 come up in any discussion with the national media on February 27. In short, we were manipulated.”

26 **May 2004:** In a letter from Boston Archbishop Sean O’Malley dated May 3, Paul Shanley is  
27 told that Pope John Paul II has decided to remove him from his responsibilities as a priest. The letter  
28 says Shanley, a key figure in the clergy sexual abuse scandal, will no longer be eligible for financial  
support or benefits from the archdiocese.

**July 6, 2004:** Facing dozens of pending lawsuits accusing clergy of sexual abuse, the  
archdiocese of Portland, Ore., files for bankruptcy. The Portland church has already paid more than  
\$53 million to settle more than 130 abuse claims, and the archbishop says, “The pot of gold is pretty  
much empty right now.” It’s believed to be the first time a U.S. archdiocese has filed for bankruptcy.

**Sept. 20, 2004:** The Roman Catholic Diocese of Tucson, Ariz., becomes the second in the  
nation to seek bankruptcy protection, in the wake of extensive and continuing legal action stemming  
from sexual abuse of children by parish priests.

**Sept. 24, 2004:** Bishop Thomas Dupree is indicted on child rape charges, becoming the first  
bishop to face charges in the church sex abuse scandal. Dupree was the head of the Springfield,  
Mass., diocese, but resigned in February after the allegations came to light. His two alleged victims  
have said Dupre sexually abused them for years in the 1970s and asked them to keep quiet about the  
abuse when he was made auxiliary bishop in 1990.

**Dec. 2, 2004:** The Orange County diocese reaches a settlement with 87 victims of clergy abuse

1 for \$100 million. The lawsuits alleged sexual misconduct by 30 priests, 11 lay personnel and two  
2 nuns. The cases were all filed under California's new statute reviving claims for one year.

3 **Feb. 7, 2005:** Defrocked priest Paul Shanley, the most notorious figure in the sex scandal that  
4 rocked the Boston Archdiocese, is convicted of raping and fondling a boy at his church during the  
5 1980s. Shanley, 74, is found guilty of two counts each of child rape and indecent assault and battery  
6 on a child, and is later sentenced to 12 to 15 years in prison.

7 **Feb. 18, 2005:** In a national audit, Roman Catholic bishops say that over the past year they  
8 received 1,092 new allegations of sexual abuse against at least 756 priests and deacons. Most of the  
9 incidents are decades old, and the majority of the accused are dead or no longer working in the  
10 church. The audit also finds more than 95 percent of dioceses are in compliance with the church's  
11 new child protection policy.

12 **June 17, 2005:** The U.S. Conference of Catholic Bishops overwhelmingly votes to extend the  
13 church's policy of permanently barring sexually abusive clergy from church work. A panel  
14 overseeing a mandatory review of the unprecedented 2002 policy concludes that "many, perhaps a  
15 majority," of bishops hope to someday ease the permanent ban on offenders, but now is not the time.

### 16 **Other States Begin an Examination of Various Statutes of Limitations** 17 **and Undertake Criminal Investigations**

18 The assertion that the Catholic Church is being targeted, punished or somehow deprived of  
19 various defenses is yet another example of the myopic historical revisionism the church has suffered  
20 for decades. In 2002, facts laid out in litigation throughout the country coalesced with media  
21 coverage of the Catholic Church's mishandling of the child sexual abuse scandal to the extent  
22 legislatures began to respond to issues concerning public welfare. Some noteworthy findings of the  
23 National Review Board concerning the suppression of documents relating to childhood sexual abuse  
24 help explain the outrage of the public:

25 In addition, some diocesan lawyers advised their bishop clients not to invoke a full penal  
26 process in those cases where civil litigation was pending or likely because the record of the  
27 testimony that was required to be kept in the canonical proceeding would be subject to  
28 discovery by a civil plaintiff. Thus, some bishops may have refrained from enforcing canon  
law to remove predator priests out of concern that victims and their lawyers would gain  
access to additional information about the priests.

To allow a predator priest to remain in ministry out of fear of litigation is simply immoral.  
Such an action is also short-sighted as the failure to take action against a predator priest  
increases the long-term legal exposure of the diocese.

When bishops in the United States first requested a process to deal with sexual abuse of  
minors by priests, it appears that the seriousness of this issue and the magnitude of the  
problem were not appreciated fully in Rome, perhaps in part because, as noted above, some  
bishops elected to sidestep the canonical process and consequently never prosecuted cases

1 that reached the Vatican.<sup>14</sup>

2 When the print and broadcast media, primarily led by the Boston Globe, New York Times and  
3 CBS News, spotlighted the issue of sexual abuse of children by clergy in 2002, there was a collective  
4 move to reform. Throughout the country, the revelation of the staggering number of children who  
5 had been molested by Catholic priests prompted grand juries, prosecutors, lawmakers, and victims'  
6 advocates to call for an end to statutes of limitations on child rape and other serious sexual offenses.  
7 Maine and Alaska wisely have no statute of limitations for such abuse.

8 Legislation to eliminate or extend statutes of limitations on sexual crimes against children has  
9 been filed in many states and the majority of the states now have some type of provision extending  
10 the statute of limitations for adult survivors of childhood sexual abuse, although the remedy varies  
11 depending upon state. Some of the extended periods are provided for by legislative statute, and  
12 others are contained in "tolling" doctrines adopted by the courts. In other states, such as Arizona and  
13 Illinois, victims' rights advocates are working with lawmakers to lower barriers to the pursuit of  
14 justice and accountability in cases of child molestation by promoting measures that address the  
15 psychological reasons for delayed reporting.

16 Many state legislatures have made their intent explicit in the legislative history which  
17 accompanies their statute. Generally, these legislatures have found that:

- 18 1. childhood sexual abuse is a pervasive problem that affects the safety and well-being of  
19 many of our citizens;
- 20 2. childhood sexual abuse is a traumatic experience for the victim causing long-lasting  
21 damage;
- 22 3. the victim of childhood sexual abuse may repress the memory of the abuse or be unable  
23 to connect the abuse to any injury until after the statute of limitations has run;
- 24 4. the victim of childhood sexual abuse may be unable to understand or make the connection  
25 between childhood sexual abuse and emotional harm or damage until many years after the abuse

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27 <sup>14</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
28 of Children and Young People, Feb. 27, 2004, at pp. 44-45.

1 occurs; and

2 5. even though victims may be aware of injuries related to the childhood sexual abuse, more  
3 serious injuries may be discovered many years later.

4 The following is a description of measures some state lawmakers have drafted and/or passed in  
5 response to the sex abuse crisis, *none* of which specifically target or identify the Roman Catholic  
6 Church or its priests.

7 **Connecticut:** Extended the time limit for filing claims of child abuse to thirty years beyond the  
8 age of majority. Under Connecticut's special statute of limitations for victims of childhood sexual  
9 abuse or exploitation (Conn. Gen. Stats. 52-577d), survivors now have until the day before their 48th  
10 birthday to bring actions against the responsible party or parties. Governor Rowland signed the bill  
11 extending the statute of limitations on May 23, 2002. It became effective immediately. The  
12 Legislature also enacted the same extension to the limitation on criminal actions.

13 **Illinois:** Has a special statute of limitations for survivors of childhood sexual abuse. As  
14 amended in 2003, Illinois Statutes § 13--202.2(b) provides: An action for damages for personal injury  
15 based on childhood sexual abuse must be commenced within 10 years of the date the person abused  
16 discovers or through the use of reasonable diligence should discover that the act of childhood sexual  
17 abuse occurred and that the injury was caused by the childhood sexual abuse.

18 **Indiana:** The legislature is considering House Bill 1061, which provides that a civil action  
19 based on an allegation of childhood sexual abuse must be brought within 2 years of the discovery of  
20 the cause of action, but before the child becomes 31 years of age.

21 **Kansas:** Victims of childhood sexual abuse would have 30 years after their 18th birthday to  
22 seek damages under a bill being considered in a Senate committee (SB 436) (Feb. 17, 2004).

23 **Missouri:** A 2003 amendment to the limitations statute provides that civil claims must be filed  
24 either on or before reaching the age of 30, or within 3 years from the date the victim discovers, or  
25 should have discovered, that physical or psychological injury was caused by abuse. Mo. Rev. Stat.  
26 § 537.046.

27 **New Jersey:** The Assembly is considering Bill A2112 which would suspend the statute of  
28



1 limitations for childhood sexual abuse cases for one year, opening a one-year window for victims  
2 whose claims were previously barred by the statute of limitations. The Bill also creates new cause  
3 of action against certain persons in supervisory positions (Mar 1, 2004).

4 **New York:** Assembly Bill 08705 would extend statute of limitations on civil lawsuits and  
5 tighten requirements for reporting child sexual abuse to civil authorities. The bill includes a one-year  
6 revival period similar to California for any action previously barred by the statute of limitations. The  
7 bill passed the NY State Assembly and was delivered to the Senate and the Conference Rules  
8 Committee on June 16, 2005. The Grand Jury Report on the Diocese of Rockville Centre, New York,  
9 filed on May 6, 2002, petitioned the state Legislature to amend the law to provide criminal penalties  
10 for permitting a clergy member with a record of child sexual abuse to have access to minors. It also  
11 reports in its findings that the statute of limitations should be eliminated in cases where the victim  
12 of a sex offense is a minor.

13 **Ohio:** Cuyahoga County Prosecutor William Mason's frustration was clear at a news conference  
14 as he criticized Ohio's laws for providing repose for most of the 145 priests against whom sexual  
15 abuse allegations were leveled. "Without a doubt, but for the statute of limitations, many more  
16 priests would have been indicted," Mason said. He said he intends to work with the Ohio legislature  
17 next year to loosen the law (Cleveland.com, 12/5/02).

18 **Pennsylvania:** Section 5533(b) of Title 42 of the Pennsylvania Consolidated Statutes was  
19 amended to provide a statute of limitations of 12 years from the date of a victim reaching his or her  
20 age of majority. The new statute of limitations was effective 60 days from the date of signing which  
21 was June 28, 2002; Philadelphia District Attorney's Office has spent the last two terms of grand jury  
22 impanelments investigating the Archdiocese of Philadelphia. A final report is due in September of  
23 2005.

24 **Washington:** A bill was introduced in the Spring of 2003 to extend the time within which  
25 victims could bring civil suits to age 30 (Senate Bill 5842). Another bill pending is for complete  
26 revocation of the statute of limitations, allowing suits to be filed at any time (House Bill 1040).

27 **Wisconsin:** A bill to suspend the statute of limitations for one year to allow suits against  
28

1 perpetrators during the one-year window regardless of the expiration of the statute of limitations  
2 failed in the Senate (March 5, 2004). The Senate did pass a bill extending the statute of limitations  
3 which will go to the Assembly for a final vote.

4 These amended laws and investigations epitomize a continuing evolution of legislative  
5 sensitivity toward providing broader civil and penal remedies previously unavailable to survivors of  
6 childhood sexual abuse. Without such statutes, sexual predators and those who shelter them would  
7 escape responsibility for the life-altering effects of early childhood sexual abuse.

8 **A. Profile of the Survivors of Sexual Abuse in the Context of Remedial Legislation.**

9 The media brought to light clandestine activities which had intentionally been concealed from  
10 the general public, thereby unveiling - but not creating - a scandal which Defendants wished to avoid  
11 at all costs. The National Review Board found the methods used by the Church to avoid scandal  
12 particularly troublesome. “First, time and again Church leaders failed to report incidents of possible  
13 criminal activity to the civil authorities. . . .” “Second, in some instances Church leaders discouraged  
14 victims or their parents from reporting the abuse to authorities. . . .” “Third, certain witnesses stated  
15 that in some instances bishops may not have punished priests who engaged in sexual abuse because  
16 the bishops were themselves compromised. That is, priests either explicitly or implicitly threatened  
17 to reveal compromising information about a bishop if the bishop took steps against the priest. . . .”  
18 “Finally, in part out of an overemphasis on secrecy, dioceses and religious orders did not utilize  
19 adequate methods to track allegations against priests.”

20 The medium was the messenger that documented outrageous behavior by those Catholic clergy  
21 in supervisory positions. The mantra of secrecy and overt displays of haughtiness played a critical  
22 role in spurring on even more media coverage.

23 Clericalism also contributed to a culture of secrecy. In many instances, Church leaders  
24 valued confidentiality and a priest’s right to privacy above the prevention of further harm  
25 to victims and the vindication of their rights. Both confidentiality and privacy are valuable,  
26 and obviously it is important to take steps to ensure, to the extent possible, the privacy and  
rights of the accused. But these values should not be allowed to trump the duty to keep  
children safe from harm or to investigate claims of sexual abuse against clerics and respond  
appropriately. ...

27 Finally, the haughty attitude of some bishops, which has exacerbated the crisis, is a

1 byproduct of clericalism. Just as priests are often placed on a pedestal far above the laity  
2 that they serve, certain bishops appear far removed from their priests. As several exemplary  
3 bishops have displayed in responding to the crisis, a bishop must lead with humility, not  
4 hubris, and never forget that he is first and foremost a pastor to this people.<sup>15</sup>

5 Defendants object to the disproportionate media coverage of Roman Catholic incidents of clergy  
6 minor abuse. However, Defendants do not dispute the accuracy of these media reports, just the  
7 staggering number. While any disparity between the number of incidents of clergy abuse among  
8 Roman Catholic clergy as compared with the number of incidents involving other religious  
9 denominations or nonsectarian youth organizations may be historically curious, the disparity is not  
10 suggestive of media bias, but of factual circumstances. No religious beliefs or conduct are in peril.  
11 Disproportionate media coverage does not preclude the passage of curative legislation which  
12 addresses an underlying, secular problem. Otherwise, Defendants would be permitted to argue the  
13 absurd: In the name of religious freedom, that by virtue of the fact that they may represent the largest  
14 group of sexual offenders, they should not be held accountable, and indeed should be shielded from  
15 civil culpability.<sup>16</sup> That argument is misplaced. The protection afforded by the First Amendment  
16 does not extend to secular acts or the pecuniary interests of a particular religious denomination.

17 Based upon Amici, “USCCB’s” own data, the collection and analysis of which was expressly  
18 authorized by the Catholic Conference of Bishops, it would appear both warranted and reasonable  
19 that “[p]eak coverage of the Catholic sex scandal dwarfed coverage of other major stories.” (“Joint  
20 Memorandum” at page 5).<sup>17</sup> Perhaps the best response to that argument is the Biblical truth, “You

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21 <sup>15</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
22 of Children and Young People, Feb. 27, 2004, at pp. 103-104, 106.

23 <sup>16</sup> Similarly, regarding the number of statewide claimants, Defendants protest “[t]he Archdiocese of Los Angeles  
24 has been hit the hardest. Over 550 Plaintiffs have filed suit against the Archbishop of Los Angeles, claiming abuse by  
25 more than 200 priests...” (“Joint Memorandum” at page 10). However, placed in the proper context, these figures are  
26 nominal. According to the official website of the Archdiocese of Los Angeles, the Archdiocese serves more than three  
27 and a half million Catholics in three California counties (Los Angeles, Santa Barbara and Ventura). Further, the  
28 Archdiocese consists of 284 parishes in 120 cities and administers 230 elementary schools and 53 high schools which  
combined enroll in excess of 100,000 students.

<sup>17</sup> Defendants contrast the minimal coverage of alleged sexual abuse of minors by the Krishna Consciousness Society  
(presumably forty-four stories nationwide, from October 2001 through April 2002) with more than 17,000 stories  
regarding the Catholic Church scandal. (“Joint Memorandum” at page 5). However, this ostensible disparity is not  
insidiously motivated but is based in pragmatism. According to the U.S. State Department’s “International Religious  
Freedom Report 2004,” there are nearly 77 million Roman Catholics in the United States. In fact, Roman Catholics  
account for 26% of the entire U.S. population. In stark contrast, according to its official website of the International  
(continued...)

1 reap what you sow.”

2 **B. Overview of Defendants’ Historical Awareness of Sexual Abuse of Minors.**

3 It cannot seriously be argued that such heinous acts have not been proscribed by *all* religious  
4 denominations since time immemorial. As early as the year 188 A.D., Bishop Athenagoras  
5 characterized adulterers and pederasts as foes of Christianity and subjected them to  
6 excommunication, then the harshest penalty the church could inflict.<sup>18</sup> The Council of Elvira in 305  
7 severely condemned pederasts.<sup>19</sup> Canons 16 and 17 of the Council of Ancyra in 314 inflicted lengthy  
8 penances and excommunication for male homosexuality.<sup>20</sup>

9 Another important source of insight into the Church’s early view of sexual abuse comes from  
10 the body of penitential literature dating back to the Seventh century. The penitential books were  
11 handbooks compiled by priests, which were used to assist them in hearing the individual confessions  
12 of members of the Church.<sup>21</sup> During this period, individual confession of sins replaced the general  
13 or group confession of sins that had been in place since the earliest years.<sup>22</sup> The handbooks contained  
14 descriptions of particular sins, and the recommended penances and related prayers. Their popularity  
15 resulted in their widespread use through Europe. They continued in popularity until the late medieval  
16 period around the Thirteenth century, and remained in evidence until the Sixteenth century.

17 Although the Penitential books lacked uniformity, and never achieved an officially-approved  
18 status, they are a valuable source of factual information on problems of the time,<sup>23</sup> that illustrate

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20 <sup>17</sup>(...continued)  
21 Society for Krishna Consciousness (“ISKCON”), the Society was founded in 1966, not two thousand years ago and  
currently has 250,000 worldwide “congregational devotees” and 10,000 “temple devotees.”

22 <sup>18</sup>*Id.* at 162.

23 <sup>19</sup>*Id.*

24 <sup>20</sup>*Id.*

25 <sup>21</sup>*See Penitential Books*, in *The Oxford Dictionary of the Christian Church*, 104 (F.L. Cross ed., 1957).

26 <sup>22</sup>*See The Sacrament of Penance*, in *The Encyclopedia of Theology*, 1189 (Karl Rahner, ed., 1975).

27 <sup>23</sup>*See* Cross, *supra* note 179, at 1060; *see also Medieval Handbooks of Penance*, 25-30 (John T. McNeill & Helena  
28 M. Gamer trans., Austin P. Evans et al. eds., 1938) [hereinafter McNeil & Gamer].

1 Church views toward sexual abuse. More recently, the canon law of the church spoke directly to the  
2 sexual abuse of minors. According to the 1917 Code of Canon Law, canon § 2359:<sup>24</sup>

3 §2 - If they have committed an offense against the sixth commandment of the Decalogue  
4 with minors under sixteen years of age, or have carried on adultery, rape, bestiality,  
5 sodomy, pandering, or incest with relatives of blood or marriage in the first degree, they  
shall be suspended, declared infamous, deprived of every office, benefice, dignity, or  
position that they may hold, and in most grievous cases they shall be deposed.

6 §3 - If they have otherwise sinned against the sixth commandment of the Decalogue, they  
7 shall be corrected with appropriate penalties in proportion to the gravity of their sin, even  
with deprivation of office or benefice, especially if they have the care of souls.

8 According to a canon of the 1983 Code of Canon Law entitled "Various Violations of Clerical  
9 Chastity:"<sup>25</sup>

10 §2. If a cleric has otherwise committed an offense against the sixth commandment of the  
11 Decalogue with force or threats or publicly or with a minor below the age of sixteen, the  
cleric is to be punished with just penalties, including dismissal from the clerical state if the  
12 case warrants it.

13 According to Canon 1455, "The Duty to Maintain Secrecy,"<sup>26</sup>

14 §1. Judges and tribunal personnel are always bound to observe secrecy of office in a penal  
trial, as well as in a contentious trial if the revelation of some procedural act could bring  
disadvantage to the parties.

15 §2. They are also always bound to observe secrecy concerning the discussion among the  
16 judges in a collegiate tribunal before the sentence is passed and concerning the various  
votes and opinions expressed there, without prejudice to the prescript of c.1609, §4.

17 Defendants' contentions notwithstanding, it appears such deviant proclivities were not only  
18 known to occur but apparently occurred with sufficient frequency as to necessitate the passage of  
19 ecclesiastical law in derogation of such illicit behavior. Clearly, claims of "unfair surprise" and  
20 "unfair warning" are disingenuous, albeit consistent with past institutional prevarications, as  
21 Defendants had policies and procedures in place to address a known problem prior to the initial  
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23 <sup>24</sup> The 1917 Code of Canon Law was revised in 1983. Canon law is the internal law of a religious organization,  
24 namely, the Roman Catholic Church." (Adam Maida & Nicholas Cafardi, *Church Property, Church Finances, and  
Church-Related Corporations: A Canon Law Handbook*, (The Catholic Health Association of the United States, 1984)),  
page 53).

25 <sup>25</sup> Codex Iuris Canonici, c. 1395. (hereinafter cited as C.I.C.).(*New Commentary On The Code of Canon Law*), J.  
26 Beal, J. Coiden & T. Green, eds., Paulist Press 2000). All subsequent references to canon law refer to the 1983 Codex  
Iuris Canonici.

27 <sup>26</sup> C.I.C. §1455. (*New Commentary On The Code of Canon Law*, J. Beal, J. Coiden & T. Green, eds., Paulist Press  
28 2000).

1 passage of C.C.P. 340.1 in 1987. While the problem of clergy childhood sexual abuse has existed  
2 for centuries, this fact was hidden from the public at large. As public awareness grew, public  
3 concern, indeed public outrage, inevitably followed altering public policy interests and reasonably  
4 culminating in the passage of remedial legislation.

5 Any elements of surprise can only be attributable to the public disclosure of such activities and  
6 the subsequent exposure to potential civil liability.

7 **THE LEGISLATURE MAY CONSTITUTIONALLY REVIVE A CIVIL CLAIM THAT**  
8 **HAS BEEN PREVIOUSLY BARRED BY THE STATUTE OF LIMITATIONS**

9 Most child or adolescent victims as represented in the Clergy Cases in California were raised  
10 in devout Catholic families, possessing strong ties to the Church, as well as to individual clergy  
11 members. In most cases, the abuse is preceded by a period of grooming or courtship, and once sexual  
12 abuse begins it consists of repeated acts over prolonged periods.<sup>27</sup> This is why it sometimes takes  
13 years for victims to report abuse. In many cases, child or adolescent victims do not disclose their  
14 abuse until they reach adulthood. These victims' intimate affiliation with the Church is also related  
15 to the historical unwillingness of their parents and other adults in their lives to believe reports of  
16 clergy sexual misconduct with children. Many of these research findings were echoed in the National  
17 Review Board's research findings:

18 Sexual abuse inherently is traumatic; and when committed by a priest, it is especially  
19 traumatic. Because a priest is quite literally a 'father figure,' abuse by a priest is likely to  
20 cause more harm to a child than abuse by any other individual outside of the family.  
21 Moreover, a unique consequence of abuse by a member of the clergy is the damage to the  
22 victim's faith. Indeed, some priests committed these crimes in connection with the  
23 sacrament of confession or in relation to other Church liturgies, aggravating the spiritual  
24 damage. Abusing priest also have, by their conduct, made many victims feel that it is  
25 difficult, if not impossible, to remain in communion with the Church or indeed to hold any

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26 <sup>27</sup>The "grooming" process has been defined as "a lot of gift giving, a lot of affection, praising, rewards, anything to  
27 make the individual more comfortable, even to the extent of dealing with lots of people surrounding this particular person,  
28 just getting into a comfortable role; in other words, feeling comfortable and being close to an individual. Yes, they often  
establish some emotional dependency". In re the application of Donald D. Nash for reinstatement as an active member  
of the Oregon State Bar, 855 P.2d, 1112 (Or.) en banc 1993, State v. Quigg, 866 P.2d, 655, 72 Wash. App. 828 (1994)  
(expert testimony stating that grooming is a concept directly related to child sexual abuse), **How Sex Offenders Lure  
Children**, Lang, Rubin, A.; Frenzel, Rory R.; Alberta Hospital, Edmonton, Department of Psychology, Canada Annals  
of Sex Research Volume 1 (2) 303-317 (1988). Pedophiles reported using a slow courtship or "grooming process" to  
seduce children with gifts, attention, and affection.

1 religious belief. [Footnote omitted.]<sup>28</sup>

2 According to Black’s Law Dictionary, the sole purpose of curative legislation is to ameliorate  
3 untenable circumstances:

4 A law, retrospective in effect, which is designed to remedy some legal defect in previous  
5 transactions. A form of retrospective legislation which reaches back into the past to operate  
6 upon past events, acts or transactions in order to correct errors and irregularities and to  
render valid and effective many attempted acts which would otherwise be ineffective for  
the purpose intended.

7 The underlying test to be applied in determining whether a statute is penal or remedial is  
8 whether it primarily seeks to impose an arbitrary, deterring punishment upon any who might  
9 commit a wrong against the public by a violation of the requirements of the statute, or  
10 whether the purpose is to measure and define the damages which may accrue to an  
individual or class of individuals, as just and reasonable compensation for a possible loss  
having a causal connection with the breach of the legal obligation owing under the statute  
to such individual or class.<sup>29</sup>

11 Throughout the legislative process in amending C.C.P. 340.1, the authors of the proposed  
12 legislation were consistent and precise on the public policy arguments that were to be addressed by  
13 the proposed bill. The bill analysis included the following statement:

14 [T]his bill is necessary to ensure that victim’s (sic) damaged by childhood sexual abuse are  
15 able to seek compensation from those responsible. While current law allows a lawsuit to  
16 be brought against the perpetrator within three years of discovery of the adulthood after  
17 effects of the childhood abuse, current law bars any action against a responsible third party  
18 entity (such as an employer, sponsoring organization or religious organization ) after the  
19 victim’s 26th birthday. Unfortunately, the author’s office and proponents assert, for many  
20 victims their adulthood trauma may not manifest itself until well after their 26th birthday,  
21 when some event in their current life triggers remembrances of the past abuse and brings  
22 on a new trauma. They conclude that it unfairly deprives a victim from seeking redress  
against responsible third parties for being accountable for their actions that caused injury  
to victims. Proponents assert that the emotional psychological damage that results from  
childhood sexual abuse affects the public at large. Many victims will require state-funded  
therapy or other medical care. They contend that untreated victims often have problems  
with alcohol and drug abuse a low achievement requiring state-funded treatment programs  
and/or public assistance. They further contend that some of these victims eventually  
become perpetrators themselves compounding such burdens while responsible parties are  
free from potential liability.<sup>30</sup>

23 The law is organic and is intended to continually change and reflect societal growth; otherwise,

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24 <sup>28</sup>“A Report on the Crisis in the Catholic Church in the United States,” The National Review Board for the Protection  
25 of Children and Young People, Feb. 27, 2004, at p. 98.

26 <sup>29</sup> Black’s Law Dictionary, Fifth Edition. (St. Paul., Minnesota: West Publishing Company, 1979, pages 343 and  
27 1163).

28 <sup>30</sup>Assembly Republican Bill Analysis, S.B. 1779, June 6, 2002, at item 5, pp. 13-14.

1 it will stagnate and become mired in antiquated concepts and ideas. The very purpose of legislation  
2 is to implement evolving, societal perspectives. One needs to look no further than Brown v. Board  
3 of Ed. of Topeka, 347 U.S. 483, 492, 74 S.Ct. 686, 691 (1954):

4 In approaching this problem, we cannot turn the clock back to 1868, when the Amendment  
5 was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider  
6 public education in the light of its full development and its present place in American life  
7 throughout the Nation.

8 Senator John Burton, co-author of S.B. 1779<sup>31</sup> also “brought SB 1889 to the legislature after the  
9 1994 earthquake.” (“Joint Memorandum,” Exh. 15, p. 186). SB 1889, later codified as C.C.P.  
10 340.9, is another example of remedial legislation.<sup>32</sup> It also quickly became the target of recalcitrant  
11 insurers and its constitutionality was addressed in Campanelli v. Allstate, 322 F3d. 1086, 1100 C.A.  
12 9(Cal.), (2003). The United States Court of Appeal rejected the carriers’ argument that Chambers  
13 v. Gallagher, 177 Cal. 704, 171 P. 931 (1918), “prohibited the revival of expired claims” and held  
14 Chambers was not controlling:

15 Allstate argues that the result is different under California's due process clause because the  
16 California Supreme Court has prohibited the revival of expired claims in *Chambers v.*  
17 *Gallagher*, 177 Cal. 704, 171 P. 931 (1918). In *Chambers*, the California Supreme Court  
18 held that a statute that removed the statute of limitations defense in proceedings to enforce  
19 payment of inheritance taxes was unconstitutional. *Id.* at 933. *Chambers*, however, has since  
20 been limited in its application. In *People v. Frazer*, 21 Cal.4th 737, 88 Cal.Rptr.2d 312, 982  
21 P.2d 180, 205 n. 32 (1999), the California Supreme Court refused to declare a revival statute  
22 unconstitutional based on *Chambers*. The court noted that *Chambers* had not been used by  
23 any court to strike down a statute in a civil case not involving some form of tax dispute.<sup>33</sup>  
24 *Id.* This effectively limits *Chambers*’ holding to tax cases. This is not a tax case; therefore,  
25 *Chambers* is not controlling. If § 340.9 passes the normal due process test for retroactive  
26 application of a statute under the California Constitution, then it is constitutional. Under the  
27 California Constitution, a statute can only be applied retroactively to impair vested rights  
28 if retroactive application ‘reasonably could be believed to be sufficiently necessary to the  
public welfare as to justify the impairment.’ *In re Marriage of Bouquet*, 16 Cal.3d 583, 128  
Cal.Rptr. 427, 546 P.2d 1371, 1376 (1976) (quoting *Addison v. Addison*, 62 Cal.2d 558, 43

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31 Senator Martha M. Escutia, Senate Judiciary Committee Chair, co-sponsored the legislation.

32 See also Rosenblum v. Safeco Ins. Co., 126 Cal.App.4th 847, 858, 24 Cal.Rptr.3d 427 (2005) “...section 340.9 was enacted in order to revive claims that were barred ‘solely because the applicable statute of limitations has or had expired. **...it simply revives [time] barred claims so that they can be further addressed.**...Section 340.9 did nothing more than reopen the filing window, for a one year period, to those otherwise viable cases that had become time barred.” (emphasis provided).

33 While *People v. Frazer*, 21 Cal.4th 737, 88 Cal.Rptr.2d 312 (1999) has been abrogated by Stogner v. California, 539 U.S. 607, 123 S.Ct. 2446 (2003) on *Ex Post Facto* grounds, the Frazer’s court Due Process analysis in regard to Chambers remains authoritative.



1 Cal.Rptr. 97, 399 P.2d 897, 902 (1965)). In determining whether a retroactive law violates  
2 the California due process clause, California courts consider: (1) the significance of the state  
3 interest served by the law; (2) the importance of retroactive application of the law to the  
4 effectuation of the interest; (3) the extent and legitimacy of the reliance on the former law;  
5 (4) the extent of actions taken on the basis of that reliance; and (5) the extent to which the  
6 retroactive application of the new law would disrupt those actions. *Id.* Applying these  
7 factors demonstrates that § 340.9 "reasonably could be believed to be sufficiently necessary  
8 to the public welfare as to justify the impairment." *Id.* The statute was passed to serve the  
9 significant state interest of ensuring that those injured by the Northridge earthquake are  
10 fully compensated for their losses. The California legislature determined that the claims  
11 procedures employed after the Northridge earthquake were not fair to all homeowners. The  
12 retroactive application of § 340.9 was essential to protecting the rights of those injured by  
13 the earthquake because most, if not all, of their claims were barred by the  
14 statutorily-imposed contractual limitations clause. Allstate, and other insurers, could not  
15 legitimately rely to any great extent on the one-year limitations period because it was  
16 mandated by statute and the insurance industry as a whole is heavily regulated. Finally,  
17 although § 340.9 significantly disrupts the insurer's actions, the legislature could have  
18 reasonably believed that § 340.9 was necessary to the public welfare because of the  
19 magnitude of the harm caused by the earthquake and the perceived problems of insurer  
20 malfeasance. We conclude that § 340.9 does not violate the due process clause of the federal  
21 or California Constitutions.  
22 (*Id.* at 1100-1101, emphasis provided).

23 The holding in Campanelli, *supra*, was foreshadowed a year earlier in Hellinger v. Farmers  
24 Group, Inc., 91 Cal.App.4th 1049, 1061, 111 Cal.Rptr.2d 268 (2002), which invoked a similar  
25 constitutional challenge. Adopting "the principle that curative statutes such as this should be  
26 liberally construed," (citation omitted) the Hellinger Court stated:

27 It has been established law for over a century that a legislature may revive a civil claim that  
28 is barred by the statute of limitations. The reason is that, in a civil case, there is no  
constitutional right of repose. (*Campbell v. Holt* (1885) 115 U.S. 620, 628-629, 6 S.Ct. 209,  
29 L.Ed. 483 [upholding provisions reviving civil actions]; *Chase Securities Corp. v.*  
30 *Donaldson* (1945) 325 U.S. 304, 314, 65 S.Ct. 1137, 89 L.Ed. 1628 [revival of a personal  
31 cause of action which did not involve creation of title does not offend due process]; *Liebig*  
32 *v. Superior Court* (1989) 209 Cal.App.3d 828, 830, 257 Cal.Rptr. 574 [Section 340.1]; *Lent*  
33 *v. Doe* (1995) 40 Cal.Rptr.4th 1177, 1183, 47 Cal.Rptr.2d 389 [similar]. (*Id.*).

34 Contrary to Defendants' protestations, C.C.P. 340.1 does not deprive them of "fair warning."  
35 The sexual abuse of children has been proscribed by English Common Law for centuries. While we  
36 may prefer to deny such unsettling truths, the reality is undeniable: sadly, clergy abuse of minors has  
37 been occurring, albeit secretly, for hundreds of years. Clearly, such proclivities were so predictable,  
38 so prevalent and so pervasive and apparently occurred with sufficient frequency as to necessitate the  
39 passage of several canons detailing the appropriate procedures and punishments for dealing with such  
40 transgressions. Consequently, with contingencies in place for the anticipated occurrence of such

1 behavior, this very same behavior cannot now paradoxically be said to constitute the basis of unfairly  
2 targeting.

3 Defendants further contend the "reason to know" standard "irreconcilably places the law of  
4 California at odds with the doctrines and teachings of the Church." ("Joint Memorandum" at p.3).

5 Yet, compare the canon law provision contained in §1717 entitled *Initiation of the Investigation*.  
6 Here, the church's own law sets out the procedures by which the bishop must conduct his  
7 investigation. It appears such an investigation requires a lesser standard ("knowledge, which at least  
8 seems true") than the scienter mandated by C.C.P. 340.1. According to Canon §1717:

9 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is  
10 carefully to inquire personally or through another suitable person about the facts,  
11 circumstances, and imputability, unless such an inquiry seems entirely superfluous.

12 §2. Care must be taken so that the good name of anyone is not endangered from this  
13 investigation.

14 §3. The person who conducts the investigation has the same powers and obligations as an  
15 auditor in the process; the same person cannot act as a judge in the matter if a judicial  
16 process is initiated later.<sup>34</sup>

17 Defendants' reliance upon Roman Catholic Bishop v. Superior Court, 42 Cal.App.4th 1556, 50  
18 Cal.Rptr.2d 399 (1996) is misplaced. ("Joint Memorandum" at p. 21). The standard of proof  
19 required by C.C.P. 340.1 is "knew or should have known," either actual or constructive knowledge.  
20 In Roman Catholic Bishop, plaintiff did not prevail because she failed to produce evidence of either  
21 constructive or actual notice. However, the Roman Catholic Bishop Court found:

22 Jane did not attend a church school, where an affirmative duty to protect students may exist.  
23 (See *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1851 [19  
24 Cal.Rptr.2d 671]; *Rodriguez v. Inglewood Unified School Dist.*, supra, 186 Cal.App.3d 707,  
25 714-715.) (Id. at 1567).

26 The Roman Catholic Bishop Court further stated:

27 The vow of celibacy by clergy is a religious decision based upon religious belief; it does not  
28 create a civil duty. Under the free exercise clause of the First Amendment, the state may not  
29 compel affirmation of a religious belief nor impose requirements based on belief in any  
30 religion. (*Torcaso v. Watkins* (1961) 367 U.S. 488, 495 [6 L.Ed.2d 982, 987, 81 S.Ct.  
31 1680].) Thus the church had no greater civil duty based upon its religious tenets. (Id. at  
32 1568).

33 However, as "the church had no greater civil duty based upon its religious tenets," it is equally

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34 C.I.C. §1717. (*New Commentary on the Code of Canon Law*, J. Beal, J. Coiden & T. Green, eds., Paulist Press  
2000).

1 true that the First Amendment does not permit the church a *lesser* civil duty based upon its religious  
2 tenets. Civil law acceptance of religious concepts is constitutionally alien, primarily because the  
3 acceptance of religious concepts requires "faith authority," which is wholly ecclesiastical and  
4 therefore secularly unenforceable:

5 Unlike the civil law, which can enforce behavior and impose penalties regardless of the  
6 individual's acceptance of the law, canon law has no compulsion except that which the  
7 individual gives it because the individual freely recognizes, as a result of his or her faith,  
8 the teaching authority involved. (footnote omitted). Faith authority rests in the individual  
and not in the sheriff. Unless the individual has been converted to the faith that underlies  
the authority, the faith authority structure of the canon law will mean nothing to him or her  
and will have no compelling effect.<sup>35</sup>

9 Therefore, while the First Amendment permits the free exercise of religious beliefs and conduct  
10 such as "penance, admonition and reconciliation" which are "sacramental response[s] to sin" and  
11 are thereby "core value[s] of the Catholic Church," these constitutionally-protected rights are a result  
12 of "faith authority" and have no compelling effect in terms of secular law.

13 According to Canon §1389, "Abuse of Authority/Negligence" states:

14 §1. A person who abuses an ecclesiastical power or function is to be punished according  
15 to the gravity of the act or omission, not excluding privation of office, unless a law or  
precept has already established the penalty for this abuse.  
16 §2. A person who through culpable negligence illegitimately places or omits an act of  
ecclesiastical power, ministry, or function with harm to another is to be punished with a just  
penalty.

17 According to the Commentary:<sup>36</sup>

18 This is the only canon in part two of Book VI where negligence (*culpa*), not malice (*dolus*),  
19 grounds penal imputability c.1321, §2). For example, an ordinary may neglect to conduct  
20 a preliminary investigation of an alleged delict c. 1717). This may damage its possible  
21 victims and perhaps the Church itself, especially, but not exclusively if the Church is found  
civilly liable because of such negligence.

22 Therefore, the culpability of those who "knew or should have known" required by C.C.P. 340.1 is  
23 neither an inappropriate consequence nor an unanticipated one. Secondly, the issue of whether or  
24 not Defendants "knew or should have known" of the occurrence of clergy abuse, as required by

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26 <sup>35</sup> Maida, pp. 54-55.

27 <sup>36</sup> Coriden, J., Green, T., Beal, J., ed., "New Commentary On The Code of Canon Law," p.1594 (Paulist Press 2000).

1 C.C.P. 340.1, is factually determinative and not properly disposed of in motion practice without a  
2 full record of discovery.

3 Defendants also object that the significant passage of time has resulted in a dearth of  
4 documentation and therefore its inability to adequately defend itself against such claims. (“Joint  
5 Memorandum” at page 4). According to Monsignor Callahan “many potentially critical records...are  
6 unavailable due to the passage of time, or because the Diocese and parishes in those eras did not keep  
7 regular reports and records regarding priests and all religious assigned them.” (Callahan Decl. ¶24).

8 However Canon 489, “The Secret Archive,” *requires* the retention of such  
9 documentation:

10 §1. In the diocesan curia there is also to be a secret archive, or at least in the common  
11 archive there is to be a safe or cabinet, completely closed and locked, which cannot be  
removed; in it documents to be kept secret are to be protected most securely.

12 §2. Each year documents of criminal cases in matters of morals, in which the accused  
13 parties have died or ten years have elapsed from the condemnatory sentence, are to be  
destroyed. A brief summary of what occurred along with the text of the definitive sentence  
14 is to be retained.<sup>37</sup>

15 As a summary for each “criminal case[] in matters of morals” is to be retained, indefinitely, in the  
16 secret archive, Defendants should not be unduly burdened by defending allegations of childhood  
17 sexual abuse, regardless of the date of occurrence. Defendants should only encounter difficulties in  
18 the event, contrary to its own internal law, summaries were neither made nor maintained.  
19 Nevertheless, it is the plaintiff’s duty to satisfy the burden of actual or constructive knowledge on  
20 the part of culpable defendants.

21 Defendants contend “[t]he Church cannot go back and change what were reasonable responses  
22 in the past to conform to retrospectively-imposed standards” (“Joint Memorandum” at p. 5). C.C.P.  
23 340.1 does not require Defendants to impossibly travel back in time. On the contrary, it appears the  
24 dictates of Defendants’ ecclesiastical law largely mirror the requirements of C.C.P. 340.1, as  
25 amended.

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27 <sup>37</sup>C.I.C. §489 (*New Commentary on the Code of Canon Law*, J. Beal, J. Coiden & T. Green, eds., Paulist Press 2000).

1 **CONCLUSION**

2 C.C.P. 340.1 is a legitimate revival statute necessary to the protection of the public welfare.  
3 Consistent with the legislative intent, it is clear that childhood sexual abuse is a pervasive problem  
4 that effects the safety and well-being of all citizens. Childhood sexual abuse is both traumatic and  
5 insidious in that its effects are lifelong for both the victims and their loved ones. Oftentimes, victims  
6 of childhood sexual abuse repress the memory of the traumatic event until well after traditional  
7 periods of limitations have run. Since many of the assaults occur during a child’s early years, the  
8 damage inherent in the assault occurring years later, is intellectually disguised and in many cases  
9 hidden from ordinary understanding. In many cases, institutions like the Catholic Church have been  
10 aware of sexual predators in their midst, but failed to disclose those facts to anyone. Even though  
11 victims of early childhood sexual assault may be aware of the incident, they can in many cases be  
12 totally unaware of the lasting emotional sequelae. The California Legislature to their credit identified  
13 all of these issues in their legislative findings and together formed the basis for their action to protect  
14 the public welfare.

15 C.C.P. 340.1 is neutral in its intent and scope. The statute is at its core curative and is solely  
16 about providing survivors of sexual abuse a judicial forum to seek redress for their injuries against  
17 those responsible. It has been the law of the State of California for over one hundred years that a  
18 legislature may revive a civil claim that is barred by the statute of limitations. 340.1 as amended  
19 addresses the significant state interest and the retroactive provisions effectuate the purpose and scope  
20 of the statute. It is purely within the legislative domain to determine what remedial curative actions  
21 are necessary to protect the public welfare.

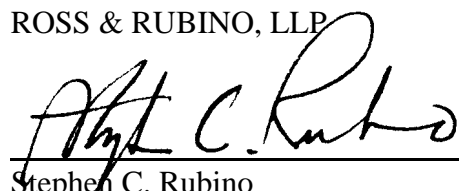
22 Catholic institutions were neither targeted nor should have been surprised by the amendments  
23 to 340.1. The defendants’ own public policy findings as enunciated by the National Review Board  
24 confirm the church’s deplorable, oftentimes criminal behavior in handling allegations of clergy  
25 childhood sexual abuse. The Catholic Church cannot now be heard to complain that they were  
26 targeted or unfairly treated since history has recorded, from their own records, the thousands of  
27 incidents of abuse and complicity within the church.

1 One cannot ignore the context of the present Motion for Summary Judgment. Nearly nine  
2 hundred cases involving these precise issues are pending before state courts throughout California.  
3 Verdicts have been rendered, settlements have been reached, appellate review has been sought and  
4 obtained, and mediation is ongoing. This Honorable Court should not countenance this blatant  
5 exercise of fortuitous forum shopping by the movants.

6 The Motion should be denied.

7 Respectfully submitted,

8 ROSS & RUBINO, LLP

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10 BY:   
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13   
14 Terry M. Giles

15 Counsel for Amici Curiae:  
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17 OF CRIME; SURVIVORS NETWORK OF  
18 THOSE ABUSED BY PRIESTS

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28 DATED: August 5, 2005

1 **CERTIFICATE OF SERVICE**

2 [Fed.R.Civ.P. 5(b), 5(d), 6(e); LR 5-135]

3 CASE NAME: *Melanie H. v. Defendant Doe 1, et al, and related actions*  
4 CASE NO.: 04 CV 1596 WQH (JFS)

5 I, CAROL L. KWOKA, declare as follows:

6 I am employed in the City of Margate, County of Atlantic, State of New Jersey. I am over the age of 18 years and not a party to the within action. My business address is Ross & Rubino, LLP, 8510 Ventnor Avenue, Margate, New Jersey 08402.

7 On August 5, 2005, I served the foregoing document described as **BRIEF OF AMICI CURIAE THE NATIONAL CENTER FOR VICTIMS OF CRIME AND THE SURVIVORS NETWORK OF THOSE ABUSED BY PRIESTS IN OPPOSITION TO COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT**, as follows:

8 [ ] **By Mail and Facsimile.** The document was served on the parties in this action listed below by placing a true copy thereof, enclosed in a sealed envelope, and addressed as indicated above. I deposited such envelope in the mail at Margate, New Jersey. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U. S. Postal Service on that same day, with postage thereon fully prepaid, at Margate, New Jersey, in the ordinary course of business. In addition to regular mail, I sent this document via facsimile, to the number(s) as listed below:

9 [ ] **By Electronic Service.** Pursuant to Order of Judicial Counsel Coordination Proceeding No. 4359, Clergy III, the document was served via Case Home Page to the parties indicated below. I forwarded an electronic version (Portable Document Format (pdf) and/or Word Perfect) document file of the text of the moving papers for scanning on August 5, 2005 to Case Home Page:

10 [ X ] **By Overnight Mail.** I arranged for this document to be delivered to the address(es) listed below by overnight mail:

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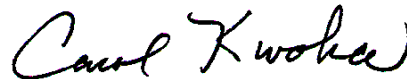
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13 I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing  
14 is true and correct. This declaration was executed on August 5, 2005, at Margate, New Jersey.

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Carol Kwoka  
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